

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20159

In the Matter of

PARFAIT MUTIMURA,

Respondent.

**DIVISION OF ENFORCEMENT’S MOTION FOR A FINDING
THAT RESPONDENT IS IN DEFAULT AND FOR IMPOSITION
OF REMEDIAL SANCTIONS AND SUPPORTING MEMORANDUM OF LAW**

Pursuant to Commission Rules or Practice 154, 155(a) and 220(f), 17 C.F.R. §§ 201.154, 155(a) and 201.220(f), the Division of Enforcement (“Division”) respectfully moves the Securities and Exchange Commission (the “Commission”) for an order finding Respondent Parfait Mutimura (“Mutimura”) in default, and imposing remedial sanctions against him, and submits this Memorandum of Law, together with the Declaration of Richard G. Primoff, dated June 24, 2021 (“Primoff Dec.”) and exhibits annexed thereto, in support.

I. Background

A. Allegations in the OIP

On December 4, 2020, the Order Instituting Proceedings (“OIP”) in this matter was issued pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. *See Parfait Mutimura*, Securities Exchange Act Release

No. 90566 (Dec. 4, 2020). As alleged in the OIP, Mutimura, age 30, was, between October 2015 and January 2020, a person associated with an investment adviser, purporting to advise clients on their investments in securities through Elevenheimer Group LLC, a company he controlled, in exchange for compensation. In addition, the OIP alleges that Mutimura was a registered representative associated with Newbridge Securities Corporation and NYLife Securities, LLC, both broker-dealers registered with the Commission. OIP II.A.

The OIP also alleges that on February 7, 2020, Mutimura pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343, and one count of investment advisor fraud in violation of 15 U.S.C. §§ 80b-6 and 80b-17, in a criminal action captioned *United States v. Parfait Mutimura*, Crim. No. 19-CR-592 (S.D.N.Y.) (the “Criminal Action”). OIP II.B.1.

On August 25, 2020, according to the OIP, judgment against Mutimura was entered in the Criminal Action, sentencing Mutimura to a prison term of 63 months, followed by three years of supervised release. On August 26, 2020, a Consent Order of Restitution was entered against Mutimura ordering him to make restitution in the amount of \$578,389. The OIP summarizes the allegations forming the basis of the Criminal Action to which Mutimura pleaded guilty. OIP ¶ II.B.1-3.

B. The Underlying Criminal Action

1. Allegations in the Superseding Information

On February 7, 2020, the United States Attorney for the Southern District of New York filed the Superseding Information against Mutimura. Primoff Dec., Exh. A; OIP ¶ II.B.1.¹ As

¹ In addition to the Superseding Information (Primoff Dec., Exh. A), the Division submits the following filings from the Criminal Action in support of its motion, each of which the Commission may take official notice of pursuant to Commission Rules of Practice 323, 17

alleged in the Criminal Action, between April 2016 and March 2019, Mutimura, “acting as an investment adviser with respect to his clients ... engaged in a scheme to obtain the moneys of his investment advisory clients through material misrepresentations and omissions and then misappropriated those client funds, including through unauthorized withdrawals and adviser fees, for his own purposes.” OIP ¶ II.B.3; Primoff Dec., Ex. A ¶ 2.

2. The Criminal Sanctions

As alleged in the OIP, on February 7, 2020, Mutimura pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343, and one count of investment adviser fraud in violation of 15 U.S.C. §§ 80b-6 and 80b-17 in the Criminal Action. *See* OIP ¶ II.B.1; Ex. A. On August 25, 2020, judgment in the Criminal Action was entered against Mutimura. OIP ¶ II.B.2; Ex. B. Mutimura was sentenced to a prison term of 63 months followed by 3 years of supervised release. *Id.* On August 26, 2020, a Consent Order of Restitution was entered against Respondent ordering him to make restitution in the amount of \$578,389. *Id.*

C. Mutimura Did Not Answer the OIP

Mutimura has not responded to the OIP in this proceeding despite being served with the OIP. The OIP was published by the Commission’s Office of the Secretary on December 4, 2020, and the Secretary’s Office served Mutimura the OIP by U.S. Mail at his address at the Metropolitan Detention Center in Brooklyn, New York on December 7, 2020. U.S. Mail records

