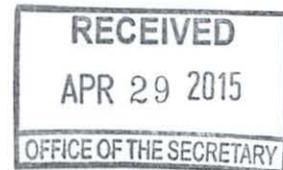


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16337

In the Matter of

BRENT F. WILLIAMS,

Respondent.

MOTION BY DIVISION OF
ENFORCEMENT FOR SUMMARY
DISPOSITION AGAINST
RESPONDENT BRENT F. WILLIAMS
PURSUANT TO COMMISSION RULE
OF PRACTICE 250

INTRODUCTION

The Division of Enforcement (“Division”) moves, pursuant to Rule 250 of the Commission’s Rules of Practice, for summary disposition against Brent F. Williams (“Respondent” or “Williams”). The Division requests that Williams be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”).

PROCEDURAL BACKGROUND

On January 13, 2015, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative Proceedings (“OIP”) against Respondent pursuant to Section 203(f) of the Advisers Act to determine what, if any, remedial action is appropriate in the public interest. On January 21, 2015, the Division also served Respondent by USPS Certified Mail with a letter offering the Division’s investigative files for inspection and copying pursuant to Rule of Practice 230. Buckhalter-Honore Dec., Ex. 1 (Letter dated January 21, 2015). On January 30, 2015, the Division filed a Motion for Adjournment of Hearing and Prehearing Conference. On February 2, 2015, the Administrative Law Judge postponed the hearing *sine die*, and ordered that a prehearing conference be held the week of March 30, 2015 (“February 2 Order”). In that February 2 Order, the Administrative Law Judge also found that Respondent was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i) on January 21, 2015.

On March 18, 2015, the Administrative Law Judge issued a Scheduling Order (“Scheduling Order”), which scheduled the prehearing conference for Tuesday, March 31, 2015. In that Scheduling Order, the Administrative Law Judge referenced Respondent’s “Answer.” The Division was not served with Respondent’s Answer, but retrieved a copy. Respondent’s Answer is

a typewritten document dated February 6, 2015. In his Answer, Respondent denied the allegations contained in the OIP. At the prehearing conference, the Administrative Law Judge granted the Division leave to file this motion for summary disposition and ordered the Division to produce its investigative file to the Respondent. April 1, 2015 Prehearing Order . In an Order issued April 13, 2015, the Administrative Law Judge granted a brief extension of time for that production. On April 17, 2015, the Division produced its investigative file to the Respondent. Declaration of Melissa A. Buckhalter-Honore (“Buckhalter-Honore Decl.”), ¶ 3 and Ex. 2 (Cover Letter to Production).

STATEMENT OF FACTS

From at least 2003 to 2005, Respondent was associated, as Chief Financial Officer, with Mathon Management Company, LLC (“Mathon”), a company that was registered with the Commission as an investment adviser from March 2, 2004 until its registration was canceled in February 2011. Declaration of Melissa A. Buckhalter-Honore (“Buckhalter-Honore Decl.”), Ex. 3 (Investment Advisers Registration Depository (“IARD”) Report regarding Mathon) at 3-4, Ex. 4 (Feb. 6, 2004 Initial Form ADV) at 18-19, and Ex. 5 (Jan. 28, 2005 Amendment to Form ADV) at 18-19. Mathon’s fraudulent operations described below were halted on April 5, 2005, when a receiver was appointed over it by the Maricopa County Superior Court, in an action brought by the Arizona Corporation Commission. Buckhalter-Honore Decl., Ex. 6 (Order Appointing Receiver).

Respondent was indicted on December 2, 2009 on one count of conspiracy to commit mail fraud and wire fraud in violation of 18 U.S.C. Section 1349; four counts of mail fraud in violation of 18 U.S.C. Section 1341; thirteen counts of wire fraud in violation of 18 U.S.C. Section 1343; and twenty-two counts of transactional money laundering in violation of 18 U.S.C.

Section 1957(a). Buckhalter-Honore Decl., Ex. 7 (Indictment in *United States v. Brent F. Williams*, CR 09-01492-003-PHX-ROS (D. Ariz.) (“Indictment”)). On June 28, 2013, Respondent was found guilty, after a jury trial, of conspiracy to commit mail and wire fraud, mail fraud, wire fraud, and transactional money laundering, in violation of Title 18 United States Code, Sections 1349, 1341, 1343, and 1957(a). Buckhalter-Honore Dec., Ex. 8 (General Verdict in *United States v. Williams* (“Verdict Form”)). On September 30, 2013, Respondent Williams was sentenced to 90 months in prison, followed by three years of supervised release. Buckhalter-Honore Decl., Ex. 9, (Judgment in a Criminal Case). On January 9, 2014, the judgment was amended to include an order of restitution against Respondent Williams in the amount of \$15,658,454.05. Buckhalter-Honore Decl., Ex. 10, (Amended (to reflect the restitution amount as ordered by the Court on December 30, 2013) Judgment in a Criminal Case (“Amended Judgment”)).

