

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20816

In the Matter of

ANITA SGARRO,

Respondent.

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DIVISION OF ENFORCEMENT’S MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT ANITA SGARRO

The Division of Enforcement (“Division”) moves pursuant to Rule 250 of the Securities and Exchange Commission’s (“SEC” or “Commission”) Rules of Practice for summary disposition in this follow-on proceeding against Anita Sgarro (“Sgarro”). Sgarro’s conviction after a jury trial in a parallel criminal case establishes the predicate facts for an industry-wide associational bar and a penny stock bar under Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”). The parties agree that this proceeding can be resolved by summary disposition,¹ and the Division submits that the undisputed facts necessary to granting its request for the same are readily established without a need for a hearing.

I. Relevant Procedural History

On September 22, 2016, a federal grand jury in the United States District Court for the Southern District of Florida returned an indictment against Sgarro alleging that she defrauded, and

¹ See Second Joint Statement Regarding Prehearing Conferenced filed on March 17, 2023.

conspired with others to defraud, investors of Sanomedics International Holdings Inc. (“Sanomedics”) through the use of mail and wire communications.²

On June 22, 2017, after a jury trial, Sgarro was convicted of one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349, one count of mail fraud in violation of 18 U.S.C. §1341, and one count of wire fraud in violation 18 U.S.C. § 1343.³ Sgarro was sentenced to a prison term of 116 months⁴ followed by three years of supervised release and ordered to make restitution in the amount of \$22,278,000.⁵

The Commission issued its Order Instituting Administrative Proceedings (“OIP”) against Sgarro on April 8, 2022, and Sgarro filed her answer to the OIP on May 2, 2022. On January 30, 2023 (after Sgarro did not accept the Division’s settlement offer by the prescribed deadline), the Division produced all responsive, non-privileged documents to Sgarro pursuant to Rule 230 of the Commission’s Rules of Practice.

II. Facts

From April 2009 through August 2015,⁶ Sgarro acted as an unregistered broker operating a telephone sales room where she trained sales agents on how to pitch shares of Sanomedics.⁷

² See *United States v. Sizer, et al.*, Case No. 1:16-CR-20715 (S.D. Fla.) (“Criminal Case”) at DE 3 (Indictment at Counts 1, 2, and 10), attached hereto as **Exhibit “1”**.

³ *Id.* at DE 406 (Verdict), attached hereto as **Exhibit “2”**.

⁴ Sgarro’s sentence was reduced to time served of 34 months due to compassionate release. *Id.* at DE 941.

⁵ *Id.* at DE 732 (Amended Judgment), attached hereto as **Exhibit “3”**.

⁶ See Ex. 1 at Counts 1, 2 and 10 (timeframe of illegal conduct); Ex. 3 at 1 (same).

⁷ See Criminal Case at DE 155 (Factual Proffer of Co-Conspirator Miguel Mesa (“Mesa”) at 2-3) (Mesa co-conspired with Sgarro and others to defraud over 700 investors and Mesa hired Sgarro to operate her own group that sold Sanomedics), attached hereto as **Exhibit “4”**; *Id.* at DE 171 (Factual Proffer of Co-Conspirator Craig Sizer (“Sizer”) at 2-3) (same), attached hereto as **Exhibit “5”**; *Id.* at DE 457 (Trial Testimony of Sales Agent Jeffrey Astgen (“Astgen”)) at 15-17, 38-42, 66-67 (Sgarro ran and trained sales team), attached hereto as **Exhibit “6”**; *Id.* at DE 500-5, DE 500-6, and DE 500-7 (Sales scripts), attached hereto as **“Composite Exhibit “7”**.

Sanomedics was a penny stock that traded on the OTC Market.⁸

Additionally, Sgarro directly solicited individuals to invest in shares of Sanomedics.⁹ Using the alias Anita Simone,¹⁰ Sgarro made false and fraudulent statements to investors, including that she was an employee of Sanomedics; a “limited number” of shares of Sanomedics stock were available to them at a steep discount for a limited time only; no commissions or fees would be charged to investors; and Sanomedics was a “safe investment,” “profitable investment,” and one where “you won’t lose money.”¹¹

Sgarro also misrepresented to investors that Sanomedics was developing non-contact thermometers and completing clinical trials on its products.¹² She told investors that Sanomedics’ largest investor and board member was the former Chief Executive Officer of Apple Inc. and president of PepsiCo,¹³ and a television personality known as “the Dog Whisperer” would soon become a spokesperson for Sanomedics’ pet thermometer.¹⁴ Furthermore, Sgarro failed to disclose

⁸ See Ex. 4 at 2 (“Sanomedics common stock traded on the Over-The-Counter Bulletin Board”); Ex. 5 at 2 (same).

