

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21266

In the Matter of

MICHAEL A. GRAMINS,

Respondent.

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

Respectfully submitted,

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Dated: April 26, 2023

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INTRODUCTION

Gramins concedes that the statutory requirements for an associational bar have been met but argues that an associational bar would subject him to disparate treatment as compared to others similarly situated. Gramins is wrong. While Gramins is the first former RMBS trader in this line of cases to be convicted and sentenced for securities fraud,¹ his unique position does not render an associational bar unreasonable. In fact, Gramins fails to explain how committing securities fraud on an RMBS desk at a Wall Street firm distinguishes him from the innumerable respondents barred by the Commission after a felony conviction. There is no principled basis for treating lies and omissions in the RMBS market any differently than lies and omissions in selling equities, municipal bonds, or any other types of securities. Rather, the Commission should apply the *Steadman* factors as it would to any trader convicted of securities fraud, regardless of the type of security bought or sold in connection with the crime committed. Here, the Division submits that the *Steadman* factors weigh in favor of imposing a bar as to Gramins, consistent with other SEC cases involving felony convictions.

I. BY IMPOSING AN ASSOCIATIONAL BAR, THE COMMISSION WOULD NOT SUBJECT GRAMINS TO DISPARATE TREATMENT.

Gramins argues that imposing an associational bar is unfair, because it would be imposed on Gramins “alone” and not as to the other RMBS traders who have been charged with securities fraud for their lies and omissions. As Gramins accurately states in his Opposition to Summary Disposition, several former RMBS traders were indicted in the District of Connecticut for similar

¹ Although Jesse Litvak was also twice convicted and sentenced for making misrepresentations and omissions on an RMBS trading desk, the Second Circuit twice vacated his conviction, and the indictment was dismissed after the United States Attorney’s Office for the District of Connecticut declined to prosecute for a third time. *See United States v. Litvak*, 3:13-cr-00019-JCH (ECF NO. 600) (August 1, 2018 order dismissing remaining count).

misconduct and, thus far, none of those traders have been barred. However, there are critical distinctions that Gramins fails to address – or even acknowledge.

First, Gramins complains that the Division has not sought associational bars as to other criminal defendants, but those defendants are not identically situated to Gramins. Specifically, all three of the other criminally convicted RMBS defendants have entered guilty pleas in the District of Connecticut to crimes connected to RMBS trading. And unlike Gramins, all are awaiting sentencing and the Commission has not yet sought associational bars. *See United States v. Matthew Katke*, 3:15-cr-00038-RNC (ECF No. 59) (adjourning sentencing); *United States v. Adam Siegel*, 3:15-cr-00231-SRU (ECF No. 64) (adjourning sentencing); *United States v. Frank Dinucci*, 3:17-cr-00069-RNC (ECF No. 26) (adjourning sentencing).² Gramins, in contrast, was convicted by a jury of criminal securities fraud and sentenced accordingly.

Moreover, Gramins was convicted after a jury trial, unlike the former MBS traders who were acquitted of securities fraud, or whose cases were ultimately dismissed by the government. *See United States v. Jesse Litvak*, 3:13-cr-00019-JCH (ECF No. 600) (dismissing sole count of conviction after judgment vacated and remanded by appeals court); *United States v. David Demos*, 3:16-cr-00220-AWT (ECF No. 252) (Judgment of Acquittal, dated May 10, 2018), *SEC v. James Im*, 1:17-cv-03613 (JPO) (ECF No. 144) (order dismissing complaint against former Nomura CMBS trader, “the jury having returned a verdict in favor of Defendant”). Such acquittals and dismissals are not relevant to the propriety of an associational bar for Gramins.

² Dinucci was a former Nomura trader, and agreed to plead guilty to securities fraud after violating the terms of his non-prosecution agreement, including his participation in another fraudulent scheme at another firm after leaving Nomura. Dinucci ultimately pled guilty and agreed to cooperate in both the criminal case against Gramins and other former Nomura traders in the District of Connecticut and the criminal case involving Dinucci’s employer Premium Point Investments. *See United States v. Dinucci*, 3:17-cr-00069-RNC (motion to suspend presentence investigation and “adjourn all sentencing dates until his cooperation with the U.S. Attorneys for both the District of Connecticut and the Southern District of New York are complete); *United States v. Dinucci*, 1:18-cr-00332-AKH (docket entry dated May 10, 2018 for proceedings including the waiver and filing of information and entry of a guilty plea).

