

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of : INITIAL DECISION
: February 10, 2012
LEILA C. JENKINS :

APPEARANCES: Frank C. Huntington and Naomi J. Sevilla for the Division of
Enforcement, Securities and Exchange Commission

Leila C. Jenkins, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision grants the Motion for Summary Disposition filed by the Division of Enforcement (Division), denies the Motion for Summary Disposition filed by Respondent Leila C. Jenkins (Jenkins), and permanently bars Jenkins from associating with a broker, dealer, or investment adviser.¹

PROCEDURAL HISTORY

On July 8, 2011, the Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP), alleging that on June 30, 2011, the United States District Court for the District of Rhode Island (Court) entered a final judgment (Final Judgment) against Jenkins in SEC v. Locke Capital Management, Inc., Civil Action Number 1:09-cv-00100-S-DLM (Civil Case). OIP, p. 2. The OIP also alleges that the Final Judgment permanently enjoined Jenkins from violating Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Sections

¹ The parties have filed the following papers: the Division's Motion for Summary Disposition (Div. Motion) (and an Appendix in Support with a Declaration of Naomi J. Sevilla and Exhibits A through E attached); Jenkins' Motion for Default Judgment Against the Division's Motion for Summary Disposition, which, to the extent that it addresses the Division's Motion, has been construed as an Opposition thereto (Resp. Opp.); Jenkins' Motion for Summary Disposition (Resp. Motion) (with Exhibits 1 through 13 attached); and the Division's Opposition thereto (with Exhibit A attached).

206(1), 206(2), and 207 of the Investment Advisers Act of 1940 (Advisers Act), and from aiding and abetting violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16), and 206(4)-1(a)(5) thereunder. Id.

Jenkins filed her response to the OIP on August 9, 2011. On August 29, 2011, Jenkins moved to stay this proceeding, pending appeal of the Final Judgment. In an Order dated September 16, 2011, Jenkins' motion to stay was denied, the parties were granted leave to file motions for summary disposition, and specific filing deadlines were established. The Division filed its Motion on December 8, 2011, Jenkins filed her Motion on December 9, 2011, the Division filed its Opposition on December 16, 2011, and Jenkins filed what has been construed as her Opposition on January 3, 2012.

Jenkins requested several extensions of the prehearing schedule because she was incarcerated on a charge of passport fraud. See Exhibits 2 and 5 of the Division's Report Concerning Service of Pleadings (Report). Orders extending the filing deadlines were issued on November 10, 2011, December 19, 2011, and January 3, 2012. The January 3, 2012, Order set January 10, 2012, as the deadline for Respondent to file her opposition brief, and January 19, 2012, as the deadline for both parties to file reply briefs. Jenkins filed no opposition brief, and briefing is therefore complete.

The Division provided sufficient documentation that it served all relevant papers upon Jenkins in accordance with Rule 150 of the Commission's Rules of Practice. In particular, the Division served its Motion on December 7, 2011, by UPS delivery to Jenkins' record address (where the parcel was signed for), as well as by e-mail to Jenkins' sister, and the Division served its Opposition on December 16, 2011, by UPS delivery to Jenkins' record address (where the parcel was signed for), as well as by e-mail to Jenkins' sister and by mail to Jenkins at the Metropolitan Correctional Center in New York City. Report, pp. 1-2. The Division also served its Motion on December 16, 2011, by mail to Jenkins at the Metropolitan Correctional Center. Report, pp. 2-3. In what has been construed as Jenkins' Opposition, filed January 3, 2012, Jenkins acknowledged that no later than December 29, 2012, she received both the Division's Motion and its Opposition. Resp. Oppo., pp. 1-2. As noted in my Order dated January 20, 2012, I conclude that service of the Division's Motion and Opposition was proper, that Jenkins received these papers both actually and constructively, and that Jenkins had sufficient time under Rule 154(b) of the Commission's Rules of Practice to respond to them.²

