INITIAL DECISION RELEASE NO. 456
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14509

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

| In the Matter of | : | |
|---|---|---|
| | : | |
| PETER EMRICH, | : | |
| ALBERTO FERREIRAS, | : | INITIAL DECISION AS TO |
| JAMES FRANKFURTH, | : | ALBERTO FERREIRAS |
| FRANK ROSSI, and | : | April 4, 2012 |
| DANA VALENSKY | : | |

APPEARANCES: Nancy A. Brown and Peter A. Pizzani for the Division of Enforcement, Securities and Exchange Commission.

Alberto Ferreiras, pro se.

BEFORE: Brenda P. Murray, Chief Administrative Law Judge.

## Background

On August 18, 2011, the Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The proceeding has either ended or been stayed as to all Respondents except Alberto Ferreiras (Ferreiras).[1]

Ferreiras was served with the OIP by August 29, 2011. The proceeding was stayed as to him from October 6, 2011, to January 9, 2012, while the Commission considered his Offer of Settlement. I granted the Division of Enforcement (Division) leave to file a motion for summary disposition on January 9, 2012, when Ferreiras stopped participating in the settlement process. 17 C.F.R. § 201.250(a). Ferreiras has not filed an Answer.

The OIP alleges that within the last ten years, Ferreiras has pled guilty in three federal cases involving securities violations. On June 18, 2003, Ferreiras pled guilty to conspiracy and securities fraud charges in United States v. Kozak, 02-cr-879 (E.D. N.Y.) and United States v. Leonard, 02-cr-

[1] Offers of Settlement from Peter Emrich, Frank Rossi, and Dana Valensky are pending before the Commission. See Peter Emrich, Commission Finality Order, Exchange Act Release No. 66504 (Mar. 1, 2012).

881 (E.D. N.Y.)[2] and on June 27, 2007, he pled guilty to one count of conspiracy to commit mail fraud and eight counts of mail fraud in United States v. Ferreiras, 07-cr-325 (E.D. N.Y.).[3] The OIP also alleges that on July 23, 2009, a criminal judgment was entered against Ferreiras and he was sentenced to concurrent prison terms of six months based on his convictions in Kozak and Leonard, 125 months based on his conviction in Ferreiras, three years of supervised release, and ordered to pay total restitution of $17,117,788.88.[4]

On January 26, 2012, the Division timely filed a Motion for Summary Disposition (Motion) and Declaration of Nancy A. Brown in Support of Motion (Brown Decl.) with fourteen exhibits attached thereto. Exhibit A, Superseding Information filed in Kozak and Leonard, on July 31, 2003; Exhibit B, transcript of the plea hearing on June 18, 2003, in Kozak and Leonard; Exhibit C, Complaint in SEC v. Heritage Film Group LLC, No. 02-cv-4364 (LDW) (E.D. N.Y.), entered August 6, 2002; Exhibit D, portions of the report from the Central Registration Depository on Ferreiras as of January 17, 2012; Exhibit E, March 26, 2007, consent to transfer, from the Southern District of Florida to the Eastern District of New York, in Ferreiras; Exhibit F, portions of a plea hearing on June 27, 2007, in Ferreiras; Exhibit G, transcript of sentencing hearing on July 21, 2007, in Kozak, Leonard, and Ferreiras; Exhibit H, Judgment filed July 21, 2009, in Kozak, Leonard, and Ferreiras; Exhibit I, printout of Bureau of Prisons, Inmate Locator for Ferreiras as of January 18, 2012; Exhibit J, OIP; Exhibit K, copies of USPS Return Receipts Forms for material sent to Ferreiras; Exhibit L, Division's letter to Ferreiras dated August 24, 2011; Exhibit M, Stay Order as to Four Respondents, issued October 6, 2011; Exhibit N, December 22, 2011, e-mail to the Division from Chris Bruno.

Ferreiras filed his Opposition to the Motion on March 2, 2012 (Opposition).

The Division filed a Motion for Extension of Time to File a Reply (Motion for Extension) and a Reply Memorandum in Further Support of its Motion (Reply) on March 8, 2012. The Motion for Extension has attached a Declaration of Nancy A. Brown (Second Brown Decl.) with three exhibits: Exhibit A, complaint in SEC v. Cash Link Sys. Inc., No 03:04-civ-1573-L (N.D. Tex. July 20, 2004); Exhibit B, Unopposed Motion of Receiver to Approve Compromise and Settlement Agreement with VC Partners, Inc. and Kimberly M. Ferreiras (Motion to Dismiss) in Cash Link Sys. Inc., filed May 16, 2005; Exhibit C, Order Granting Motion to Dismiss in Cash Link Sys. Inc, filed June 24, 2005.

I GRANT the Division's Motion for Extension. March 2, 2012, was the due date for the Division's Reply if Ferreiras had filed his Opposition on February 17, 2012, the date specified in

---

[2] Ferreiras pled guilty to two counts of sales in an unregistered offering of securities, one count in Kozak and one count in Leonard. Brown Decl. Exhibits A at 6-9, B at 12-14.

