INITIAL DECISION RELEASE NO. 384
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13494

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
	:	
STANLEY JOHNSON	:	INITIAL DECISION
	:	August 7, 2009
	:	
	:	

APPEARANCES: Gregory C. Glynn and Peter F. Del Greco for the Division of Enforcement, Securities and Exchange Commission.

Stanley Johnson, pro se.

BEFORE: Robert G. Mahony, Administrative Law Judge.

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceeding (OIP) on May 29, 2009, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that on May 15, 2009, the federal district court for the Central District of California entered a revised final judgment, permanently enjoining Stanley Johnson (Johnson or Respondent) from violating Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) and 15(a) of the Exchange Act, and Rule 10b-5 thereunder. The Commission instituted this proceeding to determine whether these allegations are true and, if so, to decide whether remedial action is appropriate in the public interest. The Division of Enforcement (Division) seeks to bar Johnson from association with any broker or dealer.

The Division has provided evidence that Johnson was served with the OIP by a process server on June 10, 2009, and he filed an Answer on July 10, 2009. On June 22, 2009, the Division advised Johnson, in writing, of his right to inspect and copy the Division's investigative file. At a telephonic prehearing conference on July 1, 2009, I set the matter for summary disposition (Prehearing Conference Transcript at 11-13; Order of July 2, 2009). The Division filed its Motion for Summary Disposition and accompanying exhibits on July 17, 2009 (Motion). Johnson did not submit an Opposition to the Motion.

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.

Johnson's Answer attacks the allegations contained in the OIP, and seeks to relitigate facts in the underlying civil proceeding. Johnson's Answer also claims that the civil injunction which serves as the basis for this administrative proceeding was entered by default. That claim is false. The district court entered its judgment after Johnson filed an answer and the Division filed a motion for summary judgment. (Motion Ex. 3.) A review of the district court's minute entries on its docket reveals that Johnson was present on March 9, 2009, when the Division's motion for summary judgment was granted. (Motion Ex. 2.)

The Commission has repeatedly upheld use of the summary disposition procedure in cases such as this one where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Jeffrey L. Gibson, 92 SEC Docket 2104, 2111-12 (Feb. 4, 2008) (collecting cases), aff'd, Gibson v. SEC, 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." See John S. Brownson, 55 S.E.C. 1023, 1028 n.12 (2002), pet. denied, 66 Fed. Appx. 687 (9th Cir. 2003).

Findings of fact and conclusions of law made in the underlying injunctive action are immune from attack in a follow-on administrative proceeding. See Ted Harold Westerfield, 54 S.E.C. 25, 32 n.22 (1999) (collecting cases). The Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See James E. Franklin, 91 SEC Docket 2708, 2713 (Oct. 12, 2007); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). To the extent that Johnson's Answer raises such challenges, his collateral attack provides no basis for denying the Division's Motion.

There is no genuine issue with regard to any fact that is material to this proceeding. Johnson has been permanently enjoined from violations of the federal securities laws in the civil case on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

FINDINGS OF FACT

Johnson is the sole shareholder of Consulting Dynamics, Inc. (Consulting Dynamics), a Nevada corporation incorporated on June 26, 2003, with its principal place of business located in California. (Motion Ex. 3 at 1-2.) Advance Body Imaging, LP (ABI), is a California limited partnership formed on July 2, 2004, with its principal place of business in California. (Id. at 2) Johnson is ABI's registered agent, and Consulting Dynamics is ABI's general partner. (Id.)

ABI's business was medical scanning. (Id.) Johnson never made an effort to fund the business, and allowed payments on ABI's only medical scanning machine to lapse. (Id.) Johnson failed to adequately maintain the medical scanning device, and abandoned it once it failed. (Id.) He also failed to pay rent for the premises leased by Consulting Dynamics, allowing it to be evicted. (Id.)

