UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73634 / November 18, 2014

Admin. Proc. File No. 3-15755

In the Matter of MARK FEATHERS	ORDER SUMMARILY AFFIRMING INITIAL DECISION IN PART AND IMPOSING REMEDIAL SANCTIONS

Mark Feathers, formerly the chief executive officer and a director of Small Business Capital Corp. ("SBCC"), a privately-held California corporation, appeals from the initial decision of an administrative law judge. The law judge found that a district court permanently enjoined Feathers from future violations of the antifraud and registration provisions of the federal securities laws and that the injunction served as a basis to consider imposing a sanction. The law judge determined that it was in the public interest to bar Feathers from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization ("NRSRO") and from participating in an offering of penny stock.

Feathers filed a petition for review by the Commission, and the Division of Enforcement filed a motion for summary affirmance of the initial decision. We have reviewed the record of action before the law judge *de novo*, as well as the documents filed on appeal.

I. We summarily affirm the law judge's findings regarding the injunction.

The law judge found that Feathers had been permanently enjoined by a district court "from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security" within the meaning of Exchange Act Sections 15(b)(4) and 15(b)(6).[1]

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[1] *Mark Feathers*, Initial Decision Release No. 605, 2014 WL 2418472, at *3 (May 30, 2014). The district court found that Feathers was an associated person of an unregistered broker. Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. §§ 78*o*(b)(4) and (6), authorize the Commission to sanction an unregistered associated person of an unregistered broker. *See, e.g.*, *Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 WL 3299148, at *6 (Dec. 2, 2005) (barring, pursuant to Exchange Act § 15(b)(6)(A), an associated person of an unregistered broker-dealer from associating with any broker-dealer and from participating in any penny stock offering, based on injunction prohibiting securities laws violations).

Pursuant to Commission Rule of Practice 411, we may summarily affirm an initial decision, in whole or in part, if we find that no issue raised in the initial decision warrants consideration by us of further oral or written argument, that no prejudicial error was committed in the conduct of the proceeding, and that the decision embodies no exercise of discretion or decision of law or policy that is important and that we should review.[2] We find that the standard for granting summary affirmance has been met regarding the law judge's findings as to the injunction. We therefore adopt the initial decision's factual and legal findings on this point.

II. We find, based on our independent review, that it is in the public interest to impose an industry-wide bar on Feathers.

The law judge found that an industry-wide bar was appropriate based on an examination of the relevant public interest factors. Under Rule 411(e)(2), we will decline to grant summary affirmance upon a reasonable showing that "the decision embodies an exercise of discretion that is important and that the Commission should review."[3] Such is the case here. In order for us to summarily affirm the law judge's sanctioning determination, the law judge's analysis must explain, based on the facts and circumstances presented in a case, why an industry-wide bar is in the public interest.[4] Although the law judge's analysis need not include a "'ritualistic incantation' regarding [the] remedial effect" of the industry-wide bar, it should make specific "findings regarding the protective interests to be served" by such a bar and the "risk of future misconduct."[5] In this case, although the initial decision discussed the public interest factors in general, it did not specifically articulate why the facts and circumstances of the case warrant an industry-wide bar or how such a bar will protect the interests of the investing public.[6] We have an interest in further explaining why an industry-wide bar serves the public interest.

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2 *See* 17 C.F.R. § 201.411(e)(2); *Joseph Contorinis*, Exchange Act Release No. 72031, 2014 WL 1665995, at *2 & n.5 (Apr. 25, 2014) (citing *Eric S. Butler*, Exchange Act Release No. 64204, 2011 WL 3792730, at *1 n.2 (Aug. 26, 2011) (noting in a follow-on proceeding based on a criminal conviction that the Commission may apply the summary affirmance rule "in the future where, as here, the relevant facts are undisputed and the initial decision does not embody an important question of law or policy warranting further review by the Commission")).

3 17 C.F.R. § 201.411(e)(2).