The counts of the criminal indictment as to which Respondent Williams was found guilty alleged, among other things that Respondent and others operating through Mathon-related entities, falsely promised investors that Mathon could earn high-yield rates of return for investors by making short-term, high-interest hard money loans to borrowers, and using repayment of principal and interest on those loans to pay investor returns, when the Respondent knew that the loans were in default or non-performing. The Respondent concealed from the investors that the loans were in default, non-performing and/or otherwise incapable of generating high rates of returns on the purported ‘investments’ as the Respondent represented. The Respondent also repaid earlier investors with funds from later investors and unlawfully enriched himself through excessive origination fees, management fees, and other means. Specifically, the Respondent

took \$623,888 from victim investors as purported compensation and other financial remuneration. *See* Buckhalter-Honore Decl., Ex. 7 (Indictment) at 2, 5-8, 12 and 17.¹

ARGUMENT

A. Summary Disposition Is Appropriate

Rule 250(a) of the Commission's Rules of Practice permits a party to move “for summary disposition of any or all allegations of the order instituting proceedings” before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a). Rule 250(b) provides that a hearing officer may grant a 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 summary disposition as a matter of law. 17 C.F.R. § 201.250(b); *see also In the Matter of Kent D. Nelson*, S.E.C. Release No. 371, 2009 WL 454556 at *1 (Initial Decision February 24, 2009) (citing 17 C.F.R. § 201.250(b)).

Moreover, it is well-established that:

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.

Nelson, 2009 WL 454556 at *2.

Summary disposition is appropriate here based on Respondent’s felony conviction in the criminal proceeding *United States of America v. Brent F. Williams*, CR 09-01492-003-PHX-ROS

¹ “In a follow-on administrative proceeding after a criminal conviction based on a guilty verdict, the Administrative Law Judge may rely upon the allegations set forth in the counts of the indictment to as to which the Respondent was convicted “without reference to whether such allegations were necessarily put in issue and determined in the criminal case. *In the Matter of Michael Robert Balboa*, Release No. 747, 2015 WL 847168, at *3 (Initial Decision, Feb. 27, 2015).

(D. Ariz.). There is no genuine issue with regard to any material fact, and, pursuant to Section 203(f) of the Advisers Act, the Division is entitled, as a matter of law, to an order permanently barring Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization. The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *3, *10-11 (Feb. 13, 2009), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *5-6 & nn.21-24 (Feb. 4, 2008) (collecting cases), *petition denied*, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate “will be rare.” *John S. Brownson*, Exchange Act Release No. 46161, 2002 WL 1438186, at *2 n.12 (July 3, 2002), *petition denied*, 66 F. App’x 687 (9th Cir. 2003).

B. Respondent’s Felony Criminal Conviction Provides the Basis for Administrative Relief

Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) authorizes the Commission to, among other things, bar a person associated with an investment adviser at the time of the alleged misconduct from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if such sanctions are in the public interest and the person has been convicted of certain crimes described in Section 203(e). 15 U.S.C. § 80b-3(f).²

² The criminal conduct giving rise to Williams’ conviction occurred prior to the 2010 enactment of Section 925 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which authorized bars from associating in capacities other than those in which the respondent was

Here, there is no question that, at the time of his misconduct, Respondent was associated with Mathon, which was a registered investment adviser. Buckhalter-Honore Decl., Ex. 3 (IARD Report regarding Mathon) at 3-4, Ex. 4 (Feb. 6, 2004 Initial Form ADV) at 18-19, and Ex. 5 (Jan. 28, 2005 Amendment to Form ADV) at 18-19. Likewise, there can be no question that the crimes for which Williams was convicted are among those which provide a basis for a bar from the securities industry. Respondent was convicted of violations of 18 U.S.C. §§ 1341 and 1343, as set forth in Section 203(e)(2)(D), and his convictions arose out of the business of an investment adviser, as set forth in Section 203(e)(2)(B). 15 U.S.C. § 203(e)(2).³ Therefore the only question remaining on this Motion is whether barring Respondent from the securities industry is in the public interest.

While it appears from his Answer that Respondent may desire to re-litigate the facts underlying his conviction, he may not do so. It is well established that a respondent may not collaterally attack his conviction in an administrative proceeding. *See Ira William Scott*, Advisers Act Release No. 1752, 1998 WL 611726, at *3 (Sept. 15, 1998); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 WL 80228, at *2 (Feb. 9, 1998). Likewise, the pendency of an appeal does not preclude the Commission from taking action based on his conviction. *See Joseph P. Galluzi*, Exchange Act Release No. 46405, 2002 WL 1941502 at *3, n.21 (August 23, 2002); *Charles Philip Elliott*, Exchange Act Release No. 31202, 1992 WL

associated at the time of the violative conduct. However, these collateral bars are available as prospective remedies under the securities laws and are not impermissibly retroactive. *In the Matter of John W. Lawton*, Release No. 3513, 2012 WL 6208750, at *10 (Commission Opinion Dec. 13, 2012).

