UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21020

In the Matter of

CARL E. DILLEY,

Respondent.

DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

I. Introduction

The Division of Enforcement (the "Division") respectfully submits this Reply in support of its Motion for Summary Disposition ("Motion") against Carl E. Dilley ("Respondent" or "Dilley"). Respondent's Response in Opposition to Summary Disposition ("Response") brings forth no genuine issues of material fact. Accordingly, the sanctions sought against Respondent should be initiated as a matter of law pursuant to Rule 250(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(b).

At least the following three key facts are undisputed:

1. Dilley, who at all relevant times served as a registered principal and representative of a Commission-registered broker-dealer, and as the President of a Commission-registered transfer agent, was found liable after a jury trial for having violated the anti-fraud provisions of the Exchange

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Act by violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5(b) thereunder. Division's Motion, Ex. 1-3; Respondent's Response at 1; and Respondent's Answer.

2. The jury instruction for the Count which Dilley was found liable outlined 19 different misrepresentations or omissions that Dilley allegedly made. Division's Motion, Ex. 2 and Respondent's Response at 4.

3. After entry of the jury verdict against Dilley, a District Judge entered a Final Judgment in the Commission's favor and against Dilley, which restrained and enjoined him for a period of five years from future violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder; entered a ten-year penny stock bar; and ordered a $150,000 civil money penalty. Division's Motion, Ex. 5-6 and Respondent's Response at 1-2.

The public interest is served by instituting remedial measures against Dilley and imposing an industry bar against him in light of his fraudulent conduct, for which a jury found him liable. Significantly, Dilley's conduct occurred while he served in gatekeeper roles as a registered principal and representative of a Commission-registered broker-dealer, and as the President of a Commission-registered transfer agent.

Dilley's Response does not address, much less refute, the public interest factors which decisively weigh in favor of the remedial measures the Division seeks against him. Instead, Dilley raises meritless arguments that this proceeding should be stayed pending his appeal of the District Court case; that the jury rejected factual assertions supporting the Division's Motion; and any relief entered by the Commission should be time limited. Dilley's arguments are unsupported in law and fact, and do not raise genuine issues of material fact. To protect the public interest the Commission should grant the Division's Motion and enter an Order barring him from association with any broker,

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dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

II. Respondent's Arguments are Meritless

Dilley's reliance on meritless arguments underscores the fact that he has no viable defense to the Division's Motion. First, Respondent rehashes previously rejected arguments related to staying this matter pending his appeal of the District Court case to the 11th Circuit. Response at I. The Commission previously denied this request stating "we have repeatedly held that 'the pendency of an appeal of a civil or criminal proceeding does not justify any delay in related follow-on administrative proceedings.'" October 14, 2022 Order, citing *Thomas D. Melvin*, Exch. Act Rel. No. 75844, 2015 WL 5172974, at *7 n.52 (Sept. 4, 2015). *See also Donald J. Fowler*, Rel. No. 89226, 2020 WL 3791560, *1 (July 6, 2020) (same). Respondent offers no justification for departing from this rule and Respondent's request for a stay should be, once again, rejected.

Next, Dilley misguidedly argues *res judicata* applies to this proceeding because the Division's Motion is purportedly supported by facts rejected by the jury. Response at 3-5. On the contrary, it is the Respondent that seeks to re-write history by narrowly construing the facts supporting the anti-fraud verdict against him. Dilley's argument is premised on the farfetched idea that because the jury found the Commission had not met its burden at trial on other counts raised against Dilley, that the jury's finding that he in fact violated the anti-fraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, is limited to a narrow subset of facts.[1]

[1] An example of Respondent's disingenuous position is highlighted by Respondent's assertion that because the Commission did not succeed in its claim for violations of Section 5(a) and 5(c) of the Securities Act of 1933, that this means the jury "conclusively decided" the shares at issue "*were free-trading*". Response at 4. But the jury found nothing of the sort and made no conclusion as to the free-trading nature of the shares. The jury's verdict only found that Respondent did not violate

Respondent argues that the only relevant allegations remaining against him is that he "contributed to false DTC applications" by "misrepresenting the shell status of the issuers." Response at 4-5. But entry of a jury verdict and injunction for anti-fraud violations based solely on these allegations (which Respondent admits are relevant to this proceeding) would in fact support entry of the industry bars the Division seeks in this proceeding.