² Oddly, in a series of e-mails sent to this Office on January 18 and 20, 2012, Jenkins claimed that she had not received copies of either the Division's Motion or its Opposition. In one of these e-mails, she provided no address of record between January 20, 2012, and some unspecified date in early February, 2012. Immediately following the issuance of the January 20, 2012, Order, Jenkins sent an e-mail to this Office, acknowledging that she had in fact received the Division's Opposition, but had to leave it behind when released from prison. She also apparently asserted that she did not receive the Division's Motion until January 20, 2012. Notably, this string of e-mails started on January 18, 2012, two weeks after Jenkins was released from federal custody. Jenkins has provided no explanation for why it took her two weeks to take action on the Division's allegedly unserved briefs.

SUMMARY DISPOSITION STANDARD

A motion for summary disposition may be granted 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. See 17 C.F.R. § 201.250(b). 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 noticed pursuant to Rule 323 of the Commission's Rules of Practice. Id.

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 (collecting cases), petition for review denied, 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, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12.

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. See 17 C.F.R. § 201.323. The findings and conclusions made in the underlying action are immune from attack in a follow-on administrative proceeding. See Phillip J. Milligan, Exchange Act Release No. 61790 (Mar. 26, 2010), 98 SEC Docket 26791, 26796-97; Ted Harold Westerfield, Exchange Act Release No. 41126 (Mar. 1, 1999), 54 S.E.C. 25, 32 n.22 (collecting cases). The Commission does not permit a respondent to relitigate issues that were addressed in previous proceedings against the respondent. See William F. Lincoln, Exchange Act Release No. 39629 (Feb. 9, 1998), 53 S.E.C. 452, 455-56. Thus, the Court's findings of fact, discussed and relied upon throughout this Initial Decision, are binding.³

The parties' motion papers and, indeed, all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

FINDINGS OF FACT

Jenkins is the founder and sole owner of Locke Capital Management, Inc. (Locke), an investment advisory firm with an office in Newport, Rhode Island. Opinion, p. 3. In 2008, Locke represented to several commercial services that it was managing more than \$1 billion in assets. Id., p. 4. Locke made similar claims, with respect to years 2006 and 2007, in brochures sent to potential clients. Id. Jenkins signed amendments to Locke's Forms ADV, which listed its assets under management as follows: (1) \$1,232,689,661 in April 2007; (2) \$1,306,692,872 in

³ The Findings of Fact, infra, are taken largely from the Court's Opinion and Order (Opinion) (Div. Motion, Ex. C) granting the Commission's motion for summary judgment against Jenkins in the Civil Case.

April 2008; and (3) \$1,278,392,478 in March 2009.⁴ Id., pp. 4-5. Jenkins represented to Locke employees that a major portion of the company's assets under management were attributable to a "Swiss Private Bank." Id., p. 5. Jenkins included the assets of the purported Swiss client in Locke's records, Commission filings, and marketing materials. Id., p. 24.

Commission staff conducted an examination of Locke in 2008, during which Jenkins stated that the identity of the purported Swiss client was confidential and that she communicated all trading information to it personally, by telephone. Id., p. 5. The Commission inquired about the identity of the purported Swiss client and instructed Jenkins to have the custodian of its securities accounts forward its statements to the Commission. Id. Instead, Jenkins personally turned over spreadsheets containing lists of securities, which bore the logo "Chase." Id. She also provided the Commission with several of Locke's computer files, which included spreadsheets titled "Portfolio Appraisal[s]" for the "SPB Accounts." Id., pp. 5-6.

