

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90109 / October 8, 2020

Admin. Proc. File No. 3-19222

In the Matter of
NICHOLI MANDRACKEN

ORDER TO SHOW CAUSE

On June 27, 2019, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Nicholi Mandracken pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹

On September 18, 2019, the Division of Enforcement filed a notice of proof of service, which states that service of the OIP was made personally on Mandracken by process server on August 31, 2019. On January 31, 2020, the Division filed a motion for default and sanctions against Mandracken. The Division requests that the Commission find Mandracken in default for not filing an answer and bar him from the securities industry based on the record and allegations in the OIP.

As stated in the OIP, Mandracken’s answer was required to be filed within 20 days of service of the OIP.² And a response to the Division’s motion was due within five days after it was served.³ As of the date of this order, Mandracken has not filed an answer or a response to

¹ *Nicholi Mandracken*, Exchange Act Release No. 86215, 2019 WL 2676859 (June 27, 2019); *see* 15 U.S.C. § 78o(b).

² *Mandracken*, 2019 WL 2676859, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), 201.160(b), 201.220(b)

³ The Division’s motion was served upon Mandracken by United Parcel Service. Rules of Practice 150(d), 154(b), 17 C.F.R. §§ 201.150(d), .154(b).

the Division's motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Mandracken is ORDERED to SHOW CAUSE by October 22, 2020, why the Commission should not find him in default due to his failure to file an answer, to respond to the Division's motion, or to otherwise defend this proceeding. When a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding a public hearing.⁴

Mandracken's submission shall address the reasons for his failure to timely file an answer or response to the Division's motion, as well as the substance of the Division's request for sanctions (including why the Commission should not bar him from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and impose a penny stock bar pursuant to Exchange Act Section 15(b)). If Mandracken files a response to this order to show cause, the Division may file a reply within 21 days after its service.

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at apfilings@sec.gov.⁵

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

⁴ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, 201.180; *see Mandracken*, 2019 WL 2676859, at *2 ("If Respondent fails to file the directed Answer, . . . the Respondent may be deemed in default and the proceedings may be determined against [him] . . ."). The failure to timely oppose a dispositive motion is itself a basis for a finding of default. *See* Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); *see, e.g., Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017). Like failing to timely file an answer, failing to timely oppose a dispositive motion may result in the determination of particular claims, or the proceeding as a whole, adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time. *See, e.g., McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sep. 29, 2017); *Bennett Group Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006).

⁵ *See Pending Administrative Proceedings*, Exchange Act Release No. 88415, <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary