

TRULINCS 63665037 - DAVIS, DARAYL - Unit: TOM-M-D

FROM: 63665037  
TO: Dailey, Paxston; Klotz, Karen  
SUBJECT: Brief in Opposition to Division's Motion Part 1  
DATE: 04/18/2024 12:42:10 PM

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-21280

In the Matter of

DARAYL D. DAVIS,

Respondent

\*\*\*\*\*  
DaRayl D. Davis's Brief in Opposition  
to the Division of Enforcement's Motion  
for Summary Disposition  
\*\*\*\*\*

RESPONDENT  
DaRayl D. Davis



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### PRELIMINARY STATEMENT

The basis for the Division of Enforcement's ("Division's) Motion for Summary Disposition is flawed. The criminal conviction in United States v. DaRayl Davis, Criminal Action No. 18-CR-00025 (N.D. ), which the Division relies upon as justification for summary disposition is under appeal and therefore subject to review and reversal. The injunction entered against Respondent is a default judgement that was obtained due to Respondent's inability to defend himself. The Division's narrative regarding the nature of the transactions and interactions between Respondent and the 30 individuals cited by the Division is inaccurate and misleading. There are extraordinary mitigating circumstances that the courts and the Commission have been deprived of that should be presented and reviewed before the Commission reaches a decision regarding the appropriate sanction(s) for the alleged misconduct.

### ARGUMENT

#### I. This Case Should Not Be Resolved by Summary Disposition

This case does not meet the criteria for summary disposition established by the Commission. Rule 250(b) of the Commission's Rules of Practice allows a party to move for summary disposition in cases where Respondent's answer has been filed and documents have been made available to Respondent for inspection and copying pursuant to Rule 230. Summary disposition should be granted in a party's favor if "the undisputed pleaded facts...show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law." The Commission has repeatedly upheld the use of summary disposition in cases "where the respondent has been enjoined or convicted of an offense listed in Exchange Act Section 15(b) and Advisers Act Section 203, the sole determination is the proper sanction, and no material fact is genuinely disputed." This case presents several material questions of fact that provide a substantial basis for opposition to summary disposition.

A. The qualifying felony conviction that the Division of Enforcement cites as being listed in Exchange Act Section 15(b) and Advisers Act Section 203 which serves as the grounds for summary disposition is currently the subject of an appeal before the United States Court of Appeals for the Seventh Circuit in Case No. 24-1039. This conviction is subject to review and reversal and therefore should not serve as an elemental basis for summary disposition.

B. The qualifying injunction that the Division of Enforcement cites is based upon a default civil judgement gained only because of the Respondent's inability to present any evidence or a defense due

to his incarceration related to the criminal matter which is now subject to review and reversal.

C. There are material facts that are genuinely under dispute.

II. Material Factual Issues in Dispute

A. The Division of Enforcement's Representations in the "Respondent's Background" section are inaccurate and misleading.

1. Specifically, at no point in time did I act as an unregistered investment adviser. I earned my Investment Adviser Representative license and designation by passing the Series 66 Securities licensing exam with an eighty-eight percent (88%) proficiency. I only marketed myself as an Investment Adviser during the period of time in which I was licensed as an Investment Adviser. I was not acting as an Investment Adviser or an unregistered investment adviser in any of the transactions related to the "30 individuals" the Division referred to its Motion for Summary Disposition. According to 15 U.S.C. Section 80b-2(a)(20)(11), an "investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

2. The title of "financial coach" is not tied to or associated with any securities industry license and is therefore not subject to the regulatory jurisdiction, oversight or authority of the Securities and Exchange Commission. I held life and health insurance licenses in multiple states and the District of Columbia from 1993 to 2018. The life insurance industry was my primary industry of practice for that 25-year span. The knowledge and experience that I accumulated during that period qualified me to serve as a "financial coach". This fact undermines the Division's allegations and diminishes the case for summary disposition.

3. "Registered Financial Consultant" (RFC) was an actual designation issued through the International Association of Registered Financial Consultants. The designation was not associated with the securities industry or any securities license/designation and therefore not under the supervision or regulatory authority of the Securities and Exchange Commission. My experience as a financial professional in the insurance industry warranted that the designation of RFC, Registered Financial Consultant, be conferred upon me. This fact undermines the case presented by the Division that summary disposition is appropriate.

B. Representations Made in the "Fraud Offering" Section of the Division of Enforcement's Motion are Inaccurate and misleading.

1. In particular, what the Division refers to as "fictitious corporate bond notes, guarantee bonds, and similar products (collectively, the 'Davis Securities')", were in fact promissory notes. These notes represented loans that clients made to either FAC or AAG. The promissory notes are not products that were "sold" but rather loans that were obtained and do not qualify as securities.

In the criminal matter 18 CR 00025, USA vs DaRayl Davis, the government acknowledges that multiple individuals in their interviews with the FBI attested to the fact that they knew and understood the promissory notes were loans to either FAC or AAG for the purposes of business operations. The nature and terms of the promissory notes are misrepresented in the Division's brief and thus warrant a hearing in which the respondent can present evidence and any defenses against these misrepresentations.

In a civil matter before the Superior Court of the District of Columbia (which is fully cited in the "Relevant Commission Precedent" section of this brief), the court determined that some of the same promissory notes the Division classified as "Davis Securities" were simply "loans" or "loan transactions".

