UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21097

In the Matter of

GRENDA GROUP, LLC,

Respondent.

THE DIVISION OF ENFORCEMENT'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AND REQUEST FOR REMEDIAL SANCTIONS

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The Division of Enforcement ("Division") respectfully submits this reply memorandum of law in response to the *Memorandum of Law in Opposition to the Division of Enforcement's Motion for Summary Disposition and Request for Remedial Sanctions* submitted by Respondent Grenda Group, LLC ("Grenda Group") dated January 16, 2024.

PRELIMINARY STATEMENT

Seeking to avoid the revocation of its registration, Grenda Group makes a scattershot collection of arguments in support of its claim that there are material questions of fact that still need to be resolved. At this point—following the December 2021 jury verdict, as well as the Court's May 2021 partial summary judgment ruling and its August 2022 post-trial decision awarding injunctive and monetary relief—there are no questions of fact remaining. Indeed, as Grenda Group fails to recognize, it is prohibited by collateral estoppel from challenging any of the damning findings in the jury's verdict and in the Court's two rulings. These findings, moreover, fully show the need for the revocation of Grenda Group's registration. Its proven conduct establishes that as an investment adviser, it and Gregory M. Grenda ("G. Grenda")[1] deceived and misled their clients for years and put them at substantial risk by knowingly exposing them to a financial predator, G. Grenda's father Walter Grenda.

The Division's motion for summary disposition should be granted.[2]

[1] G. Grenda has filed a nearly identical opposition brief to the Division's motion for summary disposition in *Gregory M. Grenda*, File No. 21098, which the Division is separately replying to in that matter.

[2] This brief uses these conventions: "Opp." refers to the *Memorandum of Law in Opposition to the Division of Enforcement's Motion for Summary Disposition and Request for Remedial Sanctions* filed by Grenda Group on January 16, 2024; "Defendants" and "Respondents" refers to G. Grenda and Grenda Group; and "Div. Ex." refers to exhibits attached to the Declaration of Alexander M. Levine dated November 20, 2023, filed in connection with the Division's motion for summary disposition.

ARGUMENT

Under Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act"), the Commission has authority to revoke Grenda Group's registration if it has been enjoined "from engaging in or continuing any conduct or practice in connection with . . . activity" as a broker, dealer, or investment adviser, and revocation of its registration is in the public interest. 15 U.S.C. § 80b-3(e)(4). Grenda Group does not and cannot dispute that it was registered as an investment adviser at the time of the alleged misconduct, and that it has been enjoined. As shown below, Grenda Group's equitable and public interest arguments for avoiding revocation lack merit.

I. Revocation of Registration Is Necessary to Protect the Investing Public

Grenda Group contends that revocation of its registration is not needed because the permanent injunction and civil penalty imposed by the District Court "are sufficient equitable and legal remedies." Opp. at 6.[3] Grenda Group, however, cites no case or legal authority finding that the imposition of a permanent injunction or civil penalty obviates the need for the revocation of its registration. Instead, Grenda Group claims that revocation of its registration is not needed because the injunction and civil penalty have caused "difficulties" for it. *Id.* Grenda Group is wrong: the revocation of its registration is needed here despite the injunctive relief and financial remedies.

"[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to revoke the registration of . . . a respondent who is enjoined from violating the antifraud provisions." *In Re Marshall E. Melton*, Rel. No. 2151, 2003 WL 21729839, at *9 (July

[3] The Opp. did not include page numbers. The page numbers of the Opp. cited here do not include the title page, such that page 1 begins with the "Introduction."

25, 2003) (noting that revocation "is appropriate to protect the public from further harm at [Respondents'] hands."). Revocation of Grenda Group's registration is needed here, given the jury's unanimous verdict finding fraud; the District Court's findings that "G. Grenda actively participated in misleading his clients" and that the violations by G. Grenda and Grenda Group were "widespread, repeated, accompanied by *scienter*, and far from inadvertent," *SEC v. Grenda Group, LLC, et al.*, 621 F. Supp. 3d 406, 410, 412-13 (W.D.N.Y. 2022) (Div. Ex. 3); and the Court's May 2021 decision granting the SEC's motion for partial summary judgment (2021 WL 1955330 (May 17, 2021) (Div. Ex. 1)), are more than sufficient to revoke Grenda Group's registration.

II. The Public Interest Factors Support Revocation

Grenda Group claims that there are "material questions of fact as to whether each of the first three factors [under *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979)] have been met," and that these questions "requir[e] a hearing." Opp. at 6-7. Grenda Group is wrong.

A. No Questions of Fact Exist Regarding Grenda Group's Failure to Recognize Its Wrongful Conduct and the Likelihood of Future Violations

Grenda Group argues that there are "questions of fact" regarding two of the *Steadman* factors: the recognition of its wrongful conduct and the likelihood of future violations. Opp. at 7. Both claims are unsupported and contradicted by the record.

