UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6835 / January 23, 2025

Admin. Proc. File No. 3-22308

In the Matter of

DAVID M. ANTHONY

ORDER DENYING MOTION FOR SUMMARY DISPOSITION AND SETTING PROCEEDING FOR HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE

On November 8, 2024, the Securities and Exchange Commission issued an order instituting proceedings ("OIP") against David M. Anthony, the President of Epic Capital Wealth Advisors, LLC, under Section 203(f) of the Investment Advisers Act of 1940.[1] On the same date, the Commission also issued an OIP against Epic Capital to determine whether its pending application for registration as an investment adviser should be denied under Advisers Act Section 203(c)(2)(B) (the "Epic Proceeding").[2]

The OIPs in both proceedings allege that the Colorado Securities Commissioner brought a civil action against Anthony contending that he had violated licensure and registration requirements, commingled money invested in various offerings, and failed to provide full and fair disclosure to investors (the "Colorado Action"). The OIPs further allege that a Colorado state court enjoined Anthony for 10 years, from, among other things, engaging in business as a securities broker-dealer, sales representative, investment adviser, or investment adviser representative in Colorado (the "Colorado Injunction").

Advisers Act Section 203(f) authorizes the Commission to impose certain remedial sanctions, including barring a person from associating in the securities industry, if the Commission finds that (1) the person was enjoined from acting as an investment adviser or from engaging in any conduct or practice in connection with that activity; (2) the person was associated with an investment adviser at the time of the alleged misconduct; and (3) such a sanction is in the public interest.[3] In assessing the public interest element, the Commission

1 *David M. Anthony*, Advisers Act Release No. 6772, 2024 WL 4723205 (Nov. 8, 2024).

2 *Epic Capital Wealth Advisors, LLC*, Advisers Act Release No. 6771, 2024 WL 4723204 (Nov. 8, 2024).

3 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4), which specifies injunctions against various actions, conduct, and practices).

considers 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.[4] Our public interest inquiry is flexible, and no single factor is dispositive.[5]

The Division of Enforcement filed a motion for summary disposition asserting that these factors are satisfied and thus that the Commission should bar Anthony from association in the securities industry, with a right to reapply after the Colorado Injunction's ten-year term expires.[6] The Commission may resolve an administrative proceeding on a party's motion for summary disposition if "there is no genuine issue with regard to any material fact" and the moving party "is entitled to summary disposition as a matter of law."[7] The Division argues that the record in this proceeding establishes that (1) the Colorado Injunction prohibits Anthony from acting as an investment adviser in Colorado; (2) he was associated with an investment adviser, Anthony Capital, LLC, at the time he allegedly engaged in misconduct; and (3) because the record in the Colorado Action establishes that Anthony engaged in various misconduct—including that he did not disclose material facts to investors—barring Anthony is in the public interest.

There are genuine issues of fact material to the Division's contentions that Anthony committed misconduct and that barring him with a right to reapply is therefore in the public interest. In particular, the Division does not identify any state court findings entitled to preclusive effect as to Anthony's conduct,[8] nor does it address the egregiousness of Anthony's conduct, its isolated or recurrent nature, or his degree of scienter, all of which are factors that are necessary to our determination whether a bar against Anthony is warranted. Although Anthony acknowledges that he was associated with Anthony Capital and that the court entered an injunction against him,[9] Anthony also disputes that he committed the violations alleged in the

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

5 *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013) (citation omitted).

6 This Division has also filed a motion for summary disposition in the Epic Proceeding, which we address by separate order. *See Epic Capital Wealth Advisors, LLC*, Admin. Proc. File No. 3-22307.

7 Rule of Practice 250(b), 17 C.F.R. § 201.250(b); *see also ERHC Energy, Inc.*, Exchange Act Release No. 90517, 2020 WL 6891409, at *2 (Nov. 24, 2020) (discussing standard).

8 The injunction against Anthony was entered as part of a settlement and apparently did not require him to admit misconduct. *Cf. Warren A. Davis*, Exchange Act Release No. 101217, 2024 WL 4357534, at *2 (Sept. 30, 2024) (providing that, in a follow-on proceeding, "collateral estoppel precludes the Commission from reconsidering a district court's judgment, as well as factual and procedural issues that were actually litigated and necessary to the court's judgment") (citation omitted).

9 After it was entered, Anthony unsuccessfully attempted to vacate the injunction because it did not ensure that he could work as an investment adviser outside Colorado, as he contended

Colorado Action. We therefore find that there are genuine issues of material fact regarding whether barring Anthony is in the public interest and deny the Division's motion for summary disposition.