Relatedly, while Gramins was convicted at trial, his co-defendants were not: Tyler Peters was acquitted on all nine counts, and after the jury failed to reach a verdict on a single count as to Ross Shapiro, Shapiro's case was dismissed after a one-year term of pretrial diversion. *See United States v. Gramins et al*, 3:15-cr-00155 (ECF No. 431) (jury verdict finding Peters not guilty on all nine counts, and finding Shapiro not guilty on eight of nine counts, with no verdict on one count); *see also* ECF No.'s 622, 628 (granting government's motion for pretrial diversion and dismissing case against Shapiro). Accordingly, these cases are not comparable to Gramins,

Gramins further complains of allegedly disparate treatment as compared to other RMBS traders who agreed to settle civil fraud claims and were either suspended or granted the right to reapply after a period of years. *See, e.g., Securities & Exchange Commission v. Ross Shapiro*, No. 15-cv-7045-RMB (S.D.N.Y. June 4, 2018) (imposing civil injunction and a \$200,000 civil penalty); *In the Matter of Ross B. Shapiro*, Release No. 84390, 2018 WL 4908181 (Oct. 10, 2018) (settled order imposing associational bar with the right to reapply after two years); *In the Matter of Nicholas M. Bonacci*, Release No. 78932, 2016 WL 5369311 (Sept. 26, 2016) (settled order imposing \$100,000 civil penalty and one-year suspension); *In the Matter of Edwin K. Chin*, Release No. 78585, 2016 WL 4363882 (Aug. 16, 2016) (settled order imposing \$400,000 civil penalty and associational bar with the right to reapply after two years); *In the Matter of Yoon Seok Lee*, Release No. 80561, 2017 WL 1548263 (May 1, 2017) (settled order imposing \$200,000 civil penalty and one-year suspension); *see also In re Kevin J. Blaney*, FINRA Letter of Acceptance, Waiver and Consent, No. 20160499622-01, dated Sept. 1, 2016 (imposing \$30,000 fine and three-month suspension); (available at <http://disciplinaryactions.finra.org/Search/ViewDocument/66541>); *In re Simon Xi*, FINRA Letter of Acceptance, Waiver and Consent, No. 20150462885-01, dated Aug. 26, 2015 (imposing industry bar) (available at

<http://disciplinaryactions.finra.org/Search/ViewDocument/63412>). However, unlike Gramins, none of these former RMBS traders sanctioned by the Commission or FINRA were found guilty of criminal securities fraud after a jury trial. And importantly, all of those former traders *voluntarily* agreed to be barred or suspended – also unlike Gramins. While Gramins is entitled to litigate the associational bar, he is not being treated unfairly simply because the Commission agreed to accept offers of settlement from former RMBS traders in civil cases.

Even looking beyond the RMBS line of cases, imposing an associational bar on Gramins is consistent with the Commission’s prior decisions involving criminal convictions. As the ALJ noted in barring former RMBS trader Jesse Litvak (before his conviction was vacated):

Absent extraordinary mitigating circumstances, an individual who has been criminally convicted of misconduct specified in Exchange Act Section 15(b)(4)(B) cannot be permitted to remain in the securities industry. *See Joseph Contorinis*, Initial Decision Release No. 503, 2013 WL 4478642, at *5 (Aug. 22, 2013) (internal citations omitted). Indeed, “the importance of honesty for a securities professional is so paramount that [the Commission has] barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business.” *Gary M. Kornman*, 2009 SEC LEXIS 367, at *23.

In the Matter of Jesse C. Litvak, Release No. 739 (January 22, 2015) (vacated on other grounds). Gramins is no different than any other defendant convicted of criminal misconduct and there are no “extraordinary mitigating circumstances” that would justify a different result here.

At bottom, Gramins’s argument is less that an associational bar is unreasonable, but more a lament that he was one of “the unfortunate few” charged with federal crimes for lies and misrepresentations in trading RMBS. That was not a decision made by the Commission, and Gramins’s frustration with the Department of Justice does not render an associational bar unfair or unwarranted. Here, the statutory requirements for imposing an associational bar as to Gramins are met, and the only question before the Commission is whether the application of the *Steadman* factors warrants the imposition of that bar.

