INITIAL DECISION RELEASE NO. 409
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13975

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	INITIAL DECISION
	:	December 1, 2010
ERIC R. MAJORS	:	
	:	
	:	

APPEARANCES: Barbara T. Wells for the Division of Enforcement, Securities and Exchange Commission.

Eric R. Majors, pro se.

BEFORE: Robert G. Mahony, Administrative Law Judge.

The Securities and Exchange Commission (SEC or Commission) issued its Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 (OIP) on July 22, 2010. The OIP alleges that, on July 7, 2010, a final judgment was entered by consent against Respondent Eric R. Majors (Majors or Respondent) permanently enjoining him from future violations of the federal securities laws. In addition, the OIP alleges Majors pleaded guilty to one count of conspiring to defraud the Commission on April 17, 2009. The Commission instituted this proceeding to decide whether remedial action is appropriate in the public interest. The Division of Enforcement (Division) seeks to bar Respondent from association with any investment adviser.

Respondent filed an Answer to the OIP on August 17, 2010. By Order dated August 18, 2010, I granted the Division leave to file a Motion for Summary Disposition. The Division filed its Motion for Summary Disposition against Respondent Eric R. Majors and Accompanying Memorandum of Fact and Law, and Exhibits on September 9, 2010 (Motion). In its Motion, the Division represents that Respondent has been advised of his right to inspect and copy the investigative file in this matter and that he has chosen to waive that right. See 17 C.F.R. § 201.230; Div. Mot. at 3. Additionally, the Division represents that Respondent does not oppose its request for leave to file for summary disposition. See 17 C.F.R. § 201.250. Majors filed a Response on October 12, 2010. [1]

[1] I will cite to the Division's Motion as "(Div. Mot. at __.)," and to Majors' Response as "(Resp. at ___.)."

The Standards for Summary Disposition

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323 of the Commission's Rules of Practice.

Rule 250(b) of the Commission's Rules of Practice requires the hearing officer to promptly grant or deny the motion, or to defer decision on the motion. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.

In assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. See Felix v. N.Y. City Transit Auth., 324 F.3d 102, 104 (2d Cir. 2003); O'Shea v. Yellow Tech. Svcs., Inc., 185 F.3d 1093, 1096 (10th Cir. 1999); Cooperman v. Individual, Inc., 171 F.3d 43, 46 (1st Cir. 1999).

By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings. At the summary disposition stage, the hearing officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. See Anderson, 477 U.S. at 249.

FINDINGS OF FACT

Majors, 40, is a resident of Boca Raton, Florida, and currently serving a criminal sentence. (Answer.) Beginning in January 2000, and during the time of the misconduct underlying the civil and criminal cases against him, Majors was associated with Force Financial Systems Group, Inc., an entity registered with the State of Colorado as an investment adviser. (Id.) For his part, Majors admits that he violated the federal securities laws but requests that he not be barred from association with an investment advisor because he does intend to work writing software that is used in the securities industry. (Id.) He points to his first-time offender status as a mitigating circumstance, and his injunction, criminal sentence, and other industry bars as adequate punishment. (Id.; Resp. at 5.)

On March 19, 2010, judgment was imposed on Majors after he pleaded guilty to one count of conspiracy to defraud the SEC and the Internal Revenue Service in violation of 18 U.S.C. § 371. United States v. Majors, No. 07-CR-471-JLK-01 (D. Colo.). Majors was sentenced to five years imprisonment and three years supervised release, and ordered to pay $166,540.57 in restitution. (Id.)

On July 7, 2010, a final judgment by consent was entered against Majors enjoining him from committing or aiding and abetting future violations of Sections 5 and 17(a) of the Securities Act of 1933, Sections 10(b), 13(a), and 16(a) of the Securities Exchange Act of 1934, and Section 302 of the Sarbanes-Oxley Act of 2002. SEC v. Majors, No. 07-CV-2414-WYD-MJW (D. Colo.). Additionally, Majors was barred from acting as an officer or director of any issuer that has securities registered pursuant to Exchange Act Section 12, barred from participating in an offering of penny stock, and ordered to disgorge $123,574 in ill-gotten gains and $48,853 in prejudgment interest. (Id.)