4 *Ross Mandell*, Exchange Act Release No. 71688, 2014 WL 907416, at *2 (Mar. 7, 2014).

5 *Id*. at *2 & n.11 (citations omitted).

6 *Id*. at *2 (finding that the initial decision did not sufficiently articulate why the facts and circumstances of the case warranted an industry-wide bar or how the bar protected the trading public from further harm and determining, as an exercise of discretion, to explain why the bar served the public interest). *Compare Anthony Chiasson*, Initial Decision Release No. 589, 2014 WL 1512024, at *4-8 (Apr. 18, 2014) (acknowledging the Commission's directive in *Mandell* and engaging in extensive analysis of facts and circumstances regarding an industry-wide bar), *appeal filed*, Admin. Proc. File No. 3-15580 (May 9, 2014).

In analyzing the public interest, we consider, among other things: 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 conduct, and the likelihood that the respondent's occupation could present opportunities for future violations.[7] Our "inquiry into … the public interest is a flexible one, and no one factor is dispositive."[8]

The district court's findings underscore the egregiousness of Feathers's actions. Feathers violated the antifraud provisions by offering and selling, through SBCC, securities in two mortgage investments funds and causing those funds to make material misrepresentations to investors about the funds' management, capitalization, and returns.[9] For example, the funds represented to investors that the funds would not grant loans to SBCC—other than loans secured by real property—when, in fact, Feathers caused the funds to transfer over $7 million in cash to SBCC using sham accounting entries in the funds' financial statements. The funds also represented in offering documents that they adhered to conservative lending standards by only making secured loans. But the funds actually made unsecured loans to SBCC, which had no ability to repay the loans. The funds further represented in offering documents that member returns would be paid from profits generated by the funds' investments when, in reality, the funds were not profitable and Feathers used investors' money to make "Ponzi-like payments" of returns to other investors.

During the time that Feathers engaged in this misconduct, he committed another violation by failing to register with the Commission as an associated person of a broker. The district court found that Feathers also was liable for SBCC's failure to register with the Commission as a broker. The district court ordered Feathers to disgorge ill-gotten gains of $7,497,402.51 and to pay a second-tier civil money penalty of $10,000, sanctions that reflect the district court's view of the seriousness of Feathers's actions.

Feathers's conduct was recurrent, having begun in early 2009 and ended in the middle of 2012. As to scienter, the court found that the Division of Enforcement "presented abundant evidence demonstrating that Feathers acted intentionally or recklessly in carrying out the misrepresentations and misstatements . . . ." Among other things, the court found that Feathers intended to deceive investors by manipulating the funds' financial statements and multiple investor communications in order to conceal the fact that the funds engaged in risky transactions

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[7] *Mandell*, 2014 WL 907416, at *4 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

[8] *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 WL 4481515, at *15 (Dec. 21, 1007), *petition denied*, 334 F. App'x 334 (D.C. Cir. 2009) (per curiam).

[9] *SEC v. Small Bus. Capital Corp., et al.*, Civil Action No. 5:12 CV 03237-EJD, 2013 WL 4455850, at *14 (Aug. 16, 2013) (finding violations of Securities Act Section 17(a), 15 U.S.C. § 77q(a); Exchange Act Section 10(b), 15 U.S.C. § 78j(b); and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5).

and were not financially sound.[10] Moreover, Feathers disregarded advice from the funds' auditors and attorneys to stop selling loans between the funds and to readjust misleading entries in the funds' financial statements.

