

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

INVESTMENT ADVISERS ACT OF 1940
Release No. 3328/December 6, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14548

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
DAVID A. SOUZA	:	IMPOSING SANCTION BY DEFAULT

SUMMARY

This Order bars David A. Souza (Souza) from association with any investment adviser. Souza was previously enjoined from violating the antifraud and registration provisions of the securities laws.

I. BACKGROUND

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Souza on September 13, 2011, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that Souza was enjoined in 2011 from violating the antifraud and registration provisions of the federal securities laws, based on his fraudulent investment scheme targeting members of a church community. Souza was served with the OIP on October 6, 2011. He failed to file an Answer, due twenty days after service of the OIP. See OIP at 2; 17 C.F.R. § 201.220(b). The Division of Enforcement filed a Motion for Entry of Default and Sanctions on November 18, 2011. Souza did not respond. Accordingly, he has failed to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; thus, he is in default, and the undersigned finds that the following allegations in the OIP are true. See 17 C.F.R. §§ 201.155(a), .220(f); OIP at 2-3.

II. FINDINGS OF FACT

Souza is permanently enjoined from violating the antifraud and registration provisions of the federal securities laws, specifically, Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. SEC v. Souza, No. 2:09-cv-02421 (E.D. Cal. Aug. 24, 2011).¹ The wrongdoing that underlies Souza's injunction

¹ Official notice, pursuant to 17 C.F.R. § 201.323, is taken of the fact that Souza was also ordered to disgorge \$895,337.63 and prejudgment interest of \$51,590.28 and to pay a civil penalty of \$946,927.91.

occurred from August 2007 through April 2008, while he was acting as an unregistered investment adviser. Individually and through his company, D.A. Souza Investments, LLC, Souza carried out a fraudulent investment scheme targeting members of a Redding, California, church community. Baselessly touting his investing acumen and promising sky-high rates of return, Souza induced approximately twenty-eight investors to invest a total of more than \$1 million into pooled funds to purchase stock and enter other investment opportunities.

Souza never invested any of the money received from investors. Rather, he diverted the money to expenditures that were not disclosed to, or authorized by, the investors. Souza used most of the money on expenditures designed to create the false appearance of a successful business operation. He used another portion of the money to pay certain investors fictitious high returns in the style of a Ponzi scheme, with the remainder used for payment of his personal expenses. Once his scheme came to light, Souza told investors that he would soon return their investments plus accrued earnings. He failed to deliver on these promises and had no means to do so.

III. CONCLUSIONS OF LAW

Souza is permanently enjoined “from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security” within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act.

IV. SANCTION

Souza will be barred from association with an investment adviser.² This sanction will serve the public interest and the protection of investors, pursuant to Section 203(f) of the Advisers Act. It accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981). Souza’s unlawful conduct was egregious, over a period of many months. There are no mitigating circumstances.

V. ORDER

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, DAVID A. SOUZA IS BARRED from association with an investment adviser.

Carol Fox Foelak
Administrative Law Judge

² The Division also requests a collateral bar pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). However, Souza’s misconduct underlying the injunction antedates the July 22, 2010, effective date of the Dodd-Frank Act. Neither the Commission nor the courts have approved such retroactive application of its provisions in any litigated case, and the undersigned declines to impose the new sanction retroactively. See Koch v. SEC, 177 F.3d 784 (9th Cir. 1999); see also Sacks v. SEC, 635 F.3d 1121(9th Cir. 2011).