[3] This case originated in Florida as 07-60020-Cr-Marra (S.D. Fla.), and involved the fraudulent sale of "cashless" automated teller machine business opportunities. Brown Decl. Exhibit E.

[4] On August 6, 2002, the Commission filed a parallel civil complaint against Ferreiras, which was stayed pending resolution of the criminal cases. SEC v. Heritage Film Group, LLC, No. 02-civ-4364 (LDW) (E.D. N.Y).

the scheduling order issued January 9, 2012. In fact, Ferreiras's Opposition was filed fourteen days late.

I take official notice of the court documents attached as exhibits to the Brown Declarations that are part of the Division's Motion and its Motion for Extension. 17 C.F.R. § 201.323.

## Motion for Summary Disposition

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the maker of the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250. The Division is entitled to a favorable ruling because Ferreiras does not contest the allegations in the OIP. There are no factual issues in dispute; therefore, I GRANT the Motion. 17 C.F.R. § 201.250.

## Findings of Fact

My findings are based on the entire record. I applied preponderance of the evidence as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

Ferreiras, a forty-two year old non-United States citizen, earned an Associate's degree in Business from Alfred State College. Brown Decl. Exhibits B at 4, F at 3, G at 13. Ferreiras passed the Series 7 and Series 63 exams in 1991. The Central Registration Depository indicates Ferreiras was in inactive status from May 9, 1997, to January 27, 2012.[5] Brown Decl. Exhibit D at 18.

According to a Superseding Information for Kozak and Leonard, while Ferreiras was not licensed and registered to sell securities, he operated two telemarketing companies in Florida and, using the telephone and mail, he sold unregistered securities to the general public, in particular to investors located in New York. Brown Decl. Exhibit A at 3-4. Specifically, between September 1998 and July 2000, Ferreiras knowingly and willfully directed the sale of unregistered securities, which should have been registered, of the Heritage Film Group, LLC, and between April 1999 and May 2001, he engaged in similar activities with respect to the unregistered securities of Out of the Black Partners, LLC. Brown Decl. Exhibits A, B at 12-14. Ferreiras's illegal telemarketing conduct, which was the basis for the findings in Kozak and Leonard, raised approximately $530,000 and $95,000, respectively. Brown Decl. Exhibit B at 13-14. On June 18, 2003, Ferreiras pled guilty to two counts of sales of unregistered securities in Kozak and Leonard. Brown Decl. Exhibits B at 2, 11, D at 24, 26, 28.

Later, in or around July 2003, Ferreiras and two associates owned and operated Cash Link Systems, Inc. (Cash Link), an entity incorporated in Florida that sold business opportunities in cash-less ATM machines. Brown Decl. Exhibits E, Indictment at 1, 4-7, F at 37. From around September 2003 through approximately April 2004, Ferreiras and others enticed potential buyers to

---

[5] The OIP alleges Ferreiras was not associated with any registered entity from approximately October 1998 through May 2001, when the offerings which were the subject of Kozak and Leonard were sold. OIP at 1-2.

invest in Cash Link, by making materially false statements and concealing material information. Brown Decl. Exhibit E, Indictment at 3, 8-10. Among other things, potential investors were provided false references, told that this business opportunity was highly profitable, and told they could earn back the cost of their investment in twelve months or less although not a single investor had ever done so and no distributor was on track to do so. Brown Decl. Exhibit E, Indictment at 8-9. Potential investors were not informed that Ferreiras, one of Cash Link's owners and directors, had pled guilty in Kozak and Leonard, to federal criminal charges involving the sale of investments to the public, and that two of Cash Link's owners violated a court order by their participation in the Cash Link offering. Brown Decl. Exhibit E, Indictment at 10. The government estimates that Cash Link investors lost close to $17 million. Brown Decl. Exhibit G at 3, 13, 15. Ferreiras shared in the receipts of the Cash Link fraud. Brown Decl. Exhibit F at 39.

On June 27, 2007, in a consolidated hearing in Kozak, Leonard, and Ferreiras, Ferreiras pled guilty to one count of conspiracy to commit mail fraud, eight counts of mail fraud, and to committing these offenses while on release for other offenses. Brown Decl. Exhibit F at 25, 36. Ferreiras acknowledged disseminating promotional material about Cash Link to potential purchasers that contained misleading information about the business opportunities and sharing in the purchasers' payments. Brown Decl. Exhibit F at 38-39. Ferreiras took these actions knowing they were illegal, and while he was on release awaiting sentencing in a different criminal case. Brown Decl. Exhibit F at 39.

