

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3949 / October 15, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16198

In the Matter of

GAETON S. DELLA PENNA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS
ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), against Gaeton S. Della Penna (“Respondent” or “Della Penna”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From 2008 through 2013, Della Penna controlled and managed three private investment funds: A-G Hedge Group, LLC (“A-G”), The Contrarian Fund, LLC (“Contrarian”), and The New Economy Fund, LLC (collectively, the “Funds”). Della Penna acted as the unregistered investment adviser to the Funds during the relevant period, maintaining control over their investment portfolios and making all final investment decisions on the Funds’ behalf. Della Penna received compensation both through fees for his advisory services and through misappropriation of money from the Funds. Della Penna, 61, resides in Sarasota, Florida.

B. ENTRY OF THE INJUNCTION

2. On September 24, 2014, a final judgment by default was entered against Della Penna, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8(a) thereunder, in the civil action entitled Securities and Exchange Commission v. Gaeton S. Della Penna, et al., Civil Action Number 8:14-cv-1203-T-30MAP in the United States District Court for the Middle District of Florida.

3. The Commission's complaint alleged that, from 2008 through 2013, Della Penna defrauded investors in three companies he controlled. Della Penna solicited individuals to purchase notes in these companies on the representation the companies would use the money to trade in securities, in which Della Penna claimed to have been engaging successfully. In fact, Della Penna lost almost all of the money through a combination of unsuccessful investments, use of investor money to pay his personal expenses, including mortgage payments and payments to his girlfriend, and, in Ponzi-scheme fashion, use of later investors' money to pay fake "returns" to prior investors. Della Penna covered up his fraud by sending investors documents falsely showing positive returns at a time when they were losing money. Della Penna also solicited money from other investors on the representation he would use their money to invest in small companies, but he stole most of that money as well. In total, of the approximately \$3.8 million Della Penna raised, he pocketed \$1.1 million and used \$1.4 million to pay prior investors.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary