

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22146

In the Matter of

MICHAEL TROFIMOFF,

Respondent.

DIVISION OF ENFORCEMENT'S
MOTION FOR ENTRY OF DEFAULT
AND REMEDIAL SANCTIONS

Pursuant to the Order to Show Cause, AP Rulings Rel. No. 102216 (January 16, 2025) (“Show Cause Order”), the Division of Enforcement (“Division”) hereby files this motion for default and remedial sanctions.

I. INTRODUCTION

This is a follow-on administrative proceeding based on the entry of a permanent injunction against Respondent Michael Trofimoff (“Trofimoff” or “Respondent”). Trofimoff was properly served with the Order Instituting Proceedings (“OIP”) in this matter on October 11, 2024, and was required to file an answer by November 12, 2024, which he failed to do. On January 16, 2025, the Commission issued the Show Cause Order requiring Trofimoff to respond or face default. Respondent has not filed an answer, and thus, is in default. Therefore, the Division moves, pursuant to Rules 155(a)(2) and 220(f) of the Securities and Exchange Commission (“SEC”)’s Rules of Practice, for a finding that Respondent is in default and for the imposition of remedial sanctions. The Division specifically requests that Respondent be permanently barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

II. BACKGROUND

A. Underlying Action

On May 22, 2024, a final judgment was entered by default (“Judgment”) against Trofimoff, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commission v. Chimene Van Gundy, et al.*, Civil Action Number SA-23-CV-700-FB, in the United States District Court for the Western District of Texas, San Antonio Division (the “District Court Action”). See Declaration of Matthew J. Gulde (“Gulde Dec.”) attached hereto as “Exhibit A,” at Ex. 3, Doc. 25 at ¶¶ I-III (“Judgment”). The Judgment also imposed against Trofimoff a conduct-based injunction, which permanently restrained and enjoined him from directly or indirectly participating in the issuance, purchase, offer, or sale of any security except for his personal account. See *id.* at ¶ IV.

In the District Court Action, the Commission’s complaint alleges that from June 2018 to November 2021 (the “Relevant Period”), Trofimoff and others engaged in a scheme to defraud hundreds of investors in a purported mobile-home investment venture. See Gulde Dec., Ex. 1, at ¶¶ 2, 18-27 (“Complaint”). The Complaint alleges that Trofimoff was a salesman under the direction of the self-proclaimed Queen of Mobile Homes, Chimene Van Gundy, and that Trofimoff was paid commissions from investor funds, which he never disclosed to investors. *Id.* at ¶¶ 4, 21-22, 28, 31, 33. The Complaint further alleges that Trofimoff made additional false and misleading statements and omissions to investors while soliciting investment in the mobile-home venture, including misleading investors about whether they were beneficiaries of a key-man insurance policy on Van Gundy’s life in recognition of her central role in the endeavor. *Id.* at ¶¶ 39-41. The

Complaint further alleges that Trofimoff acted as an unregistered broker by (a) soliciting and advising investors and effecting transactions in securities for the accounts of others; (b) receiving transaction-based compensation; and (c) engaging in broker activities. *Id.* at ¶¶ 4, 5, 21-22, 31; *see also* OIP ¶ B.3 (summarizing the allegations in the district court complaint).

On April 19, 2024, the Commission filed a motion for monetary remedies and for entry of final judgment against Trofimoff (“Motion for Remedies”) in the District Court Action, which was granted. *See* Motion for Remedies, attached hereto as Gulde Dec., Ex. 2. On May 22, 2024, the district court entered final judgment as to Trofimoff, finding him liable for disgorgement of \$756,234.18 and prejudgment interest of \$99,363.08, and imposing a civil penalty of \$756,234.18. *See* Gulde Dec., Ex. 3, at ¶ V.

B. The Institution of this Proceeding, the Service of the OIP, and Respondent’s Failure to Answer

On September 19, 2024, the Commission issued the OIP. *In re Trofimoff*, Exchange Act Rel. No. 101101 (Sept. 19, 2024). The OIP alleges that Trofimoff violated the federal securities laws as a salesman for Van Gundy’s mobile-home venture. *Id.*

The OIP further alleges that on May 22, 2024, a final judgment was entered by default against Trofimoff, permanently enjoining him from future violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder. *Id.*

The OIP initiated proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest. *Id.* It directed Trofimoff to file an answer to the allegations within 20 days after service, as provided by Rule of Practice 220(b). *Id.* The OIP informed Trofimoff that if he failed to answer, he could be deemed in default,

the allegations in the OIP could be deemed to be true as provided in the Rules of Practice, and the proceeding could be determined against him upon consideration of the OIP. *Id.*

Respondent was properly served with the OIP in this matter on October 11, 2024, and was required to file an answer by November 12, 2024, which he failed to do. *See* Show Cause Order. On January 16, 2025, the Commission issued the Show Cause Order requiring Trofimoff to respond or face default. *See id.* Respondent has not filed an answer, and thus, is in default. *See* SEC Rule 155(a)(2).

III. ARGUMENT

A. Respondent is in Default and the Allegations of the OIP May Be Deemed to Be True

Because Respondent has not responded to the OIP, he is in default. Rule 155(a) of the Commission's Rules of Practice states:

A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails [] to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding

SEC Rule 155(a). Moreover, the OIP itself provides: "If Respondent fails to file the directed Answer . . . the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true[]." (OIP at pp. 2-3).