On July 21, 2009, U.S. District Court Judge Leonard D. Wexler sentenced Ferreiras to six months in Kozak, six months in Leonard, and 125 months in Ferreiras, all sentences to run concurrently. Brown Decl. Exhibit G at 30-31. Judge Wexler ordered Ferreiras to pay restitution of $142,423 in Kozak and Leonard, and $16,975,366 in Ferreiras. Brown Decl. Exhibit G at 30-31. Ferreiras was also ordered to pay restitution of twenty-five percent of his gross income during three years of supervised release on each count, which will run concurrently, and a special assessment on each count of $100, for a total of $1,100,[6] and if he is deported, he cannot return illegally. Brown Decl. Exhibit G at 31-32.

**Conclusions of Law**

Section 15(b)(6) of the Exchange Act states that the Commission shall censure, place limitations on the activities or functions of a person, or suspend for up to twelve months, or bar a person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock if it is in the public interest to do so, when the person has been convicted within ten years of the OIP of a an offense involving the purchase or sale of a security or the conduct of a broker or dealer or has willfully violated a provision of the securities statutes. 15 U.S.C. § 78o(b)(6).

The evidence is indisputable that, within ten years of the OIP, Ferreiras was convicted of criminal offenses involving securities, for acting as a broker-dealer, and for willful violations of the securities statutes.

[6] Two counts in Kozak and Leonard, and nine counts in Ferreiras. Brown Decl. Exhibit G at 32.

Ferreiras contends "that he has already settled this matter civilly with the [Commission]" citing Cash Link Sys. Inc., and "further sanctions would create a conflict with the Constitutional bar against Double Jeopardy." Opposition at 2. His argument fails for several reasons. Double jeopardy set out in the Fifth Amendment to the Constitution is a doctrine applied in criminal, not civil, law. See Green v. United States, 355 U.S. 184, 187 (1957). Moreover, it is well settled that the doctrine of double jeopardy does not bar a party from initiating a civil proceeding following a criminal conviction or the Commission from seeking civil relief as in this administrative proceeding. Second Brown Decl. Exhibit A.

> The Supreme Court has long distinguished between civil sanctions and a criminal penalty based on a common underlying event. *See Helvering v. Mitchell,* 303 U.S. 391, 399, 58 S.Ct. 630, 82 L.Ed. 917 (1938). In *Hudson v. United States,* 522 U.S. 93, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997), the Court held that the Double Jeopardy Clause does not prohibit bringing a criminal prosecution against a person debarred from the banking industry for the same misconduct during a prior civil administrative proceeding. *Id.* at 97-99, 118 S.Ct. 488. So too the reverse must be true as well. *See DiCola v. Food and Drug Admin.*, 77 F.3d 504, 505, 507-08 (D.C. Cir. 1996).

Gary M. Korman v. SEC, 592 F.3d 173, 188 (D.C. Cir. 2010). In addition, Ferreiras was not a defendant in Cash Link Sys. Inc., the criminal case on which he relies. Id.

**Sanctions**

The Division requests that Ferreiras be barred from participation in the securities industry to the full extent allowable. Motion at 1.

Ferreiras argues that he should not be subject to a sanction because he has no intention of working in the securities industry, he has learned a painful lesson after five years of incarceration, and is a changed individual. Opposition at 1. Ferreiras believes that he has suffered enough for his misconduct. Opposition at 2.

The Commission uses the following factors in determining the public interest: (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. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

Three felony violations, including one committed just months after Ferreiras entered a guilty plea to the first two violations and while he was awaiting sentencing, causing investor loses of almost $17 million, fits the description of egregious and recurrent. Even Ferreiras's counsel acknowledged Ferreiras's intentional, reprehensible conduct and blatant schemes to defraud. Brown Decl. Exhibit G at 10.

Despite Ferreiras's statements, the evidence is that he cannot be trusted, and his expressions of remorse, assurances against future violations, and recognition of wrongful conduct are of little value. Judge Wexler, who observed the witness, was unmoved by counsel's request that he recognize the good in Ferreiras in determining a sentence. Judge Wexler stated:

> Whether I find a good spot in you? I don't find any. You knew what you were doing. Nothing bothered you. You did what you wanted to do. You ruined the lives of so many people. So the fact that you cry in front of me doesn't move me at all. And if the government didn't recommend 125 months, I would have gone much higher. I don't care if you ever see sunlight again. You hurt people. You knew what you were doing. It was a big joke. You changed names. You lied. You did everything. Okay.

Brown Decl. Exhibit G at 32.

The overwhelming evidence is that the investing public needs to be protected from Ferreiras's participation in the securities industry to the fullest extent possible.

**Ruling**

I ORDER, pursuant to Section 15(b) of the Securities Exchange Act of 1934, that Alberto Ferreiras is barred from association with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, and from participating in an offering of penny stock. [7]

Brenda P. Murray
Chief Administrative Law Judge

[7] In my view, the collateral bars, added by the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law on July 21, 2010, against association with a municipal advisor and nationally recognized statistical rating organization are impermissible because they retroactively attach new consequences to conduct that occurred prior to the statute's enactment. I disagree that the prospective application of the restriction eliminates the retroactivity concern in this proceeding. See Landgraf v. USI Film Prods., 511 U.S. 244, 273 (1994).