INITIAL DECISION RELEASE NO. 373
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13222

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
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JOSEPH C. LAVIN	:	INITIAL DECISION
	:	March 10, 2009
	:	

APPEARANCES: John S. Yun for the Division of Enforcement, Securities and Exchange Commission.

Joseph C. Lavin, pro se.

BEFORE: Robert G. Mahony, Administrative Law Judge.

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on September 19, 2008, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that, on March 21, 2008, the United States District Court for the Western District of Washington (district court) entered a judgment, sentencing Joseph C. Lavin (Respondent or Lavin) to a prison term of fifty-four months, followed by three years of supervised release, and ordering him to make restitution in the amount of $11,612,538.55. The Commission instituted this proceeding to decide whether remedial action is appropriate in the public interest. The Division of Enforcement (Division) seeks to bar Respondent from association with any investment adviser.

Respondent filed an Answer to the OIP, dated October 7, 2008. Lavin requested "a copy of any and all legal filings and correspondence that pertain to this proceeding and would be deemed important for [him] to have in order to provide a proper and thorough response and/or legal defense." (Answer at 2.) At a telephonic prehearing conference, at which the Division and Respondent appeared, the Division represented that it had sent Lavin the relevant materials and informed him that he could make arrangements to obtain copies of any additional materials he wanted. (Prehearing Conf. Tr. at 4-5.) Lavin made no further requests, and I granted the Division's request for leave to file a motion for summary disposition (Prehearing Conf. Tr. at 6; Order of Nov. 3, 2008). The Division filed its Motion for Summary Disposition, its Supporting Memorandum of Points and Authorities, and accompanying exhibits on November 18, 2008 (Motion).[1] Respondent has not filed an opposition to the Division's Motion.[2]

[1] I will cite to the Division's Motion as "(Div. Mot. at __.)."

[2] On January 20, 2009, the Division sent a letter to Lavin, inquiring whether or not he intended to oppose the Division's Motion, and, if so, whether or not he desired to review or receive copies of

The Standards for
Summary Disposition

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323 of the Commission's Rules of Practice.

Rule 250(b) of the Commission's Rules of Practice requires the hearing officer to promptly grant or deny the motion, or to defer decision on the motion. The hearing officer may grant the 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 a summary disposition as a matter of law.

In assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. See Felix v. N.Y. City Transit Auth., 324 F.3d 102, 104 (2d Cir. 2003); O'Shea v. Yellow Tech. Svcs., Inc., 185 F.3d 1093, 1096 (10th Cir. 1999); Cooperman v. Individual, Inc., 171 F.3d 43, 46 (1st Cir. 1999).

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. At the summary disposition stage, the hearing officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. See Anderson, 477 U.S. at 249.

FINDINGS OF FACT

Lavin is currently incarcerated in the Federal Correctional Institution in Sheridan, Oregon. (Answer at 1.) Lavin was the manager of Global Asset Partners, LLC (GAP), registered with the Commission as an investment adviser. (Answer at 1-2.) GAP managed the Global Asset Partners Short Term, Medium Term, and Long Term Funds (collectively, Funds). (Answer at 2.)

On November 2, 2008, Lavin pled guilty to one count of wire fraud in violation of 18 U.S.C. §§ 1342-43 and one count of money laundering in violation of 18 U.S.C. § 1956, before

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the Division's investigative files (approximately fifteen boxes of documents). The Division further offered to accommodate Lavin by making the files available to someone on his behalf due to his current incarceration. The Division sent a follow-up letter to the same effect on February 23, 2009. Lavin has not responded to either of the Division's letters.

the district court, in United States v. Lavin, No. CR07-366 RAJ. (Answer at 2; Div. Mot. at Ex. 2.) On March 21, 2008, a judgment in the criminal case was entered against Lavin. (Answer at 2.) He was sentenced to a prison term of fifty-four months, followed by three years of supervised release, and ordered to make restitution in the amount of $11,612,538.55. (Id.)

