SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 5411 / November 21, 2019

Admin. Proc. File No. 3-18854

In the Matter of

LAWRENCE ALLEN DESHETLER

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Conviction

Respondent was convicted of mail fraud. *Held*, it is in the public interest to bar respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

APPEARANCES:

Michelle I. Bougdanos, Esq. for the Division of Enforcement.

Respondent Lawrence Allen DeShetler failed to file an answer in response to an order instituting proceedings (the "OIP") alleging that he had been convicted of mail fraud for misconduct that occurred while he was an investment adviser.[1] DeShetler also failed to respond to the Division of Enforcement's motion for entry of default and sanctions, and failed to respond to an order to show cause why he should not be found in default.[2] We now find DeShetler to be in default, deem the allegations of the OIP to be true, and bar him from the securities industry.

I. Background

A. The Commission issued an OIP against DeShetler.

On September 28, 2018, the Commission issued the OIP against DeShetler pursuant to Section 203(f) of the Investment Advisers Act of 1940. The OIP alleged that DeShetler pleaded guilty in 2017 to one count of violating the federal mail fraud statute by "soliciting funds from clients by telling them he would invest the funds or purchase a financial product, when, in fact, DeShetler deposited the funds in a bank account under his name and control and used the money for his personal benefit." After accepting DeShetler's guilty plea, the court sentenced him to 60 months of incarceration followed by three years of supervised release and ordered him to make restitution of $926,809.18. The OIP also alleged that DeShetler was an investment adviser at the time of the misconduct. The OIP instituted proceedings to determine whether the allegations contained therein were true and if any remedial action was appropriate in the public interest.

The OIP directed DeShetler to file an answer to the allegations contained therein within twenty days after service, as provided by Rule 220(b) of the Commission's Rules of Practice.[3] The OIP informed DeShetler that if he failed to answer, he may be deemed in default, the allegations in the OIP may be deemed to be true as provided in the Rules of Practice, and the proceedings may be determined against him upon consideration of the OIP.[4]

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1 *Lawrence Allen DeShetler*, Advisers Act Release No. 5053, 2018 WL 4678512 (Sept. 28, 2018).

2 *Lawrence Allen DeShetler*, Exchange Act Release No. 85652, 2019 WL 1615067 (Apr. 15, 2019).

3 17 C.F.R. § 201.220(b).

4 *See* Rule of Practice 155(a), 220(f), 17 C.F.R. § 201.155(a), .220(f).

B. DeShetler failed to answer the OIP, respond to the Division's motion, or respond to a show cause order.

DeShetler was properly served with the OIP pursuant to Rule of Practice 141(a)(2)(i),[5] but did not answer it. On November 20, 2018, more than twenty days after service on DeShetler, the Division filed a motion requesting that the Commission find DeShetler in default and bar him from the securities industry. The Division supported the motion with copies of the Judgment and the Plea Agreement and accompanying Factual Basis and Stipulation filed in DeShetler's criminal proceeding. DeShetler did not respond to the Division's motion.

On April 15, 2019, DeShetler was ordered to show cause by April 29, 2019, why the Commission should not find him in default due to his failure to file an answer, respond to the Division's motion, or otherwise defend this proceeding. DeShetler was directed to address the reasons for his failure to timely file an answer or respond to the Division's motion, as well as the substance of the Division's request for sanctions. DeShetler was warned that if found in default, the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against him upon consideration of the record. DeShetler did not subsequently answer the OIP or respond to the Division's motion or the show cause order.

II. Analysis

A. We hold DeShetler in default and deem the OIP's allegations to be true.

Rule of Practice 155(a) provides that if a party fails to "answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding," we may deem the party in default and "determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true."[6] Because DeShetler has failed to answer or respond to the Division's motion or to the show cause order, we find it appropriate to deem him in default and to deem the allegations of the OIP to be true. We base the findings that follow on the record, including the OIP.

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[5] 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by "sending a copy . . . addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt").

[6] 17 C.F.R. § 201.155(a); *see also* Rule of Practice 220(f), 17 C.F.R. § 201.220(f) (providing that "[i]f a respondent fails to file an answer required by this rule within the time provided, such respondent may be deemed in default pursuant to Rule 155(a)").