⁹ See e.g. Criminal Case at DE 449 (Trial Testimony of Investor Girard Secker (“Secker”)) at 6-10 (describing how Sgarro convinced him to invest in Sanomedics), attached hereto as **Exhibit “8”**.

¹⁰ See Ex. 6 at 11-12 (Sgarro used the name Anita Simone with investors); Ex. 8 at 8 (Sgarro cold-called Secker under the alias Anita Simone); Criminal Case at DE 440 (Trial Testimony of Investor Aurelia Ostro (“Ostro”)) at 5 (Sgarro introduced herself as Anita Simone), attached hereto as **Exhibit “9”**.

¹¹ See Ex. 4 at 2 (misrepresentations made by Sgarro and others to induce investors to invest in Sanomedics); Ex. 5 at 2 (same).

¹² See Ex. 4 at 1 (“Sanomedics claimed to develop and market a line of non-contact infrared thermometers principally for consumer home healthcare for children”); Ex. 5 at 1 (same); Ex. 9 at 6 (Sgarro told Ostro that Sanomedics was developing healthcare thermometers) and 18-19 (Sgarro told Ostro that Sanomedics was completing clinical trials at certain medical schools and hospitals).

¹³ See Ex. 4 at 2 and Ex. 5 at 2.

¹⁴ See Ex. 9 at 8 and 10; see also Criminal Case at DE 491-41, DE 491-42, DE 491-45, and DE 491-46 (E-mails from Sgarro to Ostro describing the above misrepresentations), attached hereto as **Composite Exhibit “10”**; *Id.* at DE 443 (Trial Testimony of Sales Agent Juan Perez Ortega (“Ortega”)) at 159-160 (Sgarro instructed sales agents to use the “Dog Whisperer” in their sales pitch), attached hereto as **Exhibit “11”**.

resale restrictions on Sanomedics shares.¹⁵

Sgarro received \$1,070,000 in undisclosed commissions¹⁶ for the sale of Sanomedics stock.¹⁷

III. The Division Is Entitled to Summary Disposition

A. Legal Standards

A party may move for summary disposition of any or all allegations of the OIP, after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying. *See* 17 C.F.R. § 201.250. A 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. *Id.*

Official notice may be taken of any matter that might be judicially noticed by a district court of the United States. *See* 17 C.F.R. § 201.323; *see also* Fed. R. Evid. 201(b)(2) (permitting judicial notice of facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”); *see, e.g., In the Matter of David A. Souza*, Exch. Act Rel. No. 3328, 2011 WL 6046243, at *1-2 n. 1 (Dec. 6, 2011) (taking official notice of provisions of district court judgment against respondent).

Summary disposition is appropriate here because the facts alleged in this proceeding have been litigated and determined in an earlier judicial criminal proceeding resulting in Sgarro's

¹⁵ *See* Ex. 9 at 34-35 (Sgarro did not tell Ostro that she would not be able to sell her shares of Sanomedics).

¹⁶ *See* Ex. 4 at 2 (“All combined, the defendants and their co-conspirators used approximately 80% of investor proceeds in undisclosed commissions and fees”); Ex. 5 at 2 (same); Ex. 8 at 29-30 (Secker would not have invested in Sanomedics if he had known Sgarro made a 25% commission); *United States v. Wheeler*, 16 F.4th 805, 813 (11 Cir. 2021) (“Between Sanomedics and FCF, the defendants took in the following sums: [] \$1,070,000 for Sgarro ...”).

¹⁷ The Division has submitted a Request for Official Notice of the exhibits attached hereto.

conviction, and the sole determination concerns the appropriate sanction. *In the Matter of Joseph C. Lavin*, Exch. Act Rel. No. 373, 2009 WL 613543, *5-6 (March 10, 2009) (granting summary disposition based upon criminal conviction); *Gary M. Kornman*, Exch. Act Rel. No. 2840, 2009 WL 367635, *6 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (same).

B. Associational and Penny Stock Bars Are Warranted

Section 15(b)(6)(A) of the Exchange Act authorizes an associational bar and a penny stock bar against a person with a qualifying conviction who at the time of the misconduct was associated with a broker or dealer:

With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person ... has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph.

See 15 U.S.C. §78o(b)(6)(A).

As discussed further below, the requirements for imposing associational and penny stock bars under Section 15(b)(6)(A)—timely issuance of the OIP, Sgarro’s conviction under a qualifying statute, Sgarro’s misconduct committed while she was associated with an unregistered broker or dealer or acting as an unregistered broker by selling securities while not registered or associated with a registered broker-dealer, and furtherance of the public interest—are satisfied here.

1. The Division Timely Filed This Action

The Division must commence a proceeding under Section 15(b) within “ten years” of the criminal conviction. *See* 15 U.S.C. §78o(b)(6)(A)(ii). Here, Sgarro was convicted on June 22, 2017, and the OIP was issued on April 8, 2022. Therefore, this matter was timely filed.

2. Sgarro Was Convicted Of A Qualifying Offense

Under the Exchange Act, the Commission may sanction a person who has been convicted of an offense set forth in Section 15(b)(4)(B)(iv), *i.e.*, an offense which “involves the violation of section 152, 1341 [*i.e.*, mail fraud], 1342, or 1343 [*i.e.*, wire fraud] or chapter 25 or 47 of title 18, or a violation of substantially equivalent foreign statute.” *See* 15 U.S.C. §78o(b)(6)(A)(ii). Here, Sgarro was convicted of conspiracy to commit mail and wire fraud, mail fraud, and wire fraud. Thus, she has been convicted of an offense which warrants a sanction.

3. Sgarro Acted As An Unregistered Broker and Offered Penny Stock at the Time of the Misconduct

Section 15(a)(1) of the Exchange Act makes it unlawful for a broker “to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security” unless registered with the Commission in accordance with Section 15(b).

Exchange Act Section 3(a)(4) defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others.” *See* 15 U.S.C. §78c(a)(4). A person engages in the business of effecting securities by “participat[ing] in purchasing and selling securities involving more than a few isolated transactions; there is no requirement that such activity be a person’s principal business or the principal source of income.” *Anthony Fields*, Exch. Act Rel. No. 4028, 2015 WL 728005, *18 (Feb. 20, 2015) (quotations and alternations omitted). The broker

in question need not have been a registered broker. *Tzemach David Netzer Korem*, Exch. Act Rel. No. 70044, 2013 WL 3864511, *7 (July 26, 2013).

Factors to determine if an individual has acted as a broker include whether the individual: (1) is an employee of the issuer; (2) received commissions as opposed to a salary; (3) is selling, or previously sold, the securities of other issuers; (4) is involved in negotiations between the issuer and the investor; (5) makes valuations as to the merits of the investment or gives advice; and (6) is an active rather than passive finder of investors. *SEC v. Hansen*, 1984 WL 2413, at 10 (S.D.N.Y. Apr. 6, 1984). These factors are not exclusive, and not all of them, or any particular number of them, must be satisfied for a person to be a broker. *See SEC v. Bengier*, 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010) (explaining that the *Hansen* factors “were not designed to be exclusive”).

At the time of her misconduct, Sgarro acted as an unregistered broker offering Sanomedics stock, a penny stock,¹⁸ to investors. She solicited investors through cold-calls and e-mails, and touted the merits of Sanomedics by claiming that it was a “safe” and “profitable” investment.”¹⁹ She also controlled sales agents whom she hired, supervised, and paid commissions in her telephone sales room.²⁰ At trial, one of Sgarro’s sales agents testified that Sgarro held the roles of “closer” and “loader” in her telephone sales room.²¹ As the “closer,” Sgarro convinced prospective investors to invest and, as the “loader,” she convinced existing investors to invest additional

¹⁸ During the relevant period, Sanomedics’ securities qualified as a “penny stock” because they did not meet any of the exceptions from the definition of a “penny stock,” as defined by Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. Among other things, the securities were equity securities: (1) that were not an “NMS stock,” as defined in 17 CFR 242.600(b)(47); (2) traded below five dollars per share during the relevant period; (3) whose issuer had net tangible assets and average revenue below the thresholds of Rule 3a51-1(g)(1); and (4) did not meet any of the other exceptions from the definition of “penny stock” contained in Rule 3a51-1 under the Exchange Act.