First, the District Court found that both G. Grenda and Grenda Group LLC "accept no responsibility for their violations." 621 F. Supp. 3d at 411 (Div. Ex. 3 at 4). Even now, Grenda Group fails to offer the slightest indication that it accepts any responsibility at all for its conduct. On the contrary, rather than expressing remorse for deceiving and misleading its customers, Grenda Group focuses only on itself and the "difficulties" that the injunction and penalty have supposedly caused it. Opp. at 6.

Second, Grenda Group claims that there are questions of fact regarding "the likelihood . . . in the future [that] will present opportunities for future violations." Opp. at 7. Still, however, Grenda Group appears to continue to be registered as an investment adviser.[4] Given the record proving that Grenda Group abused the position of trust it occupied as an investment adviser and that it and G. Grenda acted with scienter, Grenda Group remains a risk to the investing public. Under these circumstances, the revocation of its registration is warranted. *See In the Matter of Eagleeye Asset Mgmt., LLC*, Rel. No. 497, 2013 WL 3817857, at *5 (July 24, 2013) (revoking registration where respondent offered no specific assurances against future violations).

Third, Grenda Group asserts that there are questions of fact regarding his "recognition of the wrongful nature of the conduct and the likelihood that . . . the future will present opportunities for future violations" because "[s]ince the verdict, the Grenda Group engaged in no violation of the terms of the permanent injunction." Opp. at 7. However, "compliance with the district court's judgment is expected" and an "asserted lack of prior violations [] is not mitigating because securities professionals should not be rewarded simply for complying with securities laws." *George Charles Cody Price*, Rel. No. 1018, 2016 WL 3124675, at *7 (Init. Dec. June 3, 2016) (quotation and alteration omitted).

B. The Non-Party Declarations Submitted by Grenda Group Should Be Given No Weight

Grenda Group claims that factual issues exist regarding three other *Steadman* factors: the egregiousness of its conduct, its scienter, and whether its violations were isolated or recurring. Opp. at 7. In support, Grenda Group has submitted hearsay declarations signed more than three years ago by nonparties Peter Andrews ("Andrews"), Joseph Cherico ("Cherico") and Patrick

[4] Grenda Group remains registered as an investment adviser (although its Form ADV has not been updated since 2021). *See* https://reports.adviserinfo.sec.gov/reports/ADV/170241/PDF/170241.pdf (visited Feb. 12, 2024).

Lyons ("Lyons") which, Grenda Group claims, show that "Grenda Group clients were clearly informed about Walter Grenda's bar by Greg Grenda and that Greg Grenda prevented Walter Grenda from having contract with Grenda Group clients." *Id*.

The declarations should be given no weight. They improperly seek to relitigate the jury verdict and the District Court's findings in its summary judgment and post-trial rulings that G. Grenda and Grenda Group "did nothing to affirmatively disclose to Grenda Group clients W. Grenda's barred status." *SEC v. Grenda Group*, *LLC, et al*., 2021 WL 1955330, at *11 (Div. Ex. 1 at 20). And in its post-trial decision, the Court found that "Defendants permitted Walter Grenda's association to continue for years." 621 F. Supp. 3d at 413 (Div. Ex. 3 at 7).

These findings were made by District Court and jury based on the totality of evidence admitted at trial—which included testimony from Andrews, one of the declarants—and cannot be challenged now. "Findings of fact and conclusions of law made in the underlying action are immune from attack in a follow-on administrative proceeding." *Frank L. Constantino*, Rel. No. 414, 2011 WL 1341151, at *2 (Init. Dec. Apr. 8, 2011) (granting motion for summary disposition); *see also Thomas D. Conrad, Jr.*, Rel. No. 6467, 2023 WL 6955511, at *4 (Oct. 20, 2023) ("[C]ollateral estoppel prevents [Respondent] from relitigating the district court's factual findings and legal conclusions"); *Phillip J. Milligan*, Rel. No. 61790, 2010 WL 1143088, at *4 & ns.12-13 (Mar. 26, 2010) ("We have repeatedly held that a respondent in a follow-on proceeding may not challenge the findings made by the court in the underlying proceeding and we consider those findings in determining the appropriate sanction.").

Indeed, Grenda Group submitted these same declarations to the Court in 2021 during briefing on the SEC's partial summary judgment motion, and the Court found that the declarations did not support its arguments but "provide further evidence that W. Grenda and G.

