UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21098

In the Matter of

GREGORY M. GRENDA,

Respondent.

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

David Stoelting
Alexander M. Levine
SECURITIES AND EXCHANGE COMMISSION
100 Pearl Street
New York, NY 10004
Stoeltingd@sec.gov
Levinealex@sec.gov
(212) 336-0174 (Stoelting)
(212) 336-9104 (Levine)

Counsel for the Division of Enforcement

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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 Gregory M. Grenda ("G. Grenda") dated January 16, 2024.

PRELIMINARY STATEMENT

Seeking to avoid an associational bar, G. Grenda makes a scattershot collection of arguments in support of his 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 G. Grenda fails to recognize, he 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 an associational bar. His proven conduct establishes that as an investment adviser, he and Grenda Group, LLC ("Grenda Group")[1] deceived and misled his clients for years and put them at substantial risk by knowingly exposing them to a financial predator, his father Walter Grenda.

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

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[1] Grenda Group has filed a nearly identical opposition brief to the Division's motion for summary disposition in *Grenda Group, LLC*, File No. 21097, 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 G. Grenda on January 16, 2024; "Div. Br." refers to the *Division of Enforcement's Motion for Summary Disposition and Request for Remedial Sanctions* filed November 20, 2023; "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(f) of the Investment Advisers Act of 1940 ("Advisers Act"), the Commission has authority to bar G. Grenda from the securities industry if: (1) he was associated with an investment adviser at the time of the alleged misconduct; (2) he was enjoined "from engaging in or continuing any conduct or practice in connection with … activity" as a broker, dealer, or investment adviser; and (3) a bar is in the public interest. 15 U.S.C. § 80b-3(e)(4), (f). G. Grenda does not and cannot dispute that he was an investment adviser at the time of the alleged misconduct, and that he has been enjoined. As shown below, G. Grenda's equitable and public interest arguments for avoiding a bar lack merit.

I. A Bar Is Necessary to Protect the Investing Public

G. Grenda contends that an associational bar 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] G. Grenda, however, cites no case or legal authority finding that the imposition of a permanent injunction or civil penalty obviates the need for an associational bar. Instead, G. Grenda claims that a bar is not needed because the injunction and civil penalty have caused "difficulties" for him. *Id.* G. Grenda is wrong: an associational bar is needed here despite the injunctive relief and financial remedies.

"The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm." *David Michael*, Rel. No. 6519, 2024 WL 49075, at *5 (Jan. 2, 2024). Such a bar is needed here, given the jury's

[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."

unanimous verdict finding fraud; the District Court's findings that "Grenda actively participated in misleading his clients" and that his violations 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 establish that G. Grenda is unfit to participate in the securities industry.

II. The Public Interest Factors Support a Bar

G. Grenda 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 on the associational bar." Opp. at 6-7. G. Grenda is wrong.

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

G. Grenda argues that there are "questions of fact" regarding two of the *Steadman* factors: his recognition of 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, G. Grenda fails to offer the slightest indication that he accepts any responsibility at all for his conduct. On the contrary, rather than expressing remorse for deceiving and misleading his customers, G. Grenda focuses only on himself and the "difficulties" that the injunction and penalty have supposedly caused him. Opp. at 6.

Second, G. Grenda claims that there are questions of fact regarding "the likelihood that his occupation in the future will present opportunities for future violations." Opp. at 7. Still, G. Grenda does not state in his brief or in any supporting declaration that he has no intention to

return to the securities industry. Given the record proving that G. Grenda abused the position of trust he occupied as an investment adviser and that he acted with scienter, G. Grenda remains a risk to the investing public. Under these circumstances, a bar is warranted. *See George Charles Cody Price*, Rel. No. 4631, 2017 WL 405511, at *3 (Jan. 30, 2017) (opportunities for future violations were presented where respondent did not indicate that he planned to leave the securities industry).

Third, G. Grenda asserts that there are questions of fact regarding his "recognition of the wrongful nature of his conduct and the likelihood that his occupation in the future will present opportunities for future violations" because "[s]ince the verdict, [he] has 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 G. Grenda Should Be Given No Weight

G. Grenda claims that factual issues exist regarding three other *Steadman* factors: the egregiousness of his conduct, his scienter, and whether his violations were isolated or recurring. Opp. at 7. In support, G. Grenda has submitted hearsay declarations signed more than three years ago by nonparties Peter Andrews ("Andrews"), Joseph Cherico ("Cherico") and Patrick Lyons ("Lyons") which, G. Grenda claims, show that he "informed clients about Walter Grenda's bar" and "took action to prevent Walter Grenda from having contract with 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 "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, G. Grenda 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 G. Grenda's 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).[4]

[4] 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."

In addition, G. Grenda claims that at the trial "Andrews . . . testified that [he] received notification of Walter Grenda's bar." Opp. at 7.[5] The jury, however, apparently found Andrews' testimony unconvincing and contradicted by the substantial evidence of fraud given its verdict.[6] In the context of this follow-on proceeding, where the jury's verdict finding G. Grenda liable on all charges cannot be challenged, the declarations submitted deserve no weight. By attempting to relitigate that action, G. Grenda shows that a permanent associational bar is in the public interest. *See Dale E. St. Jean*, Rel. No. 442, 2011 WL 744648, at *6 (Init. Dec. Nov. 17, 2011) (finding collateral bar necessary and appropriate where respondent continued "to attack the facts . . . underlying his civil injunction" rather than providing "any meaningful assurances that he will not commit future violations" or "recogniz[ing] the wrongful nature of his conduct"). "'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.

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

G. Grenda argues that the imposition of an associational bar would be disproportionate to his violations. The District Court, however, made sweeping findings about the gravity of G. Grenda'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

[5] Contrary to G. Grenda's claim that "Greg Grenda did notify Grenda Group clients of Walter Grenda's bar" (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.

[6] G. Grenda 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.

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. However, it is undisputed that "as the sole owner and member of Grenda Group and as its Chief Compliance Officer," G. Grenda "not only had knowledge of Grenda Group's activities but directed and controlled them." 2021 WL 1955330 *13 (Ex. 1 at 22).

In addition, G. Grenda's claim that "his 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

G. Grenda 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 9-10.

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 G. Grenda 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, G. Grenda's general complaint of "waiting more than two (2) years after the District Court verdict . . . to the filing of the motion for summary disposition and remedial sanctions" (Opp. at 9) ignores the context of much of the relevant period. G. Grenda 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, G. Grenda 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 permanently bar Gregory Grenda from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[7]

Dated: February 12, 2023
New York, NY

Respectfully submitted,

DIVISION OF ENFORCEMENT

/s/ *David Stoelting*

David Stoelting
Alexander M. Levine
U.S. Securities and Exchange Commission
100 Pearl Street
New York, NY 10004
Stoeltingd@sec.gov
Levinealex@sec.gov
(212) 336-0174 (Stoelting)
(212) 336-9104 (Levine)

[7] The Conclusion of the Division's brief in support of its motion for summary disposition incorrectly (and inadvertently) stated that the Commission should, in addition to the collateral bars referenced in Section 203(f) of the Advisers Act, also bar G. Grenda from "participating in an offering of penny stock." Div. Br. at 12. To be clear, Section 203(f) does not authorize a penny stock bar and the Division is not seeking one here.

CERTIFICATE OF SERVICE

Pursuant to the Commission's Order of January 9, 2024 (IA-6526) 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