¹⁹ *See* Ex. 4 at 2; Ex. 5 at 2; Ex. 8 at 6-10; Ex. 9 at 6, 8-10, 18-19; Comp. Ex. 10.

²⁰ *See* Ex. 4 at 2-3; Ex. 5 at 2-3; Ex. 6 at 15-17, 38-42, 66-67; Comp. Ex. 7.

²¹ *See* Ex. 6 at 12-13.

funds.²² Furthermore, Sgarro received \$1,070,000 in commissions²³ for the sale of Sanomedics securities. *See Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010) (“The Commission properly relied on the ordinary meaning of alleged ‘misconduct,’ which refers to allegedly ‘unlawful or improper behavior.’”).

4. Associational and Penny Stock Bars Serve the Public Interest

In determining whether an associational bar or a penny stock bar is in the “public interest,” the Commission considers the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981):

the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.

Lawrence Deshetler, Advisers Act Rel. No. 5411, 2019 WL 6221492, *2 (Nov. 21, 2019); *see also In the Matter of George Bussanich, Jr.*, Exch. Act Rel. No. 967, 2016 WL 771014, *6-7 (Feb. 29, 2016) (applying *Steadman* factors and imposing permanent associational and penny stock bars); *In the Matter of Joseph P. Doxey and William Daniels*, Exch. Act Rel. No. 598, 2014 WL 1943919, *27 (May 15, 2014) (applying *Steadman* factors and imposing permanent penny stock bar, among other relief). “Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry.” *Frederick W. Wall*, Exch. Act Rel. No. 52467, 2005 WL 2291407, at *4 (Sept. 19, 2005) (quotation omitted); *accord Shreyans Desai*, Exch. Act Rel. No. 80129, 2017 WL 782152, at *4 (Mar. 1, 2017).

²² *Id.*

²³ *See Wheeler*, 16 F.4th at 813.

These factors weigh in favor of associational and penny stock bars. As to the first, second and third factors, Sgarro's actions were egregious, recurrent, and involved a high degree of scienter. *Lavin*, 2009 WL 613543 at *5 (“conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest sanctions under the securities laws.”). For nearly six years, she made fraudulent statements to investors about Sanomedics' business and the merits of investing in the company.²⁴ She also routinely told investors that no commissions or fees would be charged to them²⁵ when in fact, she was paid \$1,070,000 in commissions for selling Sanomedics securities.²⁶ Her fraudulent conduct resulted in \$22,278,000 in investor losses.²⁷ As to her scienter, she was convicted of mail and wire fraud, *see United States v. Guadagna*, 183 F.3d 122, 129 (2d Cir. 1999) (holding that wire fraud requires a showing of intentional fraud), and conspiracy to commit mail and wire fraud, including that she “knew” the conspiracy existed and that she “knowingly and voluntarily joined it,” *see United States v. Moran*, 778 F.3d 942, 960 (11th Cir. 2015) (setting forth elements for conspiracy to commit wire fraud).

As to the fourth and fifth factors, Sgarro has not offered assurances against future violations and has not recognized the wrongful nature of her conduct. While “[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar . . . the existence of a violation raises an inference that it will be repeated.” *Korem*, Exch. Act Rel. No. 70044, 2013 WL 3864511, at n.50 (July 26, 2013) (quotation and alternations omitted). Sgarro has

²⁴ See Ex. 4 at 2; Ex. 5 at 2; Ex. 8 at 6-10; Ex. 9 at 6, 8-10, 18-19; Comp. Ex. 10; Ex. 9 at 6, 8-10, 18-19; Comp. Ex. 10.

²⁵ See Ex. 4 at 2; Ex. 5 at 2; Ex. 8 at 29-30.

²⁶ *Wheeler*, 16 F.4th at 813.

