

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 STATUS REPORT

The Division of Enforcement (“Division”) respectfully files this Status Report to update the Commission on the status of Respondent Anita Sgarro’s (“Sgarro”) parallel criminal proceeding, *United States v. Sizer, et al.*, Case No. 1:16-cr-20715 (S.D. Fla.) (the “Criminal Case”), and related civil proceeding, *Sgarro v. United States*, Case No. 1:23-cv-24544-BB (S.D. Fla.) (the “Civil Case”):

I. The Criminal Case

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 conspired with others to defraud, investors of Sanomedics International Holdings Inc. (“Sanomedics”) through the use of mail and wire communications. *See* Criminal Case at DE 3.

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. *Id.* at DE 406. Sgarro

was sentenced to a prison term of 116 months¹ followed by three years of supervised release and ordered to make restitution in the amount of \$22,278,000. *Id.* at DE 732.

Sgarro appealed her conviction and sentence to the Eleventh Circuit. *Id.* at DE 699. On appeal, she argued that “there was insufficient evidence” to support her conviction, that the prosecutors “engaged in misconduct” during closing arguments, and that some of the trial court’s evidentiary and sentencing rulings were erroneous. *United States v. Wheeler*, 16 F.4th 805, 818 (11th Cir. 2021). The Eleventh Circuit affirmed Sgarro’s conviction and sentence on October 21, 2021, *see id.* at 831, and issued its mandate on February 18, 2022, *see Criminal Case* at DE 971.

II. The Civil Case

On November 30, 2023, Sgarro filed her Emergency Pro Se 28 U.S.C. § 2255 Motion to vacate her criminal conviction (“Motion to Vacate”). *See Criminal Case* at DE 1086. The Court directed all further docketing related to this motion to be done in the Civil Case. *Id.*

On March 11, 2024, the Court denied Sgarro’s Motion to Vacate. *See Civil Case* at DE 20. The Court explained that the Motion to Vacate was time-barred and that neither of the two equitable exceptions to § 2255(f)’s limitations periods – equitable tolling and actual innocence – applied to her. *Id.* at pp. 6-8. The Court also denied a certificate of appealability because there were no issues with arguable merit for appeal. *Id.* at p. 9.

III. The Commission’s Administrative Proceeding

The Commission issued its Order Instituting Administrative Proceedings (“OIP”) on April 8, 2022, against Sgarro based on her criminal conviction, and Sgarro filed her answer to the OIP on May 2, 2022. On January 30, 2023 (after settlement negotiations failed), the Division produced

¹ Sgarro’s sentence was reduced to time served of 34 months due to compassionate release. *Id.* at DE 941.

all responsive, non-privileged documents to Sgarro pursuant to Rule 230 of the Commission’s Rules of Practice.

On April 24, 2023, the Division moved for summary disposition against Sgarro because her conviction in the Criminal Case established 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 (“Motion for Summary Disposition”). On May 19, 2023, Sgarro filed her Response seeking to delay this proceeding pending her pursuit of post-conviction relief based on “new evidence” and the appointment of counsel to represent her “with all the latest new evidence.” *See* Response at pp. 1, 3. On May 23, 2023, the Division filed its Reply in support of its Motion for Summary Disposition. On May 24, 2023, Sgarro filed a “supplemental brief” (which the Division responded to on May 31, 2023) and requested that it be sealed. But in response to the Commission’s June 29, 2023 Order directing her to explain the basis for her request to file the brief under seal, she explained on July 13, 2023 that there was no reason to seal any documents because information would be disclosed in her motions in the Criminal Case.

The Motion for Summary Disposition is fully briefed and is pending before the Commission. The Criminal Case is closed as to Sgarro, *see* Criminal Case at DE 688, and the related Civil Case is closed, *see* Civil Case at DE 20 at p. 9.

April 17, 2024

Respectfully submitted,



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DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION

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CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that on April 17, 2024, 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]

[REDACTED]
Stephanie N. Moot
Senior Trial Counsel