B. We find an industry bar to be appropriate in the public interest.

Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from the securities industry if it finds, on the record after notice and opportunity for hearing, that (i) the person was convicted of violating the federal mail fraud statute, 18 U.S.C. § 1341, within ten years of the commencement of the proceeding; (ii) the person was associated with an investment adviser at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.[7] DeShetler was convicted of violating the federal mail fraud statute within ten years of the commencement of this proceeding.[8] Because at the time of his misconduct DeShetler was an investment adviser, he necessarily also was a person associated with an investment adviser.[9]

Thus, we need determine only if any remedial action is in the public interest. In doing so, we consider the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[10]

DeShetler's misconduct warrants an industry bar to protect the investing public. Mail fraud requires a specific intent to defraud.[11] In the Factual Basis and Stipulation filed in the criminal proceeding, DeShetler admitted that throughout 2016 he defrauded five clients of his investment adviser business by misappropriating a total of $1,907,003.71 that they had given him to invest. Most of DeShetler's victims were elderly and lost sizable portions of their retirement savings. DeShetler used their money to build a house for himself in Nicaragua, and to pay for his own personal housing rental payments, travel, and food. For two clients, DeShetler concealed his misappropriation by repeatedly making payments to them throughout 2016 based

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[7] 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)); *see also id.* § 80b-3(e)(2)(D) (discussing convictions for violating 18 U.S.C. § 1341).

[8] *See* Advisers Act Section 202(a)(6), 15 U.S.C. § 80b-2(a)(6) (defining "convicted" to include a "plea of guilty").

[9] *Shreyans Desai*, Advisers Act Release No. 4656, 2017 WL 782152, at *3 (Mar. 1, 2017) ("[T]he finding that Desai acted as an unregistered investment adviser establishes that he was associated with an investment adviser for purposes of Advisers Act Section 203(f)."). From 2014 through 2017, DeShetler was an investment adviser registered with the State of Texas and doing business as Partners Investment Advisors, a sole proprietorship.

[10] *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

[11] *United States v. Traxler*, 764 F.3d 486, 488 (5th Cir. 2014); *see also SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (scienter is "an intent to deceive, manipulate, or defraud").

on investments that he did not make from the money they deposited with him.[12] DeShetler engaged in this misconduct while occupying a position of trust relative to his victims.[13] We conclude that DeShetler's misconduct was egregious, recurrent, and involved a high degree of scienter.[14]

The remaining factors support the conclusion that an industry bar is warranted. Because DeShetler failed to answer the OIP or respond to the Division's motion or to the show cause order, he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct. Although his guilty plea indicates that DeShetler might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that DeShetler poses a risk to the investing public.[15]

DeShetler also has worked for more than twenty years in the securities industry as an investment adviser. His occupation, therefore, will present opportunities for future violations.

The Commission may impose bars to protect the investing public from a respondent's future actions by restricting access to areas of the securities industry where a demonstrated propensity to engage in violative conduct may cause further investor harm. Here, the record establishes that DeShetler is "unfit to participate in the securities industry" and that his "participation in it in any capacity would pose a risk to investors."[16] Because DeShetler poses a

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12 *See generally SEC v. Holschuh*, 694 F.2d 130, 143 (7th Cir. 1982) (describing lulling activities as "later efforts to avoid detection of the fraud").

13 *See James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary . . . as egregious.").

14 *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm).

15 *See James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding the "egregious and recurrent nature of the fraud in which [respondent] violated his fiduciary duties and harmed his clients outweigh any acceptance of responsibility").

16 *Id.* (finding that the misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and posed a risk to investors).

continuing threat to investors, we conclude that it is in the public interest to bar him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[17]

An appropriate order will issue.

By the Commission (Chairman CLAYTON and Commissioners JACKSON, PEIRCE, ROISMAN, and LEE).

Vanessa A. Countryman
Secretary

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[17] *Id.* (imposing associational bars where they were necessary to protect the public).

UNITED STATES OF AMERICA
before the
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In the Matter of

LAWRENCE ALLEN DESHETLER

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Lawrence Allen DeShetler is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Vanessa A. Countryman
Secretary