

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98969 / November 17, 2023

Admin. Proc. File No. 3-19734

In the Matter of

ANTHONY B. BRANDEL and
M.Y. CONSULTANTS, INC.

SECOND ORDER REQUESTING ADDITIONAL BRIEFING AND MATERIALS

On March 24, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Anthony B. Brandel and M.Y. Consultants, Inc., pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹

After Respondents failed to respond to the OIP, to an order to show cause,² or to the Division’s motion for summary disposition, we requested additional briefing and materials in support of the Division’s motion.³ The Division’s response to that order focused primarily on Brandel, with limited discussion of the basis for imposing sanctions against M.Y. Consultants. And on October 17, 2023, the proceeding against Brandel was settled, leaving M.Y. Consultants as the only respondent in this proceeding.⁴ We therefore believe that the Commission would benefit from additional briefing regarding the basis for the Division’s motion as to M.Y. Consultants.

When determining whether remedial action—such as an industry or penny stock bar—is in the public interest under Exchange Act Section 15(b), the Commission considers various factors, including 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

¹ *Anthony B. Brandel*, Exchange Act Release No. 88463, 2020 WL 1433032 (Mar. 24, 2020).

² *Anthony B. Brandel*, Exchange Act Release No. 92465, 2021 WL 3110033 (July 22, 2021).

³ *Anthony B. Brandel*, Exchange Act Release No. 96855, 2023 WL 1926500 (Feb. 9, 2023).

⁴ *Anthony B. Brandel*, Exchange Act Release No. 98763, 2023 WL 6879308 (Oct. 17, 2023).

against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.⁵ And, in applying those factors, the Commission must do more than merely "recite[], in general terms, the reasons why [a respondent's] conduct is illegal," but rather "devote individual attention to the unique facts and circumstances of th[e] case."⁶

As noted in an earlier order, we construe the Division's motion for summary disposition as one for the entry of default. But finding M.Y. Consultants to be in default would not allow the Commission to establish the facts alleged in the Commission's civil complaint. Instead, finding M.Y. Consultants to be in default would allow the Commission to deem only the *OIP's* allegations to be true.⁷ And the *OIP*, in turn, recounts only the Commission's civil complaint's *allegations*. The *OIP* does not independently allege that M.Y. Consultants engaged in particular misconduct.

The Division supports its motion as to M.Y. Consultants with documents from a criminal proceeding against Brandel⁸ and from a civil proceeding against both Brandel and M.Y. Consultants. In the civil proceeding, a court enjoined Brandel from future violations of the federal securities laws based on a motion for summary judgment, but the court enjoined M.Y. Consultants based on a default.⁹ And because of that, the allegations in the Commission's civil complaint against M.Y. Consultants do not have preclusive effect here.¹⁰

The Division also provides the briefing and exhibits from the Commission's civil injunctive action against Brandel as support for imposing sanctions against M.Y. Consultants. In doing so, the Division asserts that Brandel's injunction binds not only Brandel, but also "other persons in active concert or participation" with Brandel. The Division alleges that M.Y.

⁵ See *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); see also *Lawrence Allen Deshetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *2-3 (Nov. 21, 2019) (applying *Steadman* factors in follow-on proceeding).

⁶ See *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

⁷ See Commission Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), 201.220(f).

⁸ *U.S. v. Brandel, et al.*, No. 2:13-cr-439-KJD-VCF (D. Nev. Dec. 11, 2013, and Dec. 7, 2015, respectively).

⁹ *SEC v. Malom Group AG, et al.*, No. 2:13-cv-2280-GMN-PAL (D. Nev. Dec. 16, 2013, Oct. 9, 2014, June 20, 2017, and Sept. 29, 2017, respectively).

¹⁰ See *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at *4 (Feb. 4, 2010); see also *Jaswant Gill*, Advisers Act Release No. 5858, 2021 WL 4131427, at *2 n.7 (Sept. 10, 2021) ("Because Gill's injunction in the civil action was entered by default, we do not rely on any findings made in that action in determining whether Gill's conduct warrants remedial sanctions.").

Consultants “falls squarely within the scope of [Brandel’s] injunction” because of connections alleged in the criminal indictment and civil complaint against Brandel. But beyond those allegations, the Division does not provide evidence of—or authority for how—such an alleged connection would allow the Commission to consider the evidence from those criminal and civil proceedings against *Brandel* in this follow-on proceeding against *M.Y. Consultants*.

Under the circumstances, the Commission would benefit from briefing that further develops these issues, including addressing whether evidence from criminal and civil proceedings against *Brandel* can be used against *M.Y. Consultants*. In doing so, the parties should address the appropriateness of imposing sanctions against M.Y. Consultants based on proceedings against Brandel.¹¹ The parties may also provide additional evidence to support their claims, including whether imposing industry and penny stock bars are in the public interest as to M.Y. Consultants.¹²

Accordingly, it is ORDERED that the Division shall submit a brief not to exceed 5,000 words addressing the above issues and, as it deems necessary, any additional relevant evidentiary materials by December 18, 2023.

It is further ORDERED that M.Y. Consultants, Inc., may file a responsive brief by January 17, 2024, not to exceed 5,000 words, addressing the same matters above. M.Y. Consultants’ brief should also address why they have failed to file an answer previously or to otherwise defend this proceeding, and why the Commission should not find them in default as a result.¹³ M.Y. Consultants is reminded 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 a public hearing.¹⁴

¹¹ See, e.g., *U.S. v. Pisani*, 646 F.2d 83, 88 (3d Cir. 1981) (setting forth eight factors to be considered in determining whether alter ego liability is appropriate); cf. *Daniel R. Lehl*, Securities Act Release No. 8102, 2002 WL 1315552, at *15 & n.69 (May 17, 2002) (declining to order respondent to pay disgorgement of amount held by a separate entity because Division had not adduced “evidence sufficient to demonstrate that [the respondent and the entity] are in fact ‘one and the same’”) (citing *Laborer’s Pension Trust Fund v. Sidney Weinberger Homes, Inc.*, 872 F.2d 702 (6th Cir. 1988) (factors to be considered in determining whether to pierce the corporate veil include undercapitalization of corporation, maintenance of separate books, separation of corporate and individual finances, use of corporation to support fraud or illegality, honoring of corporate formalities, and whether corporation is a mere sham)).

¹² See generally *Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716 (Oct. 16, 2020).

¹³ See *supra* note 3 (show cause order warning Respondents that failure to respond may cause the Commission to find them in default and noting that the OIP did the same).

¹⁴ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹⁵

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

Vanessa A. Countryman
Secretary

¹⁵ *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.govinfo.gov/content/pkg/FR-2020-12-30/pdf/2020-25747.pdf>; see also *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments also impose other obligations on parties to administrative proceedings such as a redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.