Jenkins maintained that the purported Swiss client was a company called "AM AG." Id., p. 6. However, there was no evidence of any such client's existence. Id., p. 20. There was no evidence of payment from the purported Swiss client to Locke and no evidence that Locke managed its assets. Id. Neither the Swiss authorities nor Chase have any record of AM AG. Id. Investors rely on assets under management in deciding whether to entrust their funds to a particular investment adviser, and in fact, some investors only patronize firms that meet a minimum threshold. Id., pp. 3-4, 25. Jenkins fabricated the Swiss client to inflate Locke's apparent assets under management and attract potential investors. Id., p. 24.⁵

On March 9, 2009, the Commission filed the Civil Case, alleging that Jenkins violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 207 of the Advisers Act, and that she aided and abetted violations of Sections 204, 204A, and 206(4) of the Advisers Act and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16), 204A-1, and 206(4)-1(a)(5) thereunder. Div. Motion Ex. A, pp. 15-22. The Commission and Jenkins filed cross-motions for summary judgment, and on October 8, 2010, the Court held a hearing on the parties' motions. Opinion, pp. 1, 12. On June 30, 2011, the Court granted the Commission's motion and denied Jenkins' motion, and the Final Judgment was issued against Jenkins. Id., p. 35; Div. Motion Ex. E.

The Final Judgment ordered disgorgement in the amount of \$1,892,476,⁶ imposed a civil penalty in the amount of \$1,781,520, and enjoined Jenkins from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 207 of the Advisers Act, and from aiding and abetting violations of Sections

⁴ Form ADV is a filing required to be submitted to the Commission on an annual basis, pursuant to the Advisers Act. Opinion, p. 4.

⁵ Jenkins disagreed with some of these asserted facts; however, the Court found that she offered no evidence to support a contrary version of events. Opinion, pp. 5, 6.

⁶ Jenkins and Locke were held jointly and severally liable for this amount, which represents the total disgorgement, including prejudgment interest. Final Judgment, p. 7.

204 and 206(4) of the Advisers Act and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16), and 206(4)-1(a)(5) thereunder. Final Judgment, pp. 1-7.

CONCLUSIONS OF LAW

Jenkins is permanently enjoined from “engaging in or continuing any conduct or practice in connection with [activities as a broker, dealer, or investment adviser]” and “in connection with the purchase or sale of any security” within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act.

Jenkins’ principal argument is that the Final Judgment is flawed, asserting that this proceeding “lacks any [b]asis or [f]oundation” because the Division “found no wrongdoing” in the Civil Case. Resp. Motion, pp. 1-21; Resp. Oppo., pp. 1-3. Jenkins disputes many of the facts found against her and alleges numerous procedural defects in the Civil Case.⁷ Resp. Motion, pp. 1-21; Resp. Oppo., pp. 1-3. However, Jenkins may not collaterally attack the Final Judgment in this proceeding, and the Findings of Fact, *supra*, are based on the Court’s Opinion, which Jenkins may not now contest. James E. Franklin, Exchange Act Release No. 56649 (Oct. 12, 2007), 91 SEC Docket 2708, 2713 *aff’d*, 285 F. App’x 761 (D.C. Cir. 2008); Demitrios Julius Shiva, Exchange Act Release No. 38389 (March 12, 1997), 52 S.E.C. 1247, 1250 (“[A]ny substantive or procedural objections that [Respondent] has with respect to the civil proceeding should have been directed to the federal appeals court.”). Because such allegations are incontestable, there are no genuine issues of material fact, even as to the appropriate sanction. See John S. Brownson, Exchange Act Release No. 46161 (July 3, 2002), 77 SEC Docket 3636, 3640 n.12 (“[A] respondent may present genuine issues with respect to facts that could mitigate his or her misconduct, although we believe that those cases will be rare.”).⁸ Thus, the Division’s Motion is granted, and Jenkins’ Motion is denied.