We conclude that an evidentiary hearing before an Administrative Law Judge is warranted to develop and resolve the disputed factual issues and that it would serve the interests of justice and not result in prejudice to any party to specify further procedures in this matter.[10]

Accordingly, IT IS ORDERED that the Division of Enforcement's Motion for Summary Disposition against David M. Anthony is DENIED.

IT IS FURTHER ORDERED that a public hearing for purposes of taking evidence on the questions set forth in Section III of the OIP in this proceeding shall be convened before an Administrative Law Judge as provided by Rule of Practice 110.[11] The Chief Administrative Law Judge shall designate the Administrative Law Judge assigned to the Epic Proceeding to also be the presiding hearing officer in this proceeding.[12] The presiding hearing officer shall specify the time and place of the hearing by further order and shall exercise the full powers conferred by the Commission's Rules of Practice and the Administrative Procedure Act.[13]

All motions, objections, or applications shall be directed to and decided by the presiding hearing officer.[14] This includes, without limitation, filings under Rules of Practice 210, 221, 222, 230, 231, 232, 233, and 250.[15] Any proposals for procedural schedules shall be directed to and decided by the presiding hearing officer.

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the parties had agreed before settling the Colorado Action. Given our disposition of the Division's motion, we do not address Anthony's attempt to collaterally attack the injunction on this basis or his related arguments that he was not "enjoined."

10 *See* Rule of Practice 100(c), 17 C.F.R. § 201.100(c). To the extent conflicting, the procedures in this order supersede those specified in the OIP.

11 17 C.F.R. § 201.110.

12 *Id.* § 200.30-10(a)(2).

13 *See, e.g.*, 5 U.S.C. § 556; Rule of Practice 111, 17 C.F.R. § 201.111.

14 *See* 17 C.F.R. § 201.151(b)-(c) (explaining how to file and how to direct filings when a matter is assigned to a hearing officer).

15 *Id.* §§ 201.210, .221, .222, .230, .231, .232, .233, .250.

IT IS FURTHER ORDERED that, pursuant to Rule of Practice 360(a)(2),[16] the presiding hearing officer shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) the completion of post-hearing briefing if a public hearing has been held; (B) the completion of briefing on a motion pursuant to Rule of Practice 250, if the presiding hearing officer has determined that no public hearing is necessary;[17] or (C) the determination by the presiding hearing officer that a party is deemed to be in default under Rule of Practice 155 and no public hearing is necessary.[18] This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i) for the purposes of applying Rules of Practice 233 and 250.[19]

IT IS FURTHER ORDERED that the initial decision be issued on the basis of the record before the presiding hearing officer, as defined by Rule of Practice 350,[20] and that the record index shall be prepared and certified in accordance with Rule of Practice 351.[21]

IT IS FURTHER ORDERED that, upon issuance of an initial decision, Rules of Practice 360(d), 410, and 411 shall govern further Commission consideration of this matter.[22]

The parties' attention is directed to the e-filing requirements in the Rules of Practice.[23] The parties should also comply with the presiding hearing officer's instructions regarding the provision of electronic courtesy copies. We also remind the parties that any document filed with

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16 *Id.* § 201.360(a)(2).

17 *Id.* § 201.250.

18 *Id.* § 201.155.

19 *Id.* §§ 201.233, .250, .360(a)(2)(i).

20 *Id.* § 201.350.

21 *Id.* § 201.351.

22 *Id.* §§ 201.360(d), .410, .411. Before issuance of an initial decision, interlocutory Commission review shall be governed by Rule of Practice 400. *Id.* § 201.400.

23 *See* Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, https://www.sec.gov/efapdocs/instructions.pdf. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).

the Commission or the presiding hearing officer must also be served upon all participants in this proceeding and be accompanied by a certificate of service.[24] Filing a document through the Commission's electronic filing system does not serve it on opposing counsel.[25]

By the Commission.

Vanessa A. Countryman
Secretary

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[24] *See* Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) ("Papers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person."); https://www.sec.gov/files/alj/certificate-service-example.pdf (sample certificate of service).

[25] *See Bradley C. Reifler*, Advisers Act Release No. 6304, 2023 WL 3274687, at *1 & n.3 (May 5, 2023) (noting that "[f]iling documents electronically using eFAP will not constitute service on Commission staff, such as the Division of Enforcement, or other participants in an administrative proceeding" (citation omitted)).