Additionally, Respondent's position is not supported by any cited law and is contradicted by the Court's Instructions to the Jury, the Verdict, the Court's post-trial Order, and Final Judgment. Motion, Ex. 2-3, 5-6. For example, it is undisputed that the Court's Instructions to the Jury included 19 misrepresentations and omissions. Motion, Ex. 2 and Response at 4. In post-trial proceedings, the District Court also found "the SEC presented evidence at trial that Defendants submitted Form 211s to FINRA for multiple issuers containing information that Defendants knew or reasonably should have known was false, made materially false statements or omissions in connection with clearance from the Depository Trust Company, and/or processed bulk transfers in instances where shares were restricted or their actions were otherwise improper" and "defendants abused their 'gatekeeper' role by enabling the purchase and sale of securities on the public market that should have been barred or more carefully vetted by FINRA." Motion, Ex. 5 at 4.

The District Court then enjoined Respondent from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder "by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

Sections 5(a) and 5(c) of the Securities Act and made no conclusions or finding related to the shares at issue. Motion, Ex. 3, Verdict.

to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, regarding:

i. initiating a quoted market in an issuer's security; or

ii. applications or submissions pursuant to Exchange Act Rule 15c2-11; or

iii. whether an issuer is a shell or blank check company; or

iv. the identity of any consultants or persons in control of an issuer; or

v. an issuer's plans for potential mergers or acquisitions; or

vi. the identity of the person or entity for whom a security's quotation is being submitted, when seeking to initiate or resume quotations of an issuer's security; or

vii. information submitted to the Depository Trust Company ("DTC") or its participants when seeking DTC eligibility for an issuer; or

viii. information submitted to Financial Industry Regulatory Authority ("FINRA") when seeking to initiate or resume quotations of an issuer's security." Motion, Ex. 6 at 2-3.

All of the above belie Respondent's meritless argument seeking to limit the facts relevant to this proceeding. Respondent is unable to point to any legal authority or anything in the underlying District Court record, which support his argument that the facts relevant to this proceeding are narrowed by the jury's verdict in the Commission's favor for one count instead of all counts.[2]

[2] Respondent also invites the Commission to rehash an argument rejected three times by the District Court. Specifically, Respondent asserts his actions could not have violated Rule 10b-5 because he made no misrepresentation to the public. Response at 5. The District Court on three separate occasions heard this argument and rejected it. Motion, Ex. 4 at 24. There is no reason to disturb the District Court's rulings on this issue.

Lastly, Respondent takes the unsupported position that any industry bar should be time-limited. While it is true that the District Court entered a 5-year injunction and 10-year penny stock bar, the Respondent presents no justification for a time-limited industry bar. In fact, he offers no legal support and does not address any of the public interest factors set forth in the Commission's Motion. Respondent also requests the Commission "follow the district court's lead" and impose a 5-year bar, without mentioning that the District Court entered a 10-year penny stock bar. As set forth in the Division's Motion, each of the unrefuted public interest factors overwhelmingly weigh in favor of an industry bar.

III. Conclusion

For the reasons above, as well as those set forth in the Division's Motion and in this Reply, the Division respectfully requests that the Commission grant the Division's Motion and impose full industry bars against Dilley.

April 28, 2023

Respectfully submitted,

CHRISTINE NESTOR Digitally signed by CHRISTINE NESTOR Date: 2023.04.28 17:00:57 -04'00'

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CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that on April 28, 2023 the foregoing document was filed using the eFAP system and that a true and correct copy of the document has been served via email on this 28th day of April 2023, on the following persons entitled to notice:

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