II. THE *STEADMAN* FACTORS SUPPORT AN ASSOCIATIONAL BAR AS TO GRAMINS, IN LIGHT OF HIS CRIMINAL CONVICTION.

The Division submits that the *Steadman* factors support an associational bar as to Gramins. As a threshold matter, the Commission has routinely imposed associational bars as to respondents who have been convicted of securities fraud – without the right to reapply after a period of years. *See, e.g., Michelle Morton*, Release No. 6094, 2022 WL 3587990 at *5 (Aug. 22, 2022) (imposing associational bar on former investment adviser who was both permanently enjoined from antifraud violations and convicted of conspiracy to commit securities fraud); *Patrick L. O'Connor*, Release No. 6055, 2022 WL 2239152 at *3 (June 22, 2022) (imposing associational bar on respondent convicted of wire fraud and money laundering); *James S. Tagliaferri*, Release No. 4650, 2017 WL 632134, at *2 (Feb. 15, 2017) (affirming summary disposition imposing associational bar based on criminal conviction); *Eric S. Butler*, Release No. 3262, 2011 WL 3792730, at *2-*6 (Aug. 26, 2011) (same).

While Gramins urges the Commission to consider his case as compared with other RMBS traders, his reasoning as to why *his* felony conviction should be treated differently than *other* felony convictions fails. As noted above, Gramins stands on equal footing with other defendants convicted of criminal misconduct and he offers no “extraordinary mitigating circumstances” that compel a different result.

Perhaps most importantly, Gramins is wrong that the sophistication of the counterparties in RMBS trading renders his conduct less egregious. Gramins was a licensed trader working at an SEC-regulated firm on Wall Street, and he routinely lied to customers buying and selling securities over the course of years. Whether the conduct was rare or commonplace among traders does not negate the egregiousness of such behavior while employed by an SEC registrant. And notwithstanding their sophistication, many RMBS investors were indeed misled. At trial,

QVT investor Joel Wollman was asked about whether he believed Gramins was telling him the truth while negotiating a 2010 trade that yielded substantial undisclosed profits to Nomura.

Q. When Mr. Gramins told you that ... 47 is best ... did you believe him?

A. Yes.

Q. Why did you believe him?

A. Because he told me, and it's an objective fact, so I thought he was telling me the truth. ... [H]e's acting on behalf of another counterparty. He's facilitating a trade between me and that other counterparty. And in that context, I expect that facts that he tells me are truthful.

United States v. Gramins, May 24, 2017 trial transcript at Vol. X, p. 2113:19-p. 2114:9 (excerpt attached as Exhibit A). Like many other RMBS investors who testified at Gramins's criminal trial, Wollman explained that Gramins's lies and omissions mattered to his investment decision.

See United States v. Gramins, 939 F.3d 429 (2d. Cir., Sept. 20, 2019) (noting that “[a]t Gramins's trial, the government elicited testimony from several of Nomura's counterparties that Gramins's and his alleged co-conspirators' lies were important to their investment decisions[.]”)

Moreover, while Gramins may point to other investors who claimed to be agnostic about being deceived by the Nomura RMBS trading desk, there is no dispute that these lies and omissions met the standard for materiality, as the Second Circuit twice held in upholding Gramins's conviction. *See id.*, 939 F.2d at 450; *see also United States v. Gramins*, 2022 WL 6853273 at *2-*3 (2d Cir., Oct. 12, 2022) (rejecting appeal as to the sufficiency of evidence as to materiality and state of mind, further noting that “th[e] evidence was sufficient to permit a rational jury to determine that Gramins knew his misrepresentations were wrongful and carried ... a significant risk of running afoul of the securities laws.”)).

The age of Gramins's conduct also does not warrant a different result under the *Steadman* factors. There are myriad examples of associational bars imposed by the Commission several

years after the original violations of the securities laws occurred. *See, e.g. In the Matter of Jose G. Ramirez, Jr.*, Release No. 96440, 2022 WL 17401566 (December 2, 2022) (imposing associational bar on respondent formerly employed by a registered broker-dealer based on a 2018 bank fraud conviction for fraudulently obtaining commissions between 2011 and 2013); *In the Matter of Travis A. Branch*, Release No. 96397, 2022 WL 17335924 (November 29, 2022) (imposing associational bar on former employee of a registered broker-dealer and permanently enjoined for his 2007 false statements in connection with collateralized mortgage obligations); *In the Matter of Jonathan Morrone*, Release No. 93847, 2021 WL 6117894 (Dec. 21, 2021) (imposing associational bar on respondent found liable for securities fraud for conduct between 2007 and 2010). Gramins was indicted in the fall of 2015 and convicted in mid-2017 for conduct between 2010 and 2013. As a result of multiple criminal appeals, Gramins was not sentenced until late 2021. Indeed, Gramins's petition for certiorari remains pending with the Supreme Court. *United States v. Gramins*, 2022 WL 6853273 (2d Cir. Oct. 12, 2022), *petition for cert. filed* (U.S. Feb. 13, 2023) (No. 22-759). The fact that the criminal process has taken a long time does not reflect any inaction or delay on the part of the Division and should be no obstacle to imposing an associational bar.

