

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101247 / October 4, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6742 / October 4, 2024

Admin. Proc. File No. 3-21578

In the Matter of TAREK D. BAHGAT

ORDER DIRECTING ADDITIONAL SUBMISSIONS

On August 22, 2023, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Tarek D. Bahgat, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.¹ Bahgat was subsequently served with the OIP but failed to file an answer to it.

On May 28, 2024, the Commission issued an order requiring Bahgat to show cause by June 25, 2024, why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceeding.²

On July 9, 2024, after Bahgat failed to respond to the show cause order, the Division filed a motion for default and remedial sanctions. The Division’s motion requested that the Commission bar Bahgat from the securities industry based on the record and the allegations in the OIP. To support its motion for default, the Division attached as exhibits, *inter alia*, the complaint in the underlying civil action, the district court’s final judgment granting the Commission’s motion for default judgment and enjoining Bahgat, the district court’s orders as to other defendants in the civil action, and a summary of financial transactions in spreadsheet form prepared by a Division staff attorney (“Summary Spreadsheet”).

When determining whether remedial action, such as an industry bar, is in the public interest under Exchange Act Section 15(b) and Advisers Act Section 203(f), the Commission

¹ *Tarek D. Bahgat*, Exchange Act Release No. 98195, 2023 WL 5399835, at *2-6 (Aug. 22, 2023).

² *Terek D. Bahgat*, Exchange Act Release No. 100226, 2024 WL 2746092, at *1 (May 28, 2024).

must consider the question with reference to the underlying facts and circumstances of the case.³ Such analysis must do more than “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.”⁴

To support its motion, the Division cites to a paragraph of the OIP that summarizes the allegations of the complaint in the injunctive action. When a respondent defaults, the Commission may deem an OIP’s allegations to be true.⁵ But the OIP here only recounts the allegations of the Commission’s civil complaint; it does not independently allege that Bahgat engaged in particular misconduct.⁶ Thus, deeming the allegations of the OIP’s summary paragraph to be true would not appear to allow the Commission to deem the summarized allegations to be true in themselves.⁷

The Division’s motion also relies on the complaint itself in the injunctive action, as well as a default final judgement against Bahgat from that action enjoining him from certain violations of securities laws. But because that injunction was entered by default, it does not appear to have preclusive effect as to facts alleged in the Commission’s complaint.⁸ In addition, the Division relies on judgments issued by the district court as to other defendants in the injunctive action. But the orders in question were entered some years *before* Bahgat was

³ See *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

⁴ See *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

⁵ See Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), 201.220(f).

⁶ *Bahgat*, 2023 WL 5399835, at *1 (stating that the “*Commission’s complaint alleged* that from at least December 2014 through September 2016, Bahgat” engaged in various misconduct) (emphasis added).

⁷ See, e.g., *Hai Khoa Dang*, Advisers Act Release No. 6464, 2023 WL 6879346, at *1 (Oct. 17, 2023); *Daniel B. Vazquez, Sr.*, Exchange Act Release No. 93912, 2022 WL 44347, at *2 (Jan. 5, 2022).

⁸ 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.”).

successfully served in that action and made a party to it,⁹ and thus do not appear to bind Bahgat now.¹⁰

The remaining piece of evidence on which the Division principally relies is the Summary Spreadsheet, which is a list of financial transactions which, according to the Division, demonstrates that Bahgat misappropriated his clients' funds by transferring them to accounts controlled by Bahgat or his investment advisory firm. But the evidentiary foundation of the Summary Spreadsheet is unclear: The Division attaches only a declaration averring that a *different* Division staff attorney some years before "reviewed [the underlying] documents and prepared the summary that is being submitted." The Summary Spreadsheet also shows only that the transfers occurred—not that they were unlawful or unauthorized.

Under the circumstances, the Commission would benefit from further development of the evidentiary record and additional briefing addressing the Division's arguments as to why sanctions are warranted.¹¹

Accordingly, it is ORDERED that the Division of Enforcement may submit any additional evidentiary materials that are relevant to its motion for sanctions by November 18, 2024, and a brief not to exceed 5,000 words, explaining the relevance of those materials and containing specific citations to the evidence relied upon.

It is further ORDERED that Bahgat may submit additional evidence and a brief by January 2, 2025, not to exceed 5,000 words, addressing the same matters to be addressed by the Division. Bahgat's brief should also address why he has failed to file an answer, respond to the order to show cause, or oppose the Division's motion previously, and why the Commission should not find him in default as a result.¹² Bahgat 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

⁹ See *SEC v. Bahgat*, 2023 WL 3491733, at *2-3 (W.D.N.Y. May 17, 2023) (describing prior difficulties effecting service on Bahgat).

¹⁰ See *Taylor v. Sturgell*, 553 U.S. 880, 893 & n.6 (2008) (describing limits to non-party preclusion).

¹¹ See, e.g., *Bruce C. Worthington*, Advisers Act Release No. 6037, 2022 WL 1785718, at *1 (June 1, 2022) (noting that "the Commission would benefit from being able to review some of the evidence supporting the [Division attorney's] declaration" submitted after initial request for additional information by the Commission); *Sean Kelly*, Advisers Act Release No. 6006, 2022 WL 1288179, at *2 (Apr. 28, 2022) (noting that the Division submitted declaration from lead investigator in Commission investigation).

¹² See *supra* note 2 (show cause order warning Bahgat that failure to respond may cause the Commission to deem him in default and noting that the OIP did the same).

hearing.¹³ If Bahgat files a response to this order, the Division may file a reply within 14 days after its service.

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

Vanessa A. Countryman
Secretary

¹³ Rules of Practice 155, 180, 17 C.F.R. § 201.155, .180.