The counts of the criminal information, to which Lavin pled guilty, alleged, among other things, that Lavin defrauded investors and obtained money and property by means of materially false and misleading statements, that he used the United States mails to send false account statements, and that he caused investors to wire funds by means of interstate commerce.[3] (Answer at 2; Div. Mot. at Ex. 1.) More specifically, the wire fraud count of the criminal information alleged the following facts.

Beginning at a date uncertain, but no later than January 2003, and continuing through in or about March 2007, within the Western District of Washington and elsewhere, Lavin did devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises; and to execute and attempt to execute such scheme and artifice by means of wire communications in interstate and foreign commerce. (Div. Mot. at Ex. 1.)

GAP was formed in 2001 as a limited liability company in Nevis, West Indies, with its principal place of business in Woodinville, Washington. (Div. Mot. at Ex. 1.) GAP advertised itself as an asset management company and offered a variety of investment opportunities for high net-worth individuals. (Id.)

Lavin was a resident of Woodinville, Washington. (Id.) Lavin is the principal officer, manager, and owner of GAP. (Id.)

Lavin, using written offering materials and oral presentations at seminars and meetings, solicited investors for the Funds. (Id.) The Funds were managed by Lavin. (Id.)

Lavin represented to investors that the Funds' assets were allocated among foreign currency investments and other "Asset-Backed Investments." (Id.) Asset-backed investments were further described by Lavin as investments that were collateralized by specific assets, bonds, or liens. (Id.)

Lavin represented to investors that the Funds would target monthly returns of between 1.5% and 2.5%, depending upon which Fund the investor selected. (Id.) Lavin also represented that he would receive compensation only if the Funds' earnings exceeded the targeted returns.

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[3] Lavin asserts, "I can say that I did not send intentionally false statements to my clients and I never used the United States mails to send account statements to my clients." (Answer at 2.) However, Lavin is collaterally estopped from challenging the allegations in the OIP which are based on the charges to which he pled guilty. See Robert Blakeney Stevenson, 48 S.E.C. 89, 90 (1985) ("The charges to which Stevenson pled guilty are essentially the same as those in the present administrative proceeding. Thus, under the doctrine of collateral estoppel, the allegations have been established by Stevenson's guilty plea, and he may not relitigate them here.").

(Id.) Lavin specified in the written offering materials that this is the only compensation paid to the Fund Manager. (Id.)

Lavin represented to investors that he was an accomplished financial executive and entrepreneur who was responsible for having consistently earned for many years returns in excess of 2% per month in the Funds. (Id.)

Lavin's written and oral representations and promises described above were knowingly and willfully false as follows:

> Lavin did not place most of the investors' money in foreign currency investments or other types of asset-backed investments. Instead, Lavin diverted investors' money that had been designated for the Funds to pay for personal expenses, to repay earlier investors, and to pay for business ventures controlled by others, specifically R.G., that had not been approved of or known to the investors;
>
> Lavin compensated himself with investors' money despite failing to meet any of the targeted rates of returns;
>
> Lavin was not an accomplished financial executive and entrepreneur. Lavin filed for personal bankruptcy in 1998; and
>
> Lavin had never met the targeted returns of 2% for any of the Funds and, in fact, had consistently lost money. (Id.)

Lavin sent or caused to be sent regular statements to investors, stating that their investments were exceeding the monthly targeted returns. (Id.) These statements were knowingly false. (Id.) Lavin had not generated any gains with any investments. (Id.)

Lavin used later investors' money to make disbursements to earlier investors in order to make it appear that investors were making the returns reported on the statements. (Id.) As a result of these false and fraudulent statements and disbursements, more investors placed their money with Lavin and GAP. (Id.)

Lavin successfully obtained approximately $13 million from more than two hundred investors for investment in the Funds. (Id.) These investors relied upon the knowingly false representations and promises made by Lavin in placing their money with GAP. (Id.)

