ADMINISTRATIVE PROCEEDING
FILE NO. 3-21125

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

JACOB C. GLICK,

Respondent.

DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S RULE 250(a) MOTION FOR JUDGMENT ON THE PLEADINGS

December 16, 2022

Division of Enforcement
Gary Y. Leung
Theresa M. Melson
444 S. Flower Street, Suite 900
Los Angeles, California 90071
(323) 965-3998 (*telephone*)
(213) 443-1904 (*facsimile*)

OS Received 12/16/2022

TABLE OF CONTENTS

OS Received 12/16/2022

TABLE OF AUTHORITIES

CASES

FEDERAL STATUTES

Securities Exchange of 1934

OS Received 12/16/2022

Investment Advisors Act of 1940

FEDERAL REGULATIONS

COMMISSION RELEASES

OS Received 12/16/2022

I. INTRODUCTION

In October 2022, a federal district court ruled that respondent Jacob Glick ("Glick" or "Respondent") committed fraud. The court found that Glick had defrauded his advisory clients when investing them in his fraudulent private placement offering and later misappropriating their funds. And the court found that Glick breached his fiduciary duty to his clients by placing their savings in unsuitable investments, including investing a 75-year-old retiree in a long-term and illiquid real estate investment that returned no profits to her. *SEC v. Glick*, Case No. CV-21-00075-PHX-JJT at Dkt. No. 41 (D. Ariz. Oct. 18, 2022). The district judge further determined that Glick's violations of the antifraud provisions of the federal securities laws caused substantial losses or created a significant risk of substantial losses to other persons. *Id.*

In an earlier August 16, 2022 summary judgment order, the district judge had ruled for the SEC on the issue of Glick's liability, and permanently enjoined him at that time from violating the antifraud provisions of the Exchange Act and Advisers Act, as well as from aiding and abetting violations of the books and records provisions of the Advisers Act. *Id.* at Dkt. No. 39. On October 18, 2022, the district judge entered a final judgment against Glick, ordering disgorgement of $116,594 in ill-gotten gains, along with prejudgment interest, and imposing third-tier civil monetary penalties of $725,140. *Id.* at Dkt. No. 41.

Shortly after the district court's summary judgment ruling, the Commission instituted this follow-on proceeding on September 22, 2022 to determine what, if any, remedial action against Glick is appropriate in the public interest under Section 203(f) of the Advisers Act. Glick now moves for judgment on the pleadings, advancing only one thin argument: because he claims he has not worked in the securities industry since June 2017, the Commission's September 22, 2022 OIP "fail[s] to meet the five-year statute of limitation" set forth in 28 U.S.C. §2462. Respondent's Motion for Ruling on the Pleadings ("Mot.") at 2-3. Glick's statute of limitations

OS Received 12/16/2022

argument is without merit.

"[A]ny applicable statute of limitations for a follow-on proceeding … runs from either the date of the criminal conviction or the injunction upon which the action is based, not from the date of the underlying conduct." *In the Matter of Contorinis*, SEC Rel. No. 3824, Admin. Proc. File No. 3-15308, 2014 WL 1665995 at *3 (Comm'n. Op.) (Apr. 25, 2014). Glick was enjoined on August 16, and this proceeding was instituted just 37 days later, on September 22. Because the Commission brought this proceeding well within any applicable statute of limitations, Glick's Rule 250(a) motion for judgment on the pleadings should be denied.

II. BACKGROUND

On January 15, 2021, the Commission filed a civil injunctive action against Glick in the United States District Court for the District of Arizona, alleging that Glick had violated the antifraud provisions of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)], violated the antifraud provisions of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and aided and abetted books and records violations of Section 204(a) of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2]. The SEC's prayer for relief sought *inter alia* an order permanently enjoining Glick from future violations.

A. The District Court Permanently Enjoined Glick on August 16, 2022

In an August 16, 2022 summary judgment order, the district judge adjudicated Glick's liability in the SEC's favor and further determined that Glick "committed numerous violations and caused investors to incur hefty losses in a short period of time," "acted with a high degree of scienter over a period of several years," "has not seriously recognized the wrongful nature of his conduct," and "given [Glick's] age and extensive securities training, future violations are likely to occur." *SEC v. Glick*, Case No. CV-21-00075-PHX-JJT at Dkt. No. 39, p. 2. The court

OS Received 12/16/2022

accordingly enjoined Glick from violating Sections 206(1) and 206(2) of the Advisers Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2 thereunder. *Id.* at p. 3.