C. Representations made by the Division in "The Civil and Criminal Actions" section of its brief are incomplete, inaccurate and misleading.

1. Particularly, the details and facts which led to the alleged violation of the Asset Freeze Order have been obscured and misrepresented in the Division's brief. The respondent's version of these facts is thoroughly documented in the respondent's pro se submissions to the court and are in stark contrast to the Division's account. This dispute in material facts would be best resolved in a proceeding wherein the Respondent and the Division can present evidence in support of their claims.

2. The Division's brief states that "Respondent opened new, undisclosed bank accounts and lines of and spent approximately \$7,000 of previously unknown cash that was frozen pursuant to court order." However, the Division fails to disclose that an affidavit was submitted to the court to account for the \$7,000 that was provided by a friend to assist respondent with living expenses that were disclosed by the respondent to attorneys for the Commission during the initial phone conference on December 27, 2017. The Division's motion also fails to note the Respondent's submission regarding the guidance he received from attorney Frederick Douglas of Douglas & Boykin, LP as to how to handle and

disclose funds received after the Asset Freeze Order was issued. Respondent sought to fully comply with the AFO. This dispute in material facts should warrant an evidentiary hearing not summary disposition.

D. The facts and admissions that the Division's brief cites from the plea agreement in the criminal matter are being contested in a post conviction petition and appeal which are now before the U.S. Court of Appeals for the Seventh Circuit. In particular, the post conviction petition alleges ineffective assistance of counsel in the negotiation of the referenced plea agreement - which is a violation of a constitutional right - and should not serve as the basis for summary disposition. The fact that these material matters are subject to review and reversal should warrant an evidentiary proceeding. On these grounds, summary disposition should not be granted.

E. The "civil action" did not afford respondent an opportunity to present evidence or any defenses in response to the Commission's complaint which was filed on December 22, 2017. It is therefore appropriate and in the public interest that an administrative proceeding be held to determine whether the allegations against the Respondent are in fact true.

FROM: 63665037  
TO: Dailey, Paxston; Klotz, Karen  
SUBJECT: Brief in Opposition to Division's Motion Part 2  
DATE: 04/18/2024 04:37:19 PM

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II. Material Factual Issues in Dispute (Continued)

F. The "criminal action" that the Division cites as a basis for summary disposition is currently the subject of an appeal that is now before the U.S. Court of Appeals for the Seventh Circuit. Therefore, the Respondent's constitutional rights to review and the potential for reversal have not been foreclosed upon in the criminal matter. As such, the Commission should hold a hearing wherein the Respondent may present evidence and any defenses against the Division's allegations before foreclosing upon this opportunity with a summary disposition.

III. Relevant Commission Precedent

A. In its motion, the Division is requesting that the Commission grant summary disposition in its favor and "bar Respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in any offering of penny stock." Because permanent debarment is not the only remedy at the Securities and Exchange Commission's disposal that acts as a deterrent, the U.S. Court of Appeals for the Fifth Circuit concluded in *Steadman v. SEC* that the Commission should articulate why a lesser sanction would not sufficiently discourage others from engaging in the unlawful conduct it seeks to avoid, in light of the material facts that are in dispute and in the abundance of caution, the Commission should hold an administrative hearing wherein the Respondent can proffer any mitigating evidence surrounding the alleged misconduct. When imposing an industry-wide lifetime bar, the Commission is subject to a court's review that is limited to determining whether the sanction was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Further, the Commission's choice of sanction shall not be disturbed by the court unless the sanction is either unwarranted in law or is without justification in fact. As such, an administrative proceeding is most appropriate in the instant case. Such a proceeding would afford the Respondent the opportunity to exercise the rights that are generally available in disciplinary proceedings before the Securities and Exchange Commission. A hearing would also offer the Commission the opportunity to determine the appropriate sanction based upon a balanced view of the facts and evidence.

B. Although Respondent may not attack the criminal conviction and civil injunction in this administrative proceeding, matters of fact determined in other judicial proceedings are relevant. Under Rule 32, "[o]fficial notice may be taken of any material fact which might be judicially noticed by a District Court of the United States,



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CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Commission deny the Division's Motion for Summary Disposition and proceed with an administrative/evidentiary hearing in the public interest and in the interest of justice.

Dated April 18, 2024

Respectfully Submitted,

/s/DaRayl D. Davis /s/ (electronic signature)

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TRULINCS 63665037 - DAVIS, DARAYL - Unit: TOM-M-D

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FROM: 63665037  
TO: Dailey, Paxston; Klotz, Karen  
SUBJECT: Certificate of Service  
DATE: 04/19/2024 10:53:17 AM

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-21280

In the Matter of

DARAYL D. DAVIS,

Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January 2024, with respect to In the Matter of DaRayl D. Davis Administrative Proceeding File No. 3-21280, I caused a true and correct copy of DaRayl D. Davis's Brief In Opposition to the Division's Motion for Summary Disposition, to be filed and served by email and upon counsel for the Division of Enforcement by U.S. Mail at the following address:

Karen M. Klotz  
U.S. Securities and Exchange Commission  
Philadelphia Regional Office  
One Penn Center  
1617 JFK Blvd., Ste 520  
Philadelphia, PA 19103

Respectfully submitted,

  
DaRayl D. Davis  