Respondent was properly served with the OIP on October 11, 2024, and has failed to answer. *See* Show Cause Order. Under Rule 155(a), the allegations of the OIP may thus be deemed true and the proceedings may be determined against the party upon consideration of the record, including the order instituting proceedings. *See, e.g., In re Reginald Buddy Ringgold, III,*

Advisers Act Release No. 6267, 2023 WL 2705591, at *2 (March 29, 2023) (deeming allegations of OIP true as against respondent in default); *In re Barrera*, Exchange Act Release No. 101639, at p. 3 (Nov. 14, 2024) (same).

B. Imposition of a Permanent Bar is Warranted.

Section 15(b)(6) of the Exchange Act authorizes the Commission to impose an associational bar against a respondent if, among other things: (1) at the time of the alleged misconduct, he was associated with a broker; (2) he is enjoined from any action, conduct or practice specified in Section 15(b)(4)(C); and (3) a bar is in the public interest. *See* Exchange Act, Section 15(b)(6).

The first two factors are established by the OIP, the Complaint, and the Final Judgment entered in the District Court Action. Specifically, the OIP alleges that Respondent actively solicited investors to purchase securities on behalf of Chimene Van Gundy and her company, Outstanding Real Estate Solutions, Inc. (“ORES”), that Respondent received transaction-based compensation, and that Respondent was not registered as a broker or associated with a registered broker-dealer during the relevant period. *See* OIP at ¶ B.3. The Complaint similarly alleges that during the Relevant Period, Trofimoff acted as an unregistered broker. *See* Gulde Dec. Ex. 1 (Complaint) at ¶¶ 4, 5, 21-22, 31; *see also* OIP ¶ B.3. *In Re Allen M. Perres*, Exch. Act Rel. No. 79858, 2017 WL 280080, at *3 (Jan. 23, 2017) (explaining that an individual who acts as an unregistered broker meets the definition of a “person associated with a broker” in Exchange Act Section 3(a)(18)). The Complaint and OIP further allege that Trofimoff (a) solicited and advised investors and effecting transactions in securities for the accounts of others; (b) received transaction-based compensation; and (c) engaged in broker activities. *See id.* In addition, Trofimoff was permanently enjoined from: (1) future violations of the antifraud provisions of the

federal securities laws; (2) future violations of the broker-registration provisions of the federal securities laws; and (3) directly or indirectly participating in the issuance, purchase, offer, or sale of any securities other than for his own personal account. Gulde Dec. Ex. 3 (Final Judgment) at ¶¶ I-IV.

Finally, the record establishes that a bar is in the public interest. In determining whether an administrative sanction is in the public interest, the Commission considers a number of factors, including: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (3) the sincerity of the respondent's assurances against future violations; (4) recognition of wrongful conduct; and (5) the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 81 (1981); *In re Barrera*, Exchange Act Rel. No. 101639, at pp. 4-5 (*Steadman* factors used to determine whether a bar is in the public interest). These factors were addressed in the Motion for Remedies. Gulde Dec., Ex. 2, at pp. 6-7. Based on these arguments, the district court imposed third-tier penalties against Trofimoff equal to the amount of his ill-gotten gain. Gulde Dec. Ex. 3 at ¶ V.

As to whether a permanent bar is appropriate in this proceeding, precedents hold that, “[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry.” *Michael V. Lipkin and Joshua Shainberg*, Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006), notice of finality, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

For more than three years, Trofimoff engaged in an egregious and recurrent scheme to defraud hundreds of investors, raising over \$18 million. *See* Gulde Dec. Ex. 1, ¶¶ 1-4. Trofimoff's conduct reflected a high degree of scienter, as he knowingly failed to disclose his commissions and

knowingly lied to investors when soliciting investment. *Id.* at ¶¶ 4, 21-22, 28, 31, 33, 39-41. Trofimoff and his codefendants caused significant investor loss, with the venture now in receivership and bankruptcy. *See id.* at ¶ 60. Importantly, Trofimoff has never acknowledged wrongdoing and has refused to participate in either the district court case or this administrative process, creating a significant risk that his conduct will recur. The “absence of recognition by [a respondent] of the wrongful nature of his conduct” favors a permanent bar. *Jonathan D. Havey, CPA*, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *see also Kimm Hannan*, Advisers Act Rel. No. 5906, at 4, 2021 WL 5161855, *3 (Nov. 5, 2021) (“Because Hannan failed to answer the OIP or respond to the order to show cause or to the Division’s motion, he has made no assurances to us that he will not commit future violations or that he recognizes the wrongful nature of his conduct.”).

Trofimoff’s actions establish that, unless he is barred from the securities industry, he will have the chance to again harm investors.

III. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court grant this motion and bar Trofimoff from:

- association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
- participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Dated: February 27, 2025

Respectfully submitted,



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CERTIFICATE OF SERVICE

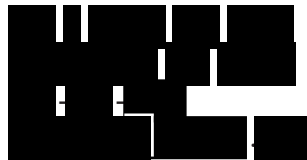
In accordance with Rule 150 and 151 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing *Division of Enforcement's Motion for Default and Remedial Sanctions* was served on the following persons on February 27, 2025, at his last known address by the method indicated:

By eFAP:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

By US Mail and email:

Mr. Michael Trofimoff



Matthew J. Gulde