

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6080 / August 8, 2022

Admin. Proc. File No. 3-20086

In the Matter of

GARY EDWARD HAYNES

ORDER

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. 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.

On April 28, 2022, we requested briefing from the parties regarding whether the OIP contains an error and, if so, whether the OIP should be amended.³ The Division filed a brief responding to this order, but Haynes did not respond to the order or the Division’s brief.

The Division’s brief acknowledges that the OIP contains an error, as Haynes was convicted of several counts of violating Michigan Compiled Laws (“MCL”) § 750.174a, whereas the OIP erroneously alleges he was convicted of several counts of violating MCL § 750.174.⁴

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 *Gary Edward Haynes*, Advisers Act Release No. 6007, 2022 WL 1288189 (Apr. 28, 2022).

⁴ *See Haynes*, 2020 WL 5766754, at *1.

We note that the OIP also describes these convictions as being for “Embezzlement From a Vulnerable Adult,”⁵ even though MCL § 750.174a does not discuss embezzlement.⁶

Regardless, the Division argues that amendment of the OIP is unnecessary because the error in referencing MCL § 750.174 rather than MCL § 750.174a was merely typographical and does not prejudice Haynes. However, in making this argument, the Division does not cite the Rules of Practice or any opinions or orders of the Commission.⁷ Instead, the Division cites federal court cases and treatises that seem to explicitly or implicitly rely on Federal Rule of Civil Procedure 60(a), which provides federal district courts with explicit authority to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” The Division does not point to any authority suggesting that Federal Rule of Civil Procedure 60(a) applies to administrative proceedings before the Commission or that any similar provision appears in our Rules of Practice.⁸

Accordingly, it is ORDERED that, by August 22, 2022, the Division file either (a) a motion to amend the OIP, along with an exhibit attaching the proposed amended OIP, specifying that Haynes was convicted of several counts of exploiting a vulnerable adult, in violation of MCL § 750.174a, or (b) a supplemental brief supporting its argument that, despite the error, the OIP need not be amended, which should include citations to the Commission Rules of Practice, Commission precedent, or court opinions concerning the pleading practices of administrative agencies. Haynes shall file any response to the Division’s filing by September 19, 2022.

⁵ *Id.*

⁶ The Division points out that both the criminal information and the judgment against Haynes referred to the convictions as “embezzlement” from a vulnerable adult. However, in the opinion affirming Haynes’s convictions, the Michigan Court of Appeals 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 various provisions of MCL § 750.174a. *People v. Haynes*, ___ N.W.2d ___, No. 350125, 2021 WL 3573029, at *1 (Mich. Ct. App. Aug. 12, 2021). This shorthand description of the convictions as “exploiting a vulnerable adult” more closely tracks the language of MCL § 750.174a. However, we need not and do not address whether amendment of the OIP would be warranted if the OIP had provided the correct statute of conviction but had described the convictions as “Embezzlement From a Vulnerable Adult.”

⁷ *Cf.* Rule of Practice 200(d), 17 C.F.R. § 201.200(d) (describing amendments to OIPs).

⁸ We note that the situation at issue here involves a known, substantive error in the OIP, which has been identified prior to the Commission’s issuance of an opinion and order resolving the case. A different analysis may well apply in a different situation.

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

Vanessa A. Countryman
Secretary