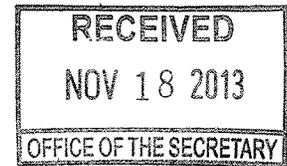


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15124**

<p><b>In the Matter of</b></p> <p><b>DAVID F. BANDIMERE and</b> <b>JOHN O. YOUNG</b></p>
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**DIVISION OF ENFORCEMENT'S**  
**MOTION FOR SUMMARY**  
**AFFIRMANCE OF INITIAL DECISION**

The Division of Enforcement (“Division”) hereby moves for summary affirmance of the Initial Decision in this matter against Respondent David F. Bandimere (“Bandimere”).

**INTRODUCTION**

The question the Securities and Exchange Commission (the “Commission”) must decide in considering whether to grant summary affirmance of the Initial Decision in this matter pursuant to Commission Rule (“Rule”) 411(e)(2) is: Does the presiding Administrative Law Judge’s (the “ALJ’s”) Initial Decision, dated October 8, 2013 (Initial Decision Release No. 507), raise any issue that warrants consideration by the Commission of further oral or written argument? The answer is no. As detailed below, the Petition raises numerous issues, none of which warrants consideration by the Commission. Bandimere re-argues the same points that the ALJ thoroughly considered and rightly decided during the hearing in this matter. Thus, the Commission should grant summary affirmance of the Initial Decision and reject the Petition for Review of Initial Decision (the “Petition”) filed by Bandimere.

## SUMMARY OF FACTS

As detailed in the Division's post-hearing briefing and the ALJ's Initial Decision, this proceeding concerns an individual who played a critical role in brokering unregistered securities while recklessly making fraudulent misstatements and omissions to investors. These securities later turned out to be a part of two Ponzi schemes. Between 2006 and 2010, Bandimere acted as an unregistered broker in selling investments in Universal Consulting Resources LLC ("UCR") – operated by Richard Dalton ("Dalton") – and IV Capital Ltd. ("IV Capital") – operated by Larry Michael Parrish ("Parrish") – two Ponzi schemes against which the Commission brought actions in 2010 and 2011 respectively.

Bandimere acted as an unregistered broker and raised at least \$9.3 million from over 60 investors to invest in these unregistered securities, earning at least \$735,000 in transaction-based compensation, which was set at a percentage of funds invested.

Bandimere knew of numerous discrepancies, risks and failures related to IV Capital and UCR, yet continued to broker the unregistered securities without disclosing these issues to current or new investors. Most critically, Bandimere told investors and potential investors material positive information, focusing on IV Capital and UCR's consistent rates of returns and established track records of performance, yet hid material facts including that Parrish had a previous SEC problem, that IV Capital and UCR lacked financial statements and accounting records, that Parrish and Dalton refused to provide documents confirming their trading programs, and that they regularly sent the wrong amounts of money to Bandimere for investor returns. Bandimere also failed to accurately disclose his commissions. These material omissions rendered Bandimere's positive representations misleading.

The ALJ's Initial Decision found that Bandimere offered and sold the unregistered securities of UCR and IV Capital and made transaction-based compensation from doing so, violating Section 5 of the Securities Act and Section 15(a) of the Exchange Act. See Initial Decision at 45-56. The ALJ also found that Bandimere made material misstatements and omissions to investors about those securities, violating Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. See Initial Decision at 56-75. The ALJ also found that Bandimere's affirmative defenses were meritless. See Initial Decision at 75-79. The ALJ imposed a cease-and-desist order, an associational bar, disgorgement of \$638,056.33 plus prejudgment interest, and \$390,000 in civil penalties against Bandimere. See Initial Decision at 79-88.

### **LEGAL STANDARD**

The Commission may grant summary affirmance if it finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument. The Commission will decline to grant summary affirmance upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review. Rule 411(e)(2).

### **ARGUMENT**

There is no issue raised in the Initial Decision that warrants consideration by the Commission of further oral or written argument. There was no prejudicial error committed in the conduct of the proceeding, and the Initial Decision does not embody an exercise of discretion or decision of law or policy that is important and that the Commission should review. This is a case about a Ponzi-scheme broker who defrauded investors. The ALJ

thoroughly considered and properly rejected the issues raised in the Petition. Thus, under Rule 411(e)(2), the Commission should summarily affirm the Initial Decision.

1. Respondent was given adequate notice of the facts and law on which the violations found in the Initial Decision were based.

Respondent claims that he was not given adequate notice of the facts and law on which the violations found in the Initial Decision were based, thereby violating his rights to notice, due process of law, and a fair opportunity to defend himself. This is simply not the case. The Initial Decision meticulously analyzes, for nearly 90 pages on a point-by-point basis, whether the Division proved the specific allegations of the OIP. See Initial Decision. Necessarily, a multiple-day hearing will result in a more detailed factual history than the specific facts alleged in the OIP, but the ALJ limited his findings of Bandimere's violations to those alleged in the OIP. For instance, the ALJ declined to find a violation that was not alleged in the OIP, even though the facts at the hearing supported it: "If the OIP had instead alleged that Bandimere misrepresented or failed to disclose the identity of the principal involved with UCR, the Division would have proven that allegation as to Koch and Radke." Initial Decision at 72 n.47.

