

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101458 / October 29, 2024

Admin. Proc. File No. 3-20653

In the Matter of

ROBERT LOUIS CARVER,
a/k/a DONALD HOWARD

ORDER DENYING THE DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF
DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS

On November