SANCTION

This proceeding was instituted pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. As of 2002, these provisions authorized the Commission to bar Jenkins from associating with a broker, dealer, or investment adviser, if in the public interest. See 15 U.S.C. § 78o(b)(6)(A) (2002); 15 U.S.C. § 80b-3(f) (2006). The Division requests that Jenkins be barred

⁷ Jenkins also asserts that the Civil Case has not yet been litigated and challenges several procedural aspects of the Civil Case. Resp. Oppo., p. 2; Resp. Motion, *passim*. To the extent that this is construed as an argument that the Final Judgment cannot operate as the basis for this proceeding because of the alleged procedural defects, it fails. The statutory basis for this proceeding is satisfied in that Jenkins was enjoined from violating the antifraud and other provisions of the federal securities laws while associated with a registered investment adviser. See 15 U.S.C. §§ 78o(b)(4)(C), 78o(b)(6)(A), 80b-3(e), 80b-3(f).

⁸ If the underlying injunction is vacated, Jenkins may request the Commission to reconsider any sanctions imposed in this administrative proceeding. See Charles Phillip Elliott, Exchange Act Release No. 31202 (Sept. 17, 1992), 52 SEC Docket 2011, 2017 n.17, *aff’d on other grounds*, 36 F.3d 86 (11th Cir. 1994).

from associating with a broker, dealer, or investment adviser. Div. Motion, p. 12. Jenkins requests that no action be taken against her. Resp. Supp., p. 3. The sanction requested by the Division will be granted.

The appropriate remedial sanction is guided by the well-established public interest factors listed in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Conrad P. Seghers, Advisers Act Release No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2303-04, petition for review denied, 548 F.3d 129 (D.C. Cir. 2008). They include: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. Steadman, 603 F.2d at 1140. Deterrence should also be considered, and the sanction may not be punitive. Steven Altman, Exchange Act Release No. 63306 (Nov. 10, 2010), 99 SEC Docket 34405, 34435; Chris G. Gunderson, Exchange Act Release No. 61234 (Dec. 23, 2009), 97 SEC Docket 24040, 24048; Johnson v. SEC, 87 F.3d 484, 490 (D.C. Cir. 1996). The inquiry into the appropriate remedial sanction is flexible and no one factor is controlling. Seghers, 91 SEC Docket at 2298.

Over the course of several years, Jenkins promoted a fabricated client, inflated Locke's reported assets under management in marketing materials, and falsified Locke's records and filings made with the Commission. Opinion, pp. 28, 32. The Court found that this conduct was egregious and recurrent because it "spanned a number of years and reflect[ed] a great effort to piece together a fraudulent scheme, cover it up, and then continue to lie about it throughout [the] litigation." Id., p. 33. The Court also found that Jenkins had a "conscious intent to defraud" and that she acted with scienter because she "must have known that her representations were false." Id., pp. 25, 33. Jenkins has failed to recognize the wrongful nature of her conduct; indeed, she denies that the Division "found any evidence of wrongdoing" and implies that she is "innocent" and "has done nothing but benefit many clients over the years." Resp. Motion, p. 1; Resp. Oppo., p. 3. Jenkins has offered no assurances against future violations, and the Court found that it was reasonably likely that she would continue to violate the federal securities laws. Opinion, pp. 28-29.

In sum, the Steadman factors weigh in favor of a permanent bar. Additionally, a permanent bar will further the Commission's interests in deterrence, particularly general deterrence. See Altman, 99 SEC Docket at 34438 ("Other attorneys, who might be encouraged by a more lenient sanction to act in a similar fashion, must also be deterred."); Steadman, 603 F.2d at 1140 ("even if further violations of the law are unlikely, the nature of the conduct mandates permanent debarment as a deterrent to others in the industry"). Finally, a permanent bar is remedial rather than punitive because it will protect the integrity of the regulatory processes and will thereby protect the investing public from future harm.

ORDER

It is ORDERED that, pursuant to Rule 250 of the Commission's Rules of Practice, the Division's Motion for Summary Disposition is GRANTED, and Jenkins' Motion for Summary Disposition is DENIED; and

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Leila C. Jenkins is BARRED from associating with a broker, dealer, or 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. See 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial 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. See 17 C.F.R. § 201.111. 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 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 motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occurs, the Initial Decision shall not become final as to that party.

Cameron Elliot
Administrative Law Judge