From July 2004 through March 2007, Johnson, Consulting Dynamics, and ABI offered and sold more than $3.1 million in limited partnership units in ABI to over 100 investors nationwide. (Id. at 1, 4-5, 8.) ABI did not file a registration statement with the Commission. (Id.) Johnson engaged sales agents, and provided a list of telephone numbers of potential investors to those agents. (Id. at 2.) Those sales agents promised large and immediate returns to the prospective investors. (Id.) Johnson gave advice to potential investors, directly solicited investors via telephone and in person, and oversaw the sales agents' solicitation. (Id. at 7.) Johnson repeatedly sent letters to investors misrepresenting ABI's operations by claiming an office in Houston was operating when it was not. (Id. at 2, 6.) His letters also misrepresented the operating status of a Laguna Hills location, which never had a paying customer. (Id. at 2, 5.)

Investors were told that at least 60% of their investment would go towards developing and operating ABI's scanning business; however, only 30% or less of the invested funds went to ABI's operations. (Id. 2, 4-5.) Consulting Dynamics and ABI had $3.4 million credited to their

bank accounts between May 2004 and March 2007. (Id. at 3.) Investors were the source of at least 90% of these funds. (Id.) All of those funds were disbursed during the same period: $1.4 million went to compensate sales agents, $952,659 was used for soliciting new investors, $224,878 was used for equipment purchases, and $99,698 was used for advertising. (Id. at 4.)

The district court found that Johnson, along with Consulting Dynamics and ABI, had violated Sections 5(a) and 5(c) of the Securities Act by offering and selling unregistered securities. (Id. at 5.) Further, the district court found Johnson, along with Consulting Dynamics and ABI, had violated Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act by committing fraud in the purchase and sale of securities. (Id. at 5-6.) The district court found Johnson acted with scienter. (Id. at 6.) Finally, the district court judge found that Consulting Dynamics and Johnson violated Section 15(a)(1) of the Exchange Act by acting as unregistered brokers and dealers. (Id. at 4.)

The district court enjoined Johnson, along with Consulting Dynamics and ABI, from future violations of Section 5 and Section 17 of the Securities Act, and Section 10(b) and Section 15 of the Exchange Act. (Motion Ex. 5 at 2-5.) It also ordered Consulting Dynamics and ABI to disgorge $3,154,023.92 in ill-gotten gains and $158,840.51 in prejudgment interest. (Id. at 5.) Johnson was adjudged jointly and severally liable for $521,259.23 of the disgorgement amount and $26,251.25 of the prejudgment interest, based on funds diverted for his personal use. (Motion Ex. 4 at 2, 5; Motion Ex. 5 at 6.) The district court assessed civil penalties in the amount of $130,000 against Johnson and $650,000 against Consulting Dynamics. (Id.)

CONCLUSIONS OF LAW

Under Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act, the Commission may impose a remedial sanction on a person associated with a broker or dealer, consistent with the public interest, if the person has been permanently or temporarily enjoined from engaging in any conduct or practice in connection with the purchase or sale of securities. At the time of the activity described above, Johnson was associated with Consulting Dynamics, which was acting as an unregistered broker-dealer. See John Kirkpatrick, 48 S.E.C. 481, 487 (1986).

The Public Interest

To determine whether sanctions under Section 15(b) of the Exchange 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).

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." Jose P. Zollino, 89 SEC Docket 2598, 2608 (Jan. 16, 2007). "[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to . . . bar from participation in the securities industry . . . a respondent who is enjoined from violating the antifraud provisions." Marshall E. Melton, 56 S.E.C. 695, 713 (2003). Johnson has failed to present any "evidence to the contrary." Indeed, Johnson argues that his scheme would have succeeded, but for interference by the Commission.

Johnson's actions were egregious and recurrent. He misled more than one hundred investors over a three-year period, receiving millions of dollars from them and diverting a significant amount for his own personal benefit. He acted with scienter, sending letters to investors making false claims about the status of ABI's business. Johnson has provided no assurances against future violations, nor does he recognize the wrongful nature of his conduct. His current and future occupation is unclear.

Viewing the Steadman factors in their entirety, I conclude that an associational bar is appropriate in 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; and,

It is FURTHER ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Stanley Johnson is BARRED from association with any broker or dealer.

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.

_____

Robert G. Mahony
Administrative Law Judge