³ In his Answer, Respondent denies various allegations in the OIP, but does not deny that he was in fact convicted of the crimes set forth in the OIP, or that Mathon was in fact a registered investment adviser. These facts should therefore be deemed admitted. Rule of Practice 220(c), 17 C.F.R. § 201.220(c).

258850 at *3 n.17. Instead, if Williams is successful in his appeal, he may then request a reconsideration of any sanctions imposed in this follow-on administrative proceeding. [FN1] Nor does the pendency of an appeal does preclude the Commission from action based on a conviction. [FN2] See Joseph P. Galluzzi, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *11 n.21 (Commission Opinion Aug. 23, 2002); Charles Phillip Elliott, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 (Sept. 17, 1992). If Williams is successful in overturning his conviction, he can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).

B. The Imposition of a Bar against Respondent Is in the Public Interest

In determining whether an administrative sanction is in the public interest, the Commission considers the following factors: (1) the egregiousness of a respondent's actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); *In the Matter of Toby G. Scammell*, Release No. 3961, 2014 WL 5493265, at *5 (Commission Opinion, Oct. 29, 2014). Here, the *Steadman* factors weigh heavily in favor of imposing a permanent bar from associating with any entity in the securities industry as to Respondent. As the Commission recently reiterated, "[f]idelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." *Toby G. Scammell*, 2014 WL 5493265, at *5.

First, Respondent's conduct was egregious. According to the indictment, Respondent induced investors to invest funds with false promises that he and others could earn high-yield rates of return by making short-term, high-interest hard money loans to borrowers, which generated the "returns" to be paid to investors, and through this fraudulent process. Buckhalter-Honore Decl., Ex. 7 (Indictment) at 2 and 8. The District Court in the underlying criminal action found that the fraudulent scheme was a sophisticated one and stated: "[T]his case involved one of the largest most sophisticated fraud schemes in Arizona history. The defendants bilked hundreds of investors into investing over \$160 million into their Ponzi scheme over a period of several years. . . ." Buckhalter-Honore Decl., Ex. 11 (Order on Objections to Presentence Report) at 4. In sentencing Williams, the District Court emphasized: "This is not a garden variety fraud case," but rather a "multiyear, multilayer *Ponzi* scheme case," and, a "serious crime." Buckhalter-Honore Decl., Ex. 12, Transcript of Respondent's Sentencing Hearing ("Sentencing Transcript") at 38, 69.

The second *Steadman* factor of recurrence also weighs in favor of a bar. According to the District Court, Respondent was convicted in a "multiyear, multilayer Ponzi scheme case." *Id.* at 38. As the District Court further noted, "[T]his was not a one-time instance where someone did something illegal. This was a daily, weekly involvement in a sophisticated crime. And you were right in the center of that and had to know and did know what was going on. . . ." *Id.* at 70. As described above, hundreds of investors were defrauded. Buckhalter-Honore Decl., Ex. 11 (Order on Objections to Presentence Report) at 4. Moreover, the District Court found that Williams' conduct merited a sentencing enhancement because his conduct caused Mathon to violate a prior administrative order issued by the state of Utah against Mathon. Buckhalter-Honore Decl., Ex. 11 (Order on Objections to Presentence Report) at 3. These findings by the

District Court leave no doubt that Williams' criminal activity was egregious and recurrent rather than isolated.

Respondent also acted with a high degree of scienter. The jury which found Respondent guilty was instructed to find him guilty of mail and wire fraud only if he acted with the "intent to defraud," which was defined as "an intent to deceive or cheat" Buckhalter-Honore Decl., Ex. 13 (Jury Instructions) at 16-17 and 20. As discussed in more detail below, at his sentencing hearing, Respondent attempted to minimize his conduct and claim that he innocently relied on others. In sentencing Respondent the District Court rejected Williams' claims of innocent reliance:

You seemed to indicate to me that you relied on others to make certain decisions and do certain conduct. And I accept that. And some of those others, as the Government has pointed out, came to you and said, hey, you can't do this, hey, what you're doing is illegal. If you didn't know this was a *Ponzi* scheme—and I'm not sure how you could not know it was a *Ponzi* scheme as the CFO of this organization. . . . You could see what was going on around you. And how could you not know at some point certainly, whoa, this is not right. We need to do something differently. We need to stop."

Buckhalter-Honore Decl., Ex. 12 (Sentencing Transcript) at 68. The Court went further to explain that Respondent's claim that he didn't know the fraudulent nature of Mathon's activity was wholly inconsistent with the evidence: "You had warning signs. You had involvement. It was more than saying, I didn't know, I didn't understand. And frankly, I'm shocked that you would say that you were shocked when the curtain finally fell. I don't know how you could have been, given all that I've seen and heard and read." Buckhalter-Honore Decl., Ex. 12 (Sentencing Transcript) at 68-69. The Court cited specific instances of Respondent's direct involvement in the *Ponzi* scheme, including, but not limited to, citing an email that Respondent was copied on where one of his co-defendants lied to an investor: "...the Bodell e-mail referenced in paragraph

24, in which you were copied that Slade wrote to Mr. Bodell. You knew that was wrong. You knew that was false.”⁴” *Id.* at 69.

Respondent has provided no assurances against future violations, sincere or otherwise. He simply denies misconduct, despite the jury’s guilty verdict. Similarly, he has not accepted responsibility for his role in the fraud. Quite to the contrary, throughout his statement to the District Court during his sentencing hearing, he minimized his own misconduct and attempted to shift the blame to others, such as auditors. Buckhalter-Honore Decl., Ex. 12 (Sentencing Transcript) at 53-58. In response to his deflection of responsibility, the Court gave Respondent another chance to acknowledge his own responsibility, and asked him point-bank, “do you find that there is any responsibility you hold for what you did or didn’t do during all this time?” Buckhalter-Honore Decl., Ex. 12 (Sentencing Transcript) at 58. Respondent listed a few changes to the business that he would have made but shirked all personal responsibility for misleading investors in this *Ponzi* scheme, stating, “We thought we were communicating the default information, but many testified they didn’t understand it. So we assumed they were getting the information...[b]ut I would never have joined had I thought in the remotest possibility that it was going to fail.” Buckhalter-Honore Decl., Ex. 12 (Sentencing Transcript) at 60. Ultimately, the Court expressed surprise and disbelief at the Respondent’s total lack of acceptance of responsibility: “I hear what you’re saying today, Mr. Williams. I frankly am a bit surprised.

⁴ The “Bodell email” was an email to a Mathon investor that was discussed at length by the prosecutor as “[T]his e-mail that Duane Slade sent to Mike Bodell, that the CFO, Brent Williams, was on the e-mail, where Duane Slade lied point-blank and said, your old \$700,000 loan just paid off, and if you give us another \$800,000 tomorrow, we’re going to use it to make the Leisure loan.” Buckhalter-Honore Decl., Ex. 12 (Sentencing Transcript) at 64. The prosecutor also described several instances where Respondent’s culpability was significant, as Respondent lulled investors in since he was more trusted than his co-defendants as a “church elder.” *Id.* at 64.

I'm not sure if the Government's word of minimization [sic] is correct, but I certainly made a note to myself that, responsibility for what he did, question mark." *Id.* at 68. The District Court even told Williams from the bench that it was "disappointed in your remarks today," and "shocked that you would say that you were shocked when the curtain finally fell. I don't know how you could have been. . . ." *Id.* at 68 and 69 (emphasis added). The absence of any meaningful assurance against future violation, along with Respondent's refusal to acknowledge the wrongful nature of his conduct, weigh heavily in favor of barring him from the securities industry.

Finally, Williams' decision to associate with a registered investment adviser until it was shut down by the Arizona Corporation Commission, further demonstrates that despite his current incarceration, the investing public must be protected upon his eventual release.

Because each of the *Steadman* factors militates in favor of barring Respondent, he should be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

CONCLUSION

For the foregoing reasons, the Division requests that the Administrative Law Judge issue an initial decision imposing the sanctions recommended herein against Respondent.

Dated: April 28, 2015

Respectfully submitted,



Spencer E. Bendell

Melissia A. Buckhalter-Honore

DIVISION OF ENFORCEMENT

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COUNSEL FOR

DIVISION OF ENFORCEMENT

In the Matter of Brent F. Williams
Administrative Proceeding File No. 3-16337

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R § 201.151), I certify that the attached:

**MOTION BY DIVISION OF ENFORCEMENT FOR SUMMARY DISPOSITION
AGAINST RESPONDENT BRENT F. WILLIAMS PURSUANT TO COMMISSION RULE
OF PRACTICE 250; DECLARATION OF MELISSIA A. BUCKHALTER-HONORE;
EXHIBITS**

were served on April 28, 2015 upon the following in the manner indicated below:

By Facsimile and UPS Next Day Air:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E. Mail Stop 1090
Washington, DC 20549
Facsimile: (202) 772-9324

By Email and UPS Next Day Air:

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
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By USPS Express Mail:

Mr. Brent F. Williams

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Melissia A. Buckhalter-Honore