Moreover, the ALJ considered and rejected Bandimere's due process argument, ruling that Bandimere "offers no substantive discussion and makes no attempt to link his alleged deprivation of due process to any evidence in the case. . . . In any event, the Commission has ruled on several occasions that '[a]dministrative due process is satisfied where the party against whom the proceeding is brought understands the issues and is afforded a full opportunity to meet the charges during the course of the proceeding.'" Initial Decision at 77 (citing cases). Thus, this issue raised by the Petition does not merit review by the Commission.

2. The ALJ's findings that Bandimere willfully violated Section 5 of the Securities Act were proper and supported by the evidence.

Bandimere's argument that he did not willfully violate Section 5 of the Securities Act was thoroughly considered, and properly rejected, by the ALJ. See Initial Decision at 48-52. The ALJ found, based on the evidence at the hearing, that Bandimere did willfully violate Section 5, and that his legal and factual arguments to the contrary were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

3. The ALJ's findings that Bandimere willfully violated Section 15(a) of the Exchange Act were proper and supported by the evidence.

Bandimere's argument that he did not willfully violate Section 15(a) of the Exchange Act was thoroughly considered, and properly rejected, by the ALJ. See Initial Decision at 52-56. The ALJ found, based on the evidence at the hearing, that Bandimere did willfully violate Section 15(a), and that his legal and factual arguments to the contrary were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

4. The ALJ's findings that Bandimere willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder were proper and supported by the evidence.

Bandimere's argument that he did not willfully violate Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder was thoroughly considered, and properly rejected, by the ALJ. See Initial Decision at 56-75. The ALJ found, based on the evidence at the hearing, that Bandimere did willfully violate Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that his legal and factual arguments to the contrary were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

5. The ALJ's findings that Bandimere did not prove his affirmative defenses were proper and supported by the evidence.

Bandimere's argument that he proved his affirmative defenses was thoroughly considered, and properly rejected, by the ALJ. See Initial Decision at 75-79. The ALJ found, based on the evidence at the hearing, that Bandimere did not prove his affirmative defenses, and that his legal and factual arguments to the contrary were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

6. The ALJ properly imposed a cease-and-desist order upon Bandimere.

Bandimere's argument that the imposition of a cease-and-desist order upon him would be inappropriate was thoroughly considered, and properly rejected, by the ALJ. See Initial Decision at 79-82. The ALJ found, based on the evidence at the hearing, that a cease-and-desist order upon Bandimere was appropriate, and that his legal and factual arguments to the contrary were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

7. The ALJ properly imposed civil penalties against Bandimere.

Bandimere's argument that the imposition of civil penalties against him would be inappropriate was thoroughly considered, and properly rejected, by the ALJ. See Initial Decision at 86-88. The ALJ found, based on the evidence at the hearing, that civil penalties against Bandimere were appropriate, and that his legal and factual arguments to the contrary were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

8. The ALJ properly imposed an associational bar against Bandimere.

Bandimere's argument that the imposition of an associational bar against him would be inappropriate was thoroughly considered, and properly rejected, by the ALJ. See

Initial Decision at 82-83. The ALJ found, based on the evidence at the hearing, that an associational bar against Bandimere was appropriate, and that his legal and factual arguments to the contrary were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

9. The ALJ properly ordered disgorgement from Bandimere.

Bandimere's argument that the order of disgorgement from him would be inappropriate was thoroughly considered, and properly rejected, by the ALJ. See Initial Decision at 83-85. The ALJ found, based on the evidence at the hearing, that an order of disgorgement from Bandimere was appropriate, and that his legal and factual arguments to the contrary were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

10. The ALJ properly concluded that Bandimere was not deprived of his rights in connection with the Division's document production.

Bandimere's argument that the Division's document production was prejudicial was thoroughly considered, and properly rejected, by the ALJ. See Initial Decision at 77; Order on Motion to Compel Production of Documents (AP Rulings Release No. 759, dated March 12, 2013). Prior to the hearing, the ALJ considered and rejected Bandimere's argument that the Division's document production deprived him of his rights, finding that the Division properly produced documents, including material exculpatory evidence. See id. The ALJ further addressed the matter during the hearing: "During the course of this proceeding, I conducted an in camera review of otherwise privileged material to determine whether that material contained any material exculpatory evidence. I concluded it did not." Initial Decision at 77. The ALJ therefore twice addressed Bandimere's argument that he was deprived of rights based on the Division's document production, and found that his

legal and factual arguments were meritless. Thus, this issue raised by the Petition does not merit review by the Commission.

11. Respondent was given adequate notice of the standards of conduct on which the violations found in the Initial Decision were based.

Respondent claims that he was not given adequate notice of the standards of conduct on which the violations found in the Initial Decision were based, thereby violating his rights to notice and due process of law. This is not true. The Initial Decision thoroughly addressed, and the OIP alleged, clear violations by Bandimere. See Initial Decision. And again, the ALJ considered and rejected Bandimere's due process argument. See Initial Decision at 77. Thus, this issue raised by the Petition does not merit review by the Commission.

### CONCLUSION

For the reasons stated above, the Commission should grant summary affirmance of the Initial Decision pursuant to Rule 411(e)(2).

Respectfully submitted this 15th day of November, 2013.



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