The court found that Feathers presented "no evidence" that he recognized the wrongful nature of his conduct. In fact, Feathers argued before the court that he did not commit fraud and that he would continue to follow rules in the future, as he had done in the past. The court also found that "Feathers did not show that he would not re-enter the brokerage industry if he were able." To the contrary, Feathers suggested that he intended to re-enter the securities industry when he indicated that he would hire a securities attorney to avoid violating the securities laws in the future.[11]

On appeal, Feathers asserts that he was "denied an opportunity for public hearings and any level of discovery" during the proceeding before the law judge. Rule of Practice 250(b) provides that a hearing officer may grant a motion for summary disposition without an in-person hearing 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."[12] Once the Division showed that it had satisfied the criteria for summary disposition, Feathers had the opportunity to produce documents, affidavits, or some other evidence to demonstrate that there was a genuine and material factual dispute that the law judge could not resolve without a hearing. Feathers did not raise "the existence of a genuine issue of material fact," and therefore the law judge was not required to conduct an in-person hearing.[13]

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[10] *See Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 & n.48 (July 26, 2013) (citation omitted) (finding that respondent's efforts to conceal misconduct further demonstrated scienter).

[11] At the time the court issued its order imposing sanctions in November 2013, it found that Feathers was employed at a printing company without elaborating on the nature of Feathers's role or responsibilities.

[12] 17 C.F.R. § 201.250(b).

[13] *Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 WL 4320146, at *11 & n.62 (Sept. 20, 2012) (quoting *Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *11 (Feb. 13, 2009)). On September 30, 2014 Feathers sent a letter to the Office of the Secretary stating that the Division "failed to turn over enforcement files which it was required to turn over." At a March 24, 2014 prehearing conference, the Division represented that it produced its investigative file, and Feathers did not challenge that representation. We find nothing in the record that suggests that the Division has failed to comply with its document production requirements. The other arguments that Feathers raises on appeal were properly addressed and rejected by the law judge in the initial decision. We therefore do not repeat those arguments here, and we summarily affirm that part of the initial decision and adopt the law judge's findings with respect to those arguments as our own.

Despite Feathers's assurances against future violations, we find that he poses too great of a risk to the investing public to be permitted to re-enter the industry. We conclude that an industry-wide bar is appropriate.[14] We have repeatedly held that "antifraud injunctions merit the most stringent sanctions and that our 'foremost consideration must . . . be whether [the] sanction protects the trading public from further harm.'"[15] As we have stated, "[t]he securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence."[16] Feathers acted with a complete lack of integrity when he deceived investors about fundamental information involving their investments. His repeated dishonesty and callous disregard for the funds' investors combined with his contempt for, or at the very least his misunderstanding of, his responsibilities as a securities professional demonstrate his unfitness to remain in the securities industry in any capacity.[17] We find that a bar from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO and from participating in any offering of penny stock will prevent Feathers from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct.[18]

Accordingly, IT IS ORDERED that the Division of Enforcement's motion for summary affirmance is granted.

By the Commission.

Brent J. Fields
Secretary

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[14] *See Korem*, 2013 WL 3864511, at *5 & n.42 (finding that, in the absence of evidence to the contrary, it is ordinarily in the public interest to bar a respondent who is enjoined from violating the antifraud provisions and imposing industry-wide bar) (citing *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *9 (July 25, 2003)).

[15] *E.g.*, *Korem*, 2013 WL 3864511, at *5 & n.40 (citation omitted); *Sherwin Brown & Jamerica Fin., Inc.*, Advisers Act Release No. 3217, 2011 WL 2433279, at *6 & n.18 (June 17, 2011) (citing *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *6 (July 23, 2010)).

[16] *Korem*, 2013 WL 3864511, at *6 & n.53 (citing *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *7 (Sept. 26, 2007)).

[17] *See Korem*, 2013 WL 3864511, at *7 (finding that the antifraud provisions that the respondent violated apply broadly to the conduct of all participants in the securities industry).

[18] In support of his appeal, Feathers includes in, or attaches to, his petition for review and his reply to the Division's opposition to the petition for review various documents and excerpts of documents. But he has not shown "with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously" as required by Rule of Practice 452(a). 17 C.F.R. § 201.452(a). Accordingly, we will not admit this additional evidence.