On or about January 21, 2003, Lavin did knowingly and willfully cause to be sent and delivered, by wire transfer, $250,000.00 from an account at the Charles Schwab & Co. located in the State of California, in the name of R.L., to an account at U.S. Bank in the name of Global Currency Trading Group, LLC, Acct # ********8097, in Seattle, Washington, controlled by Lavin (GCTG Account). (Id.)

Additionally, the money laundering count of the criminal information alleged that, on or about August 20, 2003, within the Western District of Washington and elsewhere, Lavin did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, cause to be withdrawn by check funds in the amount of

$2,744.94, from the GCTG Account, made payable to E.A., which involved the proceeds of a specified unlawful activity, that is Wire Fraud as alleged in Count 1, in violation of 18 U.S.C. § 1343, with the intent to promote the carrying on of the specified unlawful activity, specifically, to pay E.A. a referral fee for referring investors to participate in Lavin's scheme and artifice to defraud, and that, while conducting and attempting to conduct such a financial transaction, knew that the funds involved represented the proceeds of some form of unlawful activity. (Id.)

CONCLUSIONS OF LAW

Under Sections 203(e)(2)(D) and 203(f) of the Advisers Act, the Commission may impose a remedial sanction on a person associated with an investment adviser, consistent with the public interest, if the person "has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction," involving the violation of 18 U.S.C. § 1343.

Lavin was the principal officer, manager, and owner of GAP, which was registered as a an investment adviser at the time of Lavin's underlying misconduct. In 2008, Lavin pled guilty to one count of wire fraud in violation of 18 U.S.C. §§ 1342-43 and one count of money laundering in violation of 18 U.S.C. § 1956, and the district court entered a corresponding judgment. Thus, Lavin has been convicted, within ten years of the commencement of this proceeding, of felonies involving violations of 18 U.S.C. § 1343.[4]

The Public Interest

To determine whether sanctions under Section 203(f) of the Advisers Act are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. No one factor is controlling. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Remedial sanctions are not intended to punish a respondent, but to protect the public from future harm. See Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

Lavin's criminal violations were egregious. The Commission has held that "conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest sanctions under the securities laws." Marshall E. Melton, 56 S.E.C. 695, 713 (2003). Additionally, Lavin's violations caused investors to lose millions of dollars. Lavin has failed to present any evidence to the contrary.

The criminal violations at issue here involved a continuing course of conduct over multiple years. The violations also involved a high degree of scienter. See United States v. Guadagna, 183 F.3d 122, 129 (2d Cir. 1999) (holding that wire fraud requires a showing of intentional fraud); United States v. Huezo, 546 F.3d 174, 178 (2d Cir. 2008) (explaining that

[4] Lavin's guilty plea has the same legal effect as a conviction. See Morris v. Reynolds, 264 F.3d 38, 49 (2d Cir. 2001) (quoting Kercheval v. United States, 274 U.S. 220, 223 (1927)).

money laundering requires both knowledge and specific intent). Lavin intentionally and deliberately made material misrepresentations, and he admits using the Funds' assets for unauthorized investments, unearned management fees, and personal expenses. Additionally, Lavin sent false statements to investors.

By pleading guilty to wire fraud and money laundering, Lavin admitted the wrongful nature of his conduct to the district court. However, Lavin's statements in his Answer, expressing that he did not send intentionally false statements through the mails and that he never used the mails to send statements to his clients, indicate that he has not fully recognized or does not fully appreciate that admission. Lavin represented that he has no desire to be an investment adviser ever again. (Prehearing Conf. Tr. at 7.) However, this one factor does not overcome Lavin's egregious conduct over a long period of time which caused significant harm to investors.

Viewing the Steadman factors in their entirety, I conclude that an associational bar is necessary and appropriate to protect the public interest.

ORDER

Based on the Findings and Conclusions set forth above:

IT IS ORDERED THAT the Division of Enforcement's Motion for Summary Disposition is granted;

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Joseph C. Lavin is barred from association with any investment adviser.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision pursuant to Rule 111 of the Commission's Rules of Practice. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact, or unless the Commission determines on its own initiative to review this Initial Decision as to any party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Robert G. Mahony
Administrative Law Judge