C.F.R. § 201.323: the District Court’s Final Judgment entered on August 25, 2020 (Primoff Dec., Ex. B); and the Consent Order of Restitution entered on August 26, 2020 (Primoff Dec., Ex. C).

indicate that the OIP was delivered on December 23, 2020. *See* Declaration of Sheldon Mui, dated March 2, 2021, previously filed with the Commission.²

In the OIP, Mutimura was directed to file an Answer within twenty days after service of the OIP. *See* OIP at IV; *see also* Rules 160(a) and 220(b) of the Commission's Rules of Practice, which provides that a time period runs until the end of the next day that is not a Saturday or Sunday; and that the answer is due within 20 days of service, 17 C.F.R. §§ 201.160(a) and 201.220(b). Under these provisions, Mutimura's answer was due no later than January 12, 2021. Mutimura never filed an answer to the OIP with the Secretary's Office, and did not otherwise attempt to communicate with the Division.

On June 7, 2021, Division counsel learned that Respondent had sent two letters to the Division's New York Regional Office in hard copy form that, because of the current remote working environment, had been inadvertently overlooked. The first, dated December 17, 2020 (Primoff Dec. Exh. E), acknowledged receipt of the Division's Rule 230 production, and requested that the Division also send a copy of the transcript of the August 25, 2020 sentencing transcript, a document that the Division did not possess, and was not part of its investigative file. Mutimura's second letter, dated January 1, 2021 (Primoff Dec. Exh. F) repeated his request for that transcript, "to help me prepare my response."

The Division responded to Mutimura's correspondence by letter dated June 8, 2021 (sent by first class U.S. mail and UPS overnight delivery) (Primoff Dec. Exh. G), noting that the requested document was not part of the Division's investigative file, not in the Division's possession, and thus not required to have been produced to him under Commission Rule of

² By letter dated December 10, 2020, the Division transmitted its investigative file to Respondent. Primoff Dec., Exh. D.

Practice 230. That same letter also noted that the Division never received an Answer to the OIP, nor had Respondent filed an Answer with the Commission. Nor, the Division noted, had Respondent filed or served any response to the Commission's April 16, 2021 Order to Show Cause. *See infra*.

That same day, the Division voluntarily and successfully undertook to obtain the transcript Mutimura requested, and sent it to him the following day, by letter dated June 9, 2021 (Primoff Dec. Exh. H), also by first class U.S. mail and UPS overnight delivery. To date, the Division has received no further communication from Mutimura, since his January 1, 2021 letter.

D. Mutimura Did Not Respond to the April 16, 2021 Commission Order to Show Cause Against Mutimura

After the Division filed a motion for entry of default and leave to file motion for summary disposition on March 3, 2021, the Commission, on April 16, 2021, issued an Order to Show Cause (the "Order") that found that Mutimura's answer "was required to be filed within 20 days of service of the OIP," and that as of the date of the Order, he had not done so. Order at 1.

The Order required Mutimura to show cause by June 1, 2021 why he should not be deemed in default, and why this proceeding should not be determined against him. The Order further noted that when a party defaults, "the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding public hearing. *Id.* The Order also ordered the Division, in the event that Mutimura did not file a response by June 1, 2021, to file a motion for default and other relief by June 29, 2021.

The Division has not received any response to the Order, nor does the docket of this proceeding reflect any filing by Mutimura in response to it. Primoff Dec. ¶ 1.³ Accordingly, the Division now moves for a finding that Mutimura is in default, and for the imposition of remedial sanctions. Specifically, the Division requests that the Commission order that Mutimura be barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and be barred from participating in any offering of penny stock.

II. Argument

A. Mutimura Should be Deemed 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 that party upon consideration of the records, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: ...

(2) to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding ...

17 C.F.R. § 201.155(a). The OIP, moreover, provides that “[i]f 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 ¶ IV, citing Rules 152(a), 220(f), 221(f), and 310; Order at 1.

Rule 141(a)(2)(i) sets forth permissible methods of service of the OIP upon individuals, which include “sending a copy of the order addressed to the individual by

³ In its June 9, 2021 letter to Respondent (Primoff Dec. Exh. G), the Division also noted Respondent’s failure to respond to the Order.

U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt” 17 C.F.R. § 201.141(a)(2)(i).

Here, the Secretary’s Office served Mutimura the OIP by U.S. Mail at his address at the Metropolitan Detention Center in Brooklyn, New York on December 7, 2020. U.S. Mail records indicate that the OIP was delivered on December 23, 2020. *See* Declaration of Sheldon Mui, dated March 2, 2021.

The Division requests that Mutimura be deemed in default for failing to timely respond to the OIP after having been served in compliance with Rule 141 and, further, has failed to respond to the Order.

B. The Facts Alleged in the OIP Should be Deemed True

As set forth above, failure to file an answer may result in the allegations of the OIP being deemed true. In this case, that includes the following:

1. Between October 2015 and January 2020, Respondent was a person associated with an investment adviser, purporting to advise clients on their investments in securities through Elevenheimer Group LLC, a company which he controlled, in exchange for compensation. At various times between June 2013 and January 2017, Respondent was a registered representative associated with Newbridge Securities Corporation and NYLife Securities LLC, broker-dealers registered with the Commission.
2. On February 7, 2020, Respondent pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343, and one count of investment adviser fraud in violation of 15 U.S.C. §§ 80b-6 and 80b-17 in the Criminal Action.
3. On August 25, 2020, a Judgment in a Criminal Case was entered against Respondent. Respondent was sentenced to a prison term of 63 months followed by 3 years of supervised release. On August 26, 2020, a Consent Order of Restitution was entered against Respondent ordering him to make restitution in the amount of \$578,389.
4. The counts of the Superseding Information to which Respondent pleaded guilty alleged, *inter alia*, that between April 2016 and March 2019, Respondent made materially false and misleading statements and defrauded his clients “through unauthorized withdrawals and adviser fees for his own purposes.”

The facts alleged in the OIP demonstrate that the sanctions requested against Mutimura are appropriate and in the public interest.

C. The Appropriate Remedial Sanctions in this Case

The Commission has typically considered the *Steadman* factors when determining appropriate public-interest remedies. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). Those factors are: (1) the egregiousness of the Respondents' actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of the Respondents' assurances against future violations; (5) the Respondents' recognition of the wrongful nature of their conduct; and (6) the likelihood that the Respondents' occupations will present opportunities for future violations. *Id.* The Commission also considers the age of the violations, the degree of harm to investors and the marketplace resulting from the violations, and the deterrent effect of administrative sanctions. *Lonny S. Bernath*, ID Release No. 993 at 4, 2016 WL 131539 at *4 (April 4, 2016).

In this case, nearly all of the relevant factors suggest that a full collateral bar and a penny stock bar are appropriate and in the public interest. The conduct at issue was egregious and resulted in investor losses in excess of \$500,000. Mutimura's misconduct was repeated and exhibited a high degree of *scienter*, taking place over several years, from April 2016 through March 2019. During this period, Mutimura, acting as an investment adviser to clients to whom he owed a fiduciary duty, made materially false and misleading statements and defrauded his clients "through unauthorized withdrawals and adviser fees for his own purposes."

Mutimura's conduct, moreover was recent, and he has not come forward to defend this lawsuit or otherwise make any assurances against future violations. Furthermore, his youth –

even after completing his prison term – presents the likelihood that he will have the opportunity to commit future violations.

III. Conclusion

For the foregoing reasons, Mutimura should be deemed in default, and a full associational bar and a penny stock bar are appropriate and in the public interest.

Dated: June 24, 2021

Respectfully submitted,

Richard Primoff, Esq.
Sheldon Mui, Esq.

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CERTIFICATE OF SERVICE

I have caused the attached **Motion For A Finding That Respondent Is In Default And For Imposition Of Remedial Sanctions and Supporting Memorandum of Law, and the accompanying Declaration of Richard G. Primoff dated June 24, 2021**, to be served on the following parties and other persons entitled to notice by placing the same in the United States mail or by delivery as listed below and addressed as follows:

Vanessa A. Countryman
Office of the Secretary
Securities and Exchange Commission
100 F. Street, N.S.
Washington, D.C. 20549
(Emailed to APFilings@sec.gov)

Mr. Parfait Mutimura



Dated: June 24, 2021
New York, New York

s/Richard G. Primoff
Richard Primoff