²⁷ See Ex. 3 at 5 (ordering restitution for such amount); *Wheeler*, 16 F.4th at 818 (noting that the Presentence Investigation Report held Sgarro responsible for such loss amount).

offered no evidence to rebut that inference. Moreover, Sgarro denies that she has done anything wrong. *See e.g.*, Sgarro’s Answer to the OIP at p. 2 (asserting that new evidence “raises a substantial issue at the core of many of the false allegations in this complaint of the [SEC] [and] a 3-month trial already established that Sgarro is not culpable in many of these false allegations in this SEC complaint.”).

As to the sixth factor, Sgarro could re-enter the securities industry and present future risks to the investing public unless she is barred. *See Charles Phillip Elliot*, Exch. Act Rel. No. 31202, 1992 WL 258850, *3 (Sept. 17, 1992) (industry “presents many opportunities for abuse and overreaching”), *aff’d*, 36 F.3d 86 (11th Cir. 1994); *In the Matter of James E. Franklin*, Exch. Act Rel. No. 56649, 2007 WL 2974200, *8 (Oct. 12, 2007) (absent a bar, there would be no obstacle to [respondent’s] participation in a penny stock offering in the future).

V. Conclusion

For the reasons discussed above, the Division asks the Commission to sanction Sgarro by barring her from (1) association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and (b) participating in any offering of a penny stock.

April 24, 2023

Respectfully submitted,

**Moot,
Stephanie**

Digitally signed by
Moot, Stephanie
Date: 2023.04.24
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CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that on April 24, 2023, the foregoing was filed using the eFAP system, and that a true and correct copy of said filing is being served via email on the following persons entitled to notice:

Via Email

Anita Sgarro

Email: [REDACTED]

Moot,
Stephanie

Digitally signed by
Moot, Stephanie
Date: 2023.04.24
12:22:51 -04'00'

Stephanie N. Moot
Senior Trial Counsel

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
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Respondent.

INDEX OF EXHIBITS
TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT ANITA SGARRO

<u>Exhibit</u>	<u>Description</u>
Exhibit 1	Indictment (DE 3), <i>United States v. Sizer, et al.</i> , Case No. 1:16-cr-20715 (S.D. Fla.)
Exhibit 2	Verdict against Anita Sgarro (DE 406), <i>United States v. Sizer, et al.</i> , Case No. 1:16-cr-20715 (S.D. Fla.)
Exhibit 3	Amended Judgment against Anita Sgarro (DE 732), <i>United States v. Sizer, et al.</i> , Case No. 1:16-cr-20715 (S.D. Fla.)
Exhibit 4	Factual Proffer of Miguel Mesa (DE 155), <i>United States v. Sizer, et al.</i> , Case No. 1:16-cr-20715 (S.D. Fla.)
Exhibit 5	Factual Proffer of Craig Sizer (DE 171), <i>United States v. Sizer, et al.</i> , Case No. 1:16-cr-20715 (S.D. Fla.)
Exhibit 6	Transcript of Trial Testimony of Jeffrey Astgen (DE 457), <i>United States v. Sizer, et al.</i> , Case No. 1:16-cr-20715 (S.D. Fla.)

- Exhibit 7 Sales Scripts (DE 500-5, DE 500-6, and DE 500-7), *United States v. Sizer, et al.*, Case No. 1:16-cr-20715 (S.D. Fla.) (Composite exhibit)
- Exhibit 8 Transcript of Trial Testimony of Girard Secker (DE 449), *United States v. Sizer, et al.*, Case No. 1:16-cr-20715 (S.D. Fla.)
- Exhibit 9 Transcript of Trial Testimony of Aurelia Ostro (DE 440), *United States v. Sizer, et al.*, Case No. 1:16-cr-20715 (S.D. Fla.)
- Exhibit 10 E-mails (DE 491-41, DE 491-42, DE 491-45, and DE 491-46), *United States v. Sizer, et al.*, Case No. 1:16-cr-20715 (S.D. Fla.) (Composite exhibit)
- Exhibit 11 Transcript of Trial Testimony of Juan Perez Ortega (DE 443), *United States v. Sizer, et al.*, Case No. 1:16-cr-20715 (S.D. Fla.)