

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69621 / May 22, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15246

In the Matter of : ORDER MAKING FINDINGS AND
PATRICK MERRILL BRODY : IMPOSING SANCTIONS BY
: DEFAULT

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Administrative Proceedings (OIP) on March 15, 2013, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). Pending is the Division of Enforcement's (Division's) Motion for Default and Memorandum of Law in Support Pursuant to Rule 155 of the Commission's Rules of Practice (Rules) (Motion).¹

I held a telephonic prehearing conference on April 16, 2013, at which time I found that Respondent Patrick Merrill Brody (Brody) was served with the OIP no later than April 12, 2013. Ex. A; Ex. B. Rule 220(b) requires a respondent to file his Answer to the OIP within twenty days after service. OIP at 3; 17 C.F.R. § 201.220(b). I issued an Order on April 16, 2013, in which I noted that Brody had not participated in the prehearing conference, that Brody's Answer was due May 6, 2013, and that if Brody failed to timely file his Answer, he would be deemed in default and this proceeding would be determined against him. Ex. B.

Brody failed to timely file an Answer to the OIP or to participate in the prehearing conference. He is therefore in default, the allegations in the OIP are deemed true, and this proceeding is determined against him. See 17 C.F.R. §§ 201.155(a), .220(f), .221(f).

FINDINGS OF FACT

Brody resides in Salt Lake City, Utah, and is 48 years old. OIP, p. 1. He has never been registered with the Commission or held any securities licenses. Id.; Ex. D, p. 7.

¹ Attached to the Motion are six exhibits: the affidavit of service (Ex. A), my Order Following Prehearing Conference dated April 16, 2013 (Ex. B), an April 24, 2011 letter from attorney Steven R. Paul (Ex. C), the Order and Memorandum Decision (Decision) filed March 6, 2013 in SEC v. Art Intellect, Inc., 2:11-CV-00357-TC (D. Utah) (Ex. D), the Indictment filed October 31, 2012 in United States v. Brody, 2:12-CR-00680-RJS-PMW (D. Utah) (Brody II) (Ex. E), and the Judgment filed January 16, 2013 in United States v. Brody, 2:08-CR-000410-0010-CW (D. Utah) (Brody I) (Ex. F).

On February 8, 2011, Brody was enjoined from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in SEC v. Merrill Scott & Associates, Ltd., 2:02-CV-0039TC (D. Utah). OIP, p. 1. He was convicted in Brody I of one misdemeanor count of failure to file a tax return, for failing to report income received from Merrill Scott. Id., pp. 1-2. On January 15, 2013, he was found in violation of court-ordered supervised release in Brody I, based on use of “the fake identity of Robert (Bob) Quinn to conduct undisclosed employment” in 2012, and was sentenced to six months incarceration. OIP, pp. 1-2; Ex. D, p. 2; Ex. F. He is currently a defendant in Brody II. OIP, p. 2; Ex. E.

On April 18, 2011, the Commission filed the Complaint (Complaint) in Art Intellect. Ex. D., p. 1. Brody was the control person of Art Intellect, Inc., which did business as Mason Hill, an entity which raised funds from investors in order to purchase, rehabilitate, and manage distressed real estate. OIP, p. 2; Ex. D, p. 6. The Complaint alleged that from at least April 2009 through April 2011, Brody fraudulently raised at least \$2.5 million from approximately 75 investors through an offering fraud and Ponzi scheme. OIP, p. 2. The Complaint further alleged that Brody made numerous misrepresentations to investors at the time they made their investments, including that investor funds would be used to purchase distressed real estate at discounted prices, to rehabilitate the properties and secure tenants, and to pay for the managing of the properties by Mason Hill. Id. In reality, investor funds were used to pay Mason Hill’s operating expenses, to pay sales commissions, for personal use by two other parties involved in the scheme, and to make putative profit payments to earlier investors. Id.; Ex. D, p. 16. The Complaint also alleged that Brody sold unregistered securities in the form of investment contracts and acted as an unregistered broker. OIP, p. 2.

The Commission moved for summary judgment in Art Intellect, which was granted on March 6, 2013. Ex. D, pp. 5, 49. Brody was again enjoined from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as well as Sections 15(a) and 15(b) of the Exchange Act. OIP, p. 2; Ex. D, p. 49. He was also ordered to pay \$1,509,313 in disgorgement and prejudgment interest and a civil penalty in an amount to be determined. OIP, p. 2; Ex. D, p. 49.

The Decision recites a number of pertinent facts that the District Court found in connection with granting summary judgment to the Commission. Brody and a co-defendant, through Mason Hill, misappropriated at least \$1,367,250 from investors. Ex. D, p. 16. Brody failed to disclose to investors that he had previously been found to have violated federal securities laws, and been enjoined from doing so in the future, and that he had been found guilty of tax evasion. Id., p. 17. He ignored the evidence of his wrongdoing when confronted by Mason Hill managers. Id., p. 38. He continued to recruit sales people and solicit investor funds in a scheme almost identical to Mason Hill, even after he was served with a temporary restraining order in Art Intellect, and represented himself to at least one potential salesperson as “Patrick Merrill” in an apparent attempt to hide his connection to Mason Hill. Id., p. 17. He hid or sold assets belonging to the Mason Hill estate, in knowing violation of the District Court’s asset freeze order. Id., pp. 5, 43.

CONCLUSIONS OF LAW

Section 15(b)(6)(A) of the Exchange Act states that the Commission may sanction any person who at the time of the misconduct was associated with a broker or dealer, if the sanction is in the public interest and the person is enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C) of the Exchange Act. Brody, who was acting as an unregistered broker at the time of his misconduct, is enjoined from engaging in or continuing certain conduct or practices in connection with acting as a broker, and in connection with the purchase or sale of securities, within the meaning of Section 15(b)(4)(C) of the Exchange Act. See 15 U.S.C. § 78o(b)(4)(C). Accordingly, a sanction will be imposed on Brody if it is in the public interest.

SANCTIONS

The Division requests that I permanently bar Brody from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization, and from participating in an offering of penny stock. Motion, p. 9.

When considering whether an administrative sanction serves the public interest, the Commission considers the factors identified in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981): 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 or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations (Steadman factors). Gary M. Kornman, Investment Advisers Act of 1940 Release No. 2840 (Feb. 13, 2009), 95 SEC Docket 14246, 14255, pet. denied, 592 F.3d 173 (D.C. Cir. 2010). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Id.

All of the Steadman factors weigh in favor of a severe sanction. Ex. D, p. 44. Brody's misconduct was egregious; he and one of his co-defendants misappropriated at least \$1,367,250 from investors, and fraudulently raised approximately \$2.5 million. His misconduct was recurrent, as evidenced by his defrauding approximately 75 investors. He acted with a "high degree of scienter." Id. He has offered no assurances against future violations and has not recognized the wrongful nature of his conduct. Id., pp. 43-44. His occupation, such as it is, presents opportunities for future violations. Indeed, he is a recidivist: he has been convicted of tax evasion in connection with a previous securities-related fraud, he has had his supervised released revoked for assuming a false identity, and – of greatest significance – he committed the instant misconduct while subject to an injunction against it.

ORDER

It is ORDERED that the Division's Motion for Default is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Patrick Merrill Brody is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Patrick Merrill Brody is BARRED from participating in an offering of penny stock, including acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Respondent is notified that he may move to set aside the default in this case. Rule 155(b) permits me, at any time prior to the filing of the initial decision, and the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. Id.

Cameron Elliot
Administrative Law Judge