

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6007 / April 28, 2022

Admin. Proc. File No. 3-20086

In the Matter of

GARY EDWARD HAYNES

ORDER REQUESTING BRIEFS

On September 28, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Gary Edward Haynes pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ Haynes was served with the OIP, but he did not file an answer.

On June 9, 2021, the Division of Enforcement filed a motion requesting that the Commission find Haynes in default and bar him from the securities industry. The Division supported its motion with transcripts of Michigan state court criminal proceedings against Haynes. On July 26, 2021, Haynes was ordered to show cause by September 9, 2021, why the Commission should not find him in default due to his failure to file an answer or otherwise defend this proceeding.² Haynes did not respond to the Division’s motion or the show cause order.

The OIP alleged that Haynes was convicted by a jury in Michigan state court of “several counts of ‘Embezzlement From A Vulnerable Adult,’” in violation of Michigan Compiled Laws (“MCL”) § 750.174.³ However, in its opinion affirming Haynes’s convictions, the Court of Appeals of Michigan stated that Haynes had been convicted of several counts of “obtaining or using a vulnerable adult’s money or property through fraud, deceit, misrepresentation, coercion, or unjust enrichment (exploiting a vulnerable adult),” in violation of MCL § 750.174a (emphasis

¹ *Gary Edward Haynes*, Advisers Act Release No. 5597, 2020 WL 5766754 (Sept. 28, 2020).

² *Gary Edward Haynes*, Advisers Act Release No. 5807, 2021 WL 3158259 (July 26, 2021).

³ *Haynes*, 2020 WL 5766754, at *1.

added).⁴ And, although the Division has not submitted the underlying criminal information or the written jury instructions, the transcript of the oral jury instructions indicates that the jury was instructed on the elements of MCL § 750.174a, not MCL § 750.174.⁵

Accordingly, the parties are directed to brief the following issues:

- Was Haynes convicted of several counts of exploiting a vulnerable adult in violation of MCL § 750.174a, rather than several counts of embezzlement from a vulnerable adult in violation of MCL § 750.174?
- If so, should the OIP be amended, and do Haynes’s convictions under MCL § 750.174a satisfy the statutory predicate for an administrative remedy under Advisers Act Section 203(f)?

Accordingly, it is ORDERED that the parties submit briefs addressing the foregoing issues by June 13, 2022. Responses to the initial briefs may be filed by July 28, 2022.

Pursuant to Rule of Practice 180(c), a party’s failure to comply with this order may result in the Commission’s determination of the matter at issue against that party, entry of a default,

⁴ *People v. Haynes*, ___ N.W.2d ___, No. 350125, 2021 WL 3573029, at *1 (Mich. Ct. App. Aug. 12, 2021). The opinion specified that Haynes was convicted of one count of exploiting a vulnerable adult when the money or property value equaled or exceeded \$100,000, MCL § 750.174a(1) and (7)(a), and eight counts of exploiting a vulnerable adult when the money or property value was at least \$1,000 but less than \$20,000, MCL § 750.174a(1) and (4)(a). *Haynes*, 2021 WL 3573029, at *1.

⁵ That is, although the trial court used the phrase “embezzlement from a vulnerable adult” as shorthand for the relevant charges, the trial court instructed the jury on the elements of MCL § 750.174a, which provides at subsection (1): “A person shall not through fraud, deceit, misrepresentation, coercion, or unjust enrichment obtain or use or attempt to obtain or use a vulnerable adult’s money or property to directly or indirectly benefit that person knowing or having reason to know the vulnerable adult is a vulnerable adult.” By contrast, MCL § 750.174(1) provides: “A person who as the agent, servant, or employee of another person, governmental entity within this state, or other legal entity or who as the trustee, bailee, or custodian of the property of another person, governmental entity within this state, or other legal entity fraudulently disposes of or converts to his or her own use, or takes or secretes with the intent to convert to his or her own use without the consent of his or her principal, any money or other personal property of his or her principal that has come to that person’s possession or that is under his or her charge or control by virtue of his or her being an agent, servant, employee, trustee, bailee, or custodian, is guilty of embezzlement.”

dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.⁶

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.⁷

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

⁶ 17 C.F.R. § 201.180(c).

⁷ *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81. And the amendments provide further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478-79.