Grenda continued to meet jointly with Grenda Group clients after the SEC bar." 2021 WL 1955330, at *9 (Div. Ex. 1 at 16-17).[5]

In addition, Grenda Group claims that at the trial "Andrews . . . testified that [he] received notification of Walter Grenda's bar." Opp. at 7.[6] The jury, however, apparently found Andrews' testimony unconvincing and contradicted by the substantial evidence of fraud given its verdict.[7] In the context of this follow-on proceeding, where the jury's verdict finding Grenda Group liable on all charges cannot be challenged, the declarations submitted deserve no weight. By attempting to relitigate that action, Grenda Group shows that revocation of its registration is in the public interest. *See In the Matter of Sherwin Brown & Jamerica Fin., Inc.*, Rel. No. 408, 2010 WL 4851379, at *4 (Nov. 29, 2010) (revoking registration and noting that respondents "are precluded from relitigating in this proceeding the district court's findings of fact or conclusions of law"). "'Fidelity to the public interest' requires a severe sanction for fraud because the securities industry relies on all securities professionals to avoid dishonest and self-interested misconduct." *George Charles Cody Price*, 2017 WL 405511, at *5.

[5] These factual findings were made by the District Court in granting the SEC's motion for partial summary judgment on its claim under Section 203(f) of the Advisers Act. 2021 WL 1955330 (W.D.N.Y. May 17, 2021) (Div. Ex. 1). In an ECF text order entered on November 30, 2021, the Court stated that its "[s]ummary judgment order is law of the case and argument or evidence contradicting it is precluded."

[6] Contrary to Grenda Group's claim that its clients "were notified of Walter Grenda's bar by Greg Grenda" (Opp. at 7 (emphasis in original)), Andrews states in his declaration that he "did not speak with Walter Grenda about the SEC bar" and "chose not to speak with [G. Grenda] about his father's situation." *See* Decl. of Joseph G. Makowski, Ex. A, ¶ 7.

[7] Grenda Group also claims incorrectly that Patrick Lyons testified at the trial. Opp. at 7 ("At the trial, both Peter Andrews and Patrick Lyons testified…"). In fact, only Andrews testified at trial; Lyons and Cherico did not, and the three declarations were not admitted into evidence.

C. Grenda Group's Remaining Arguments on the *Steadman* Factors Fail

Grenda Group argues that the revocation of its registration would be disproportionate to its violations. The District Court, however, made sweeping findings about the gravity of Grenda Group's conduct in flagrant breach of his fiduciary duties to clients, finding that the Defendants "assisted in perpetrating a fraud on their clients, many of whom were unsophisticated investors and relied exclusively on Defendants' expertise," and that their "violations were widespread, repeated, accompanied by *scienter*, and far from inadvertent." 612 F. Supp. 3d at 412 (Div. Ex. 3 at 7, 8). The Court also found that the Respondents committed "an array of deceitful and misleading acts and omissions" and that G. Grenda "testified untruthfully" at trial. *Id*. at 410, 413.

In addition, Grenda Group's claim that its "conduct did not involve the loss of any client investment money" misses the mark. Opp. at 7. "[A]ssertions that investors lost no money . . . do not mitigate sanctions because the Commission's focus is on the welfare of investors generally and the threat one poses to investors and the markets in the future." *George Charles Cody Price*, 2016 WL 3124675, at *8 (quotations omitted). In any event, the District Court found that the Respondents' conduct "created a significant risk of financial losses, not only to clients whose accounts Walter Grenda attempted to access, but to all clients unjustifiably exposed to Walter Grenda's predatory conduct." 621 F. Supp. 3d at 414 (Div. Ex. 3 at 9).

III. The Administrative Proceeding is Not Untimely

Grenda Group asserts without any authority that this proceeding is "untimely" because it was begun more than two years after the District Court verdict and more than 15 months "from the issuance of the injunction and fine" in the underlying civil case. Opp. at 8.

As noted above, the entry of the injunction by the Court is a necessary precondition to the relief that is sought. And the Division instituted this proceeding on September 16, 2022, just 21 days after the final judgments were entered. Div. Ex. 5 (Final Judgment entered on August 26, 2022). As Grenda Group cites no authority for his claim that the proceedings were untimely—indeed, the Rules of Practice contain no period within which follow-on proceedings must be instituted—this argument lacks merit. *See* 17 C.F.R. § 201.200.

Finally, Grenda Group's general complaint of the motion for summary disposition and remedial sanctions being filed "more than two (2) years after the District Court's verdict" (Opp. at 8) ignores the context of much of the relevant period. Grenda Group either consented to or did not oppose the procedural issues that impacted the timing of the Division's motion for summary disposition. In any event, Grenda Group does not actually allege any prejudice.

CONCLUSION

For all these reasons, the Division of Enforcement respectfully requests that the Commission grant its motion for summary disposition and revoke the registration of Grenda Group, LLC.

Dated: February 12, 2024
New York, NY

Respectfully submitted,

DIVISION OF ENFORCEMENT

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CERTIFICATE OF SERVICE

Pursuant to the Commission's Order of January 9, 2024 (IA-6527) and Rule 150(c), the Division of Enforcement certifies that the foregoing Division's Reply in Support of its Motion for Summary Disposition was filed using the eFAP system and that a true and correct copy of the document has been served on counsel for Respondent on February 12, 2024.

/s/ *Alexander M. Levine*
Alexander M. Levine

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