As part of his plea, Majors agreed that the government's evidence would have established the following facts. During the summer of 2000, Majors and Joshua Walcott (Walcott) began forming shell corporations in Colorado and registering the shares of those corporations with the SEC for public trading. (Div. Mot. Ex. 4 at 6.) Those corporations would eventually engage in reverse merger transactions with actively operating, non-registered businesses. (Id.) Majors then registered as an investment adviser with the State of Colorado in order to find initial investors for the shell corporations and to promote the shell corporations' stock. (Id.) Majors and Wolcott incorporated six companies at this time. (Id. at 6-7.) Majors solicited money from family, friends, and investors to further this scheme using a private placement. (Id. at 7.) He also purchased identity information for several Mexican nationals and used the information to open brokerage accounts, lease office space, and rent mailboxes. (Id. at 7-8.) In January 2001, Majors and Wolcott filed registration statements for the shares of the first of the shell corporations. (Id. at 9.) Later in 2001, Majors and Wolcott engaged in a scheme to create fictitious revenue for the shell company. (Id. at 9-10.) By the end of 2001, Majors and Wolcott sold that company and realized gross proceeds over $300,000. (Id. at 10.)

As Majors and Walcott finalized the sale of the first shell company, they undertook a scheme to register the shares of a second shell company. (Id. at 11-17.) They used the identities previously purchased to distribute shares, and created fictitious revenue and false financial statements. (Id.) All of this false information was included in registration statements filed with the SEC. (Id. at 15-17.) From December 2002 through February 2005, Majors and Wolcott orchestrated a scheme to register more than 45 million shares of stock in the shell company and distribute the shares to accounts they controlled, employed stock promoters to drive trading in the company's shares, all while creating false revenue and financial data. (Id. at 18-21.) Majors and Walcott used the gains from the sales of shares for personal use. (Id. at 23.) In April 2004, the SEC began an informal investigation into the activity surrounding the second shell company. (Id. at 33.) The SEC began a formal investigation in October 2004. (Id. at 34.) In February 2005, the SEC suspended public trading of the second shell company's shares, and in July 2005, the company ceased all operations. (Id. at 37-38.)

Majors and Walcott also used the brokerage accounts opened in the names of the Mexican nationals to hold and sell shares of stock of other companies, realizing a gain of $220,782. (Id. at 38.)

CONCLUSIONS OF LAW

Under Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, the Commission may impose a remedial sanction on a person associated with an investment adviser, consistent with the public interest, if the person has willfully made or caused a false statement to be filed with the Commission, been convicted within ten years of a felony involving the purchase or sale of a security, or has been adjudged to have willfully violated provisions of the federal securities laws. Majors meets the statutory predicates for imposing a remedial sanction.

The Public Interest

To determine whether sanctions under Section 203(f) of the Advisers Act are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. No one factor is controlling. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Remedial sanctions are not intended to punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Majors' actions were egregious and recurrent. His elaborate scheme caused substantial harm to many investors. He provided false and misleading information to those investors and federal agencies, and failed to make adequate disclosures on multiple occasions. He used investor funds for his own benefit. The scheme stretched over a four-year period.

His purchase and use of false identities, efforts to commit accounting fraud, filing of false statements with the Commission, and use funds for his own benefit evidence that Majors acted with scienter. Majors recognizes his wrongful conduct and has provided assurances against future violations. He insists that his occupation will not present opportunities for future violations.

Viewing the Steadman factors in their entirety, I conclude that an associational bar is necessary and appropriate in the public interest.

ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED that the Division of Enforcement's Motion for Summary Disposition is GRANTED; and,

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Eric R. Majors is BARRED from association with any investment adviser.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision pursuant to Rule 111 of the Commission's Rules of Practice. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact, or unless the Commission determines on its own initiative to review this Initial Decision as to any party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Robert G. Mahony
Administrative Law Judge