B. The District Court Entered Final Judgment on October 22, 2022

Following briefing on monetary remedies, the district judge entered an October 22, 2022 final judgment that ordered disgorgement, imposed civil monetary penalties, and concluded the case. In its final judgment, the district court found that:

- Glick "breached his fiduciary duty and violated Sections 206(1) and 206(2) of the Advisers Act and obtained $49,594 in advisory fees by defrauding his … advisory clients and placing their funds in unsuitable investments that resulted in over $1.9 million in losses despite [Glick's] representations and his fiduciary duty to place their money in only suitable investments."
- Glick "violated Sections 206(1) and 206(2) of the Advisers Act and breached his fiduciary duty when he obtained $67,000 in ill-gotten gains by defrauding an elderly widowed advisory client by, among other things, using over half of her $675,000 investment to pay his personal and other expenses and by placing the remaining funds in a long-term, illiquid, unsuitable real estate investment that returned no profits to her."
- Glick "breached his fiduciary duty and violated Sections 206(1) and 206(2) of the Advisers Act when he enticed two of his advisory clients to invest in a fraudulent private placement offering through material misrepresentations and omissions and when he subsequently defalcated or embezzled their $250,000 investment for his personal use."
- Glick "violated Section 10(b) of the Exchange Act and Rule 10b-5(b) and obtained the $250,000 investment from these advisory clients by making material misrepresentations

OS Received 12/16/2022

and omissions in soliciting their investment in the fraudulent private placement offering and by misappropriating their funds for his personal use."

- Glick "violated Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) by engaging in a scheme to defraud the advisory clients who invested $250,000 in his private placement offering by concealing his fraudulent conduct and continuing to make material misrepresentations and omissions to them, including by making payments to them using some of their own principal investment and by repaying them with funds he obtained from another client."
- And finally, Glick "violated Section 204(a) of the Advisers Act and Rule 204-2(a)(7) by using his personal cellphone to give investment advice via text message to advisory clients and then destroying those communications when he sold his cellphone, despite being repeatedly instructed by APA that he was required to preserve client communications regarding investment advice."

SEC v. Glick, Case No. CV-21-00075-PHX-JJT at Dkt. No. 41, pp. 3-4. In view of these factual findings, the district court necessarily concluded that Glick's securities law violations resulted in substantial losses or created significant risk of substantial losses, and imposed three third-tier civil penalties, along with one second-tier penalty for Glick's aiding and abetting of a registrant's books and records violations. *Id.* at 4.

C. The Commission Instituted this Proceeding on September 22, 2022

On September 22, 2022, the Commission instituted this follow-on proceeding to determine what, if any, remedial action against Glick is appropriate in the public interest under Section 203(f) of the Advisers Act.

OS Received 12/16/2022

III. ARGUMENT

A. Rule 250(a) Motions for Judgment on the Pleadings

Rule 250(a) of the Rules of Practice allow a party, "[no] later than 14 days after a respondent's answer has been filed," to "move for a ruling on the pleadings on one or more claims or defenses." 17 C.F.R. § 201.250(a); *see also In the Matter of Healthway Shopping Network*, *et al.*, SEC Rel. No. 89374, Admin. Proc. File No. 3-19343, 2020 WL 4207666, *2 (Jul. 22, 2020). The rule "permits a respondent to seek a ruling as a matter of law based on the factual allegations in the OIP and permits either party to seek a ruling as a matter of law after the filing of an answer." *Id.* (quoting *Amendments to the Commission's Rules of Practice*, Exchange Act Rel. No. 78319 (Jul. 13, 2016). To succeed on his Rule 250(a) motion, Glick must show that "even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law." 17 C.F.R. § 201.250(a).

B. This Follow-On Proceeding Is Not Time-Barred

Glick's Rule 250(a) motion for judgment on the pleadings argues that this follow-on proceeding is time-barred under the five-year statute of limitations under 28 U.S.C. § 2462 because he hasn't worked in the securities industry since June 2017 and the Commission brought its follow-on proceeding in September 2022. Mot. at 2-3. Glick is incorrect.