Finally, the Commission should not exercise its discretion to permit Gramins to reapply after a period of years, given the gravity of the offense. The bulk of the cases cited by Gramins involve very different facts, including cooperation by the respondent.³ *See, e.g., Maher F. Kara*, Release No. 979, 2016 WL 1019197 at *6-*7 (Mar. 15, 2016) (imposing collateral bar with right to reapply after three years where respondent testified as a government witness at a criminal

³ Among other things, Gramins relies on the Second Circuit's decision in *SEC v. Patel*, which applied a multi-factor test for district courts imposing an officer-and-director bar – a standard not at all germane to the imposition of an associational bar by the Commission pursuant to the *Steadman* factors. *See SEC v. Patel*, 61 F.3d 137, 142 (2d Cir. 1995) (evaluating whether defendant was substantially unfit to be an officer or director of a public company).

trial, citing district court's finding that it was "unlikely" the respondent would reoffend); *Sandip Shah*, Release No. 1054, 2015 WL 12513537 at *4 (Sept. 8, 2015) (imposing five-year penny stock bar – not an associational bar – against consultant to penny stock companies who was the target of an FBI sting). The Division submits that where Gramins has been convicted of conspiracy for misconduct at an SEC-registered broker-dealer and investment adviser, imposing an associational bar without the right to reapply after a period of years is a reasonable sanction.

CONCLUSION

The Division respectfully submits that summary disposition is appropriate, that the proceeding should be resolved in favor of the Division and against Gramins, and that the Commission should issue an Order barring Gramins from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or national recognized statistical rating organization.

Dated: April 26, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rua M. Kelly, hereby certify that on April 26, 2023, the foregoing was filed through the electronic filing system, and accordingly, the document will be sent electronically to all participants registered to receive electronic notice in this case.

/s/ Rua M. Kelly
Rua M. Kelly

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21266

In the Matter of

MICHAEL A. GRAMINS,

Respondent.

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

<u>Attachment</u>	<u>Description</u>
A	<i>United States v. Gramins</i> , May 24, 2017 trial transcript at Vol. X, p. 2113:19-p. 2114:9 (testimony of Joel Wollman)

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA	:	No. 3:15CR155 (RNC)
	:	
vs.	:	
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ROSS SHAPIRO, ET AL,	:	HARTFORD, CONNECTICUT
	:	May 24, 2017
Defendants.	:	
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JURY TRIAL - VOLUME X

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

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1 BY MS. CHERRY:

2 Q. If you had received the truth and been told that 47
3 wasn't the buyer's best best, but instead his best bid
4 was 49, would that have mattered or be important
5 information for you to know?

6 A. Yes.

7 Q. Why is that?

8 THE COURT: May I follow up?

9 Is the objection to form that the bid was not 49
10 at that point?

11 MR. SKLAROFF: Yes, Your Honor.

12 THE COURT: Okay. Then I sustain that.

13 Members of the jury, please disregard the last
14 question and answer with the witness, because I'm
15 sustaining the objection; the objection being that at that
16 moment in time the bid was not yet 49.

17 Okay?

18 BY MS. CHERRY:

19 Q. When Mr. Gramins told you that he says 47 is best
20 best, did you believe him?

21 A. Yes.

22 Q. Why did you believe him?

23 A. Because he told me, and he's acting as a broker in
24 this capacity, and it's an objective fact, so I thought he
25 was telling me the truth.

1 Q. So let's dig into that.

2 First, you said he was acting as a broker in this
3 transaction; what do you mean by that?

4 A. Meaning that he's not selling bonds from his
5 inventory -- or sorry -- rather, buying bonds for his
6 inventory. He's acting on behalf of another counterparty.
7 He's facilitating a trade between me and that other
8 counterparty. And in that context, I expect that facts
9 that he tells me are truthful.

10 Q. And you had said he's not selling you a bond from
11 inventory. How do you know that? How do you know he's
12 brokering a trade?

13 A. He said initially at 20:51:17, Guy is looking to show
14 a bid on this. Wants me to show a few holders a 46 bid.

15 Q. And then I think you had said in your answer, "it was
16 an objective fact"; what do you mean by that?

17 A. He either said 47 is best best or he didn't say 47 is
18 best best. There's no ambiguity.

19 Q. Would it have mattered to you if you had known that
20 there was no bid yet?

21 A. Yes.

22 Q. Why is that?

23 A. Well, my interaction in this trade is all predicated
24 on the fact that there was a bid and we were negotiating
25 to buy the bond. I wouldn't negotiate against myself.