

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87425 / October 30, 2019

Admin. Proc. File Nos. 3-17874; 3-17875

In the Matter of

TALMAN HARRIS

ORDER REMANDING PROCEEDING

On March 10, 2017, the Commission issued an order instituting proceedings (“OIP”) against Talman Harris pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ Exchange Act Section 15(b) authorizes the imposition of sanctions if it finds that (i) the respondent was enjoined from “any conduct or practice in connection with . . . the purchase or sale of any security,” or convicted within ten years of the commencement of the proceeding of a felony that “involves the purchase or sale of any security” or “arises out of the conduct of the business of a” broker-dealer; (ii) the respondent was associated with a broker-dealer at the time of the alleged misconduct; and (iii) the sanction is in the public interest.² The OIP alleged that, for misconduct that occurred while Harris was associated with a broker-dealer, a federal district court had enjoined Harris from future violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder and Section 17(a) of the Securities Act of 1933. The OIP further alleged that, for the same misconduct, another federal district court had convicted Harris of one count of conspiracy to commit securities fraud and wire fraud; three counts of wire fraud; and one count of obstruction of justice. The OIP instituted proceedings to determine what, if any, remedial action was appropriate in the public interest pursuant to Exchange Act Section 15(b).

On June 28, 2019, the presiding administrative law judge (“ALJ”) issued an initial decision granting the Division of Enforcement’s motion for summary disposition and finding that it was in the public interest to bar Harris from the securities industry and from participating in

¹ *Talman Harris*, Exchange Act Release No. 80197, 2017 WL 947233 (Mar. 10, 2017).

² *See* Exchange Act Section 15(b)(6)(A)(ii) and (iii), 15 U.S.C. § 78o(b)(6)(A)(ii) and (iii) (cross-referencing Section 15(b)(4)(B) and (C), 15 U.S.C. § 78o(b)(4)(B) and (C)).

any penny stock offering.³ The ALJ found that the Division had established the first two predicates for imposing sanctions under Exchange Act Section 15(b)(6), and then applied the following factors to determine whether sanctions were in the public interest: 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 will present opportunities for future violations. In addressing the first three factors, the ALJ stated simply: "As described in the Findings of Fact, Harris's conduct was egregious and recurrent, over a period of several years, and involved a high degree of scienter as indicated by the fact that his misconduct included wire fraud and conspiracy to commit securities fraud and wire fraud."⁴ But the Findings of Fact stated only that Harris had been enjoined and convicted; it did not describe Harris's underlying conduct, nor did the rest of the initial decision.⁵

No party has filed a petition for review of the initial decision, and the time to do so has expired.⁶ On our own initiative, however, we have determined that it is appropriate to remand the proceeding to the ALJ to identify the facts and circumstances of Harris's misconduct that lead her to conclude that the public interest warrants the imposition of sanctions.⁷ We express no

³ *Talman Harris*, Initial Decision Release No. 1380, 2019 WL 2725326 (June 28, 2019). On the same day, the ALJ issued an initial decision imposing industry and penny stock bars upon co-respondent Victor Alfaya pursuant to Exchange Act Section 15(b). *Talman Harris*, Initial Decision Release No. 1381, 2019 WL 2725327 (June 28, 2019). The Commission subsequently declared that initial decision final. *Victor Alfaya*, Exchange Act Release No. 87162 (Sept. 30, 2019), available at <https://www.sec.gov/alj/aljdec/2019/34-87162.pdf>.

⁴ *Harris*, 2019 WL 2725326, at *4.

⁵ *See McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005) (stating that "each case must be considered on its own facts" in assessing sanctions); *Blinder, Robinson & Co., Inc. v. SEC*, 837 F.2d 1099, 1113 (D.C. Cir. 1988) ("[T]he Commission must do more than say, in effect, petitioners are bad and must be punished."); *Steadman v. SEC*, 603 F.2d 1126, 1137 (5th Cir. 1979) ("[W]hen the Commission chooses to order the most drastic remedies at its disposal, it has a greater burden to show with particularity the facts and policies that support those sanctions and why less severe action would not serve to protect investors."), *aff'd on other grounds*, 450 U.S. 91 (1981).

⁶ *See Harris*, 2019 WL 2725326, at *5 ("[A] party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision.").

⁷ *Cf. Harris*, 2019 WL 2725327, at *2 (making findings that "Alfaya worked at a boiler room . . . where he would cold call and solicit investors and recommend various stocks, the prices of which were manipulated by the conspirators in a 'pump and dump' manner," that upon making a sale "Alfaya would receive a commission," and that this activity "occurred from September 2006 to September 2014"). *See generally* Rule of Practice 100(c), 17 C.F.R. § 201.100(c) (providing that the "Commission, upon its determination that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply").

view as to the outcome on remand. Accordingly, it is ORDERED that the initial decision is vacated and the proceeding is remanded to the ALJ.

By the Commission.

Vanessa A. Countryman
Secretary