At the outset, Glick's argument ignores that the Commission could have barred or suspended him from associating with an investment adviser through follow-on proceedings only *after* he was permanently or temporarily enjoined by a court. 15 U.S.C. §§ 80b-3(e), (f). Because the issuance of an injunction is the triggering event for such proceedings, the Commission has thus repeatedly held that "any applicable statute of limitations for a follow-on proceeding … runs from either the date of the criminal conviction or the injunction upon which

OS Received 12/16/2022

the action is based, not from the date of the underlying conduct." *Contorinis*, 2014 WL 1665995 at *3 (Comm'n. Op.); *see also Michael J. Markowski*, Exchange Act Release No. 44086, 2001 WL 267660, at *2 (Mar. 20, 2001) (Comm'n. Op.), pet. denied, No. 01-1181, 2002 WL 1932001 (D.C. Cir. Apr. 25, 2002); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 WL 80228, at *3 (Feb. 9. 1998) (holding that because "Section 15(b)(6)(A)(ii) of the Exchange Act authorizes us to proceed … on the basis of [respondent's] conviction … it is the date of [the] conviction, not the conduct underlying the conviction, which is relevant" for statute of limitations purposes); *Vladislav Steven Zubkis*, SEC Rel. No. 52876, 2005 WL 3299148, at *4 (Dec. 2, 2005) (Comm'n. Op.).

Moreover, "the five-year statute of limitations of § 2462 does not apply in this case because a follow-on proceeding seeking an industry-wide bar is not 'for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise' within the meaning of § 2462." *Contorinis*, 2014 WL 1665995 at *3. Unlike civil penalties or fines, industry bars can "fairly be said *solely* to serve a remedial purpose" – and thus fall outside of § 2462's scope – because industry bars are aimed at forestalling future violations, rather than punishing past violations. *Kokesh v. SEC*, 581 U.S. 455, 137 S. Ct. 1635, 1645 (2017); *see also SEC v. Gentile*, 939 F.3d 549, 556 (3d Cir. 2019), *cert. denied*, 140 S. Ct. 2669 (2020) ("[I]njunctions may properly issue only to prevent harm—not to punish the defendant," and thus are not subject to § 2462).

In any event, this follow-on proceeding is not time-barred even if this Court were to accept Glick's incorrect assertion that § 2462 applies to follow-on proceedings. The OIP alleges that the Arizona district court enjoined Glick on August 16, 2022. OIP at ¶ 2. The Commission instituted this proceeding on September 22, 2022. *See*, *e.g.*, *Contorinis*, 2014 WL 1665995, at *3 ("And even if § 2462 were deemed to apply to a follow-on proceeding based on an injunction,

OS Received 12/16/2022

the proceeding here, as noted, was brought less than two years after the injunction against Contorinis was entered."); *Imperato v. SEC*, 693 Fed. Appx. 870, 877 (11th Cir. Aug. 11, 2017) (unpublished order) (reasoning that "[e]ven assuming (without deciding)" that § 2462 applies to follow-on proceedings, proceeding was not time-barred because it "did not accrue until the district court permanently enjoined" petitioner).

Glick is not entitled to a ruling as a matter of law and his Rule 250(a) motion should be denied.

IV. CONCLUSION

For all the reasons stated, the Division of Enforcement respectfully requests that the Court deny Glick's December 12, 2022 Rule 250(a) motion for judgment on the pleadings in its entirety.

Dated: December 16, 2022

Respectfully submitted,

DIVISION OF ENFORCEMENT

Leung, Gary Digitally signed by Leung, Gary Date: 2022.12.16 14:53:29 -08'00'

Gary Y. Leung (323.965.3213)
Theresa M. Melson (323.965.3964)
Securities and Exchange Commission
444 S. Flower St., Ste. 900
Los Angeles, CA 90071
(323) 965-3998 (*telephone*)
(323) 965-3908 (*facsimile*)

Counsel for the Division of Enforcement

OS Received 12/16/2022

CERTIFICATE OF SERVICE

I certify that on December 16, 2022, I caused the foregoing document to be served on the following persons, in the manner described below:

By eFAP
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793

By Email
Jacob C. Glick
Email: [redacted]
Pro Se for Respondent Jacob C. Glick

Leung, Gary Digitally signed by Leung, Gary
Date: 2022.12.16 14:53:51 -08'00'

Gary Y. Leung
Regional Trial Counsel
Division of Enforcement
Los Angeles Regional Office
Securities and Exchange Commission
444 S. Flower St., Ste. 900
Los Angeles, CA 90071
(323) 965-3998 (*telephone*)
Email: leungg@sec.gov

OS Received 12/16/2022