

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67795 / September 6, 2012

Admin. Proc. File No. 3-11366

In the Matter of
GREGG BECKER

ORDER VACATING BARS

Gregg Becker seeks to vacate a Commission order (the "Order") entered against him on February 13, 2004 barring him from associating with any broker or dealer and from participating in the offering of any penny stock.¹ The Order was issued in an administrative proceeding instituted under Securities Exchange Act Section 15(b)(6) based on Becker's conviction, in 2002, for securities fraud and related conspiracy charges.² After this Order was issued, in 2006, the United States District Court for the Southern District of New York vacated the criminal conviction on constitutional grounds.³ In 2009, an order of *nolle prosequi* was filed in the district court, disposing of the case with respect to Becker.⁴

¹ *Gregg Becker*, Securities Exchange Act Rel. No. 49244 (Feb. 13, 2004), 82 SEC Docket 677.

² 15 U.S.C. § 70o(b), incorporating 15 U.S.C. § 70o(b)(4)(B).

³ *United States v. Becker*, No. 01 Cr. 156 (RPP) (S.D.N.Y. Jan. 17, 2006), 2006 U.S. Dist. LEXIS 2076, at *10, *aff'd*, 502 F.3d 122, 130 (2007) (finding that Becker's conviction rested on testimonial statements admitted to the trial in violation of the Sixth Amendment's Confrontation clause, that this evidence was "central[] to the government's case," and that the remaining evidence at trial "with regard to Becker's criminal intent and his membership in the conspiracy was far from overwhelming").

⁴ *United States v. Becker*, No. 01 Cr. 156 (RPP) (S.D.N.Y. Jan. 16, 2009). We take official notice of the *nolle prosequi* pursuant to our Rule of Practice 452, 17 C.F.R. § 201.452.

In seeking to vacate the Commission's Order, Becker argues that the reversal of the conviction and dismissal of the underlying charges are a "change in circumstances [that] invalidates the" basis for the Order. The Division of Enforcement agrees, noting in its response that "the statutory basis for the bar is no longer present."

We have held that administrative bar orders "will remain in place in the usual case" and are vacated "only in compelling circumstances."⁵ We have found such compelling circumstances where, as here, the statutory basis for the bar, in this case Becker's criminal conviction, has been vacated.⁶ Under these circumstances, it is appropriate to vacate the Order.

In light of the foregoing, IT IS ORDERED that the order entered against Gregg Becker on February 13, 2004 barring him from associating with any broker or dealer and from participating in the offering of any penny stock, be, and it hereby is, vacated.

By the Commission.

Elizabeth M. Murphy
Secretary

⁵ *Salim B. Lewis, Order Granting and Denying in Part Petition to Vacate Administrative Bar Order*, 58 S.E.C. 491, 502 (2005).

⁶ *See, e.g., Jimmy Dale Swink, Jr.*, 52 S.E.C. 379, 379 (1995) (vacating findings and administrative bar order when an appellate court reversed the criminal conviction that was the basis for the proceeding); *cf. Terry Harris*, Investment Advisers Act Rel. No. 2622 (July 26, 2007), 91 SEC Docket 541, 543 (ordering dismissal of administrative proceeding after finding that "none of the three bases for proceeding under Advisers Action Section 203(f) that were alleged in the [order instituting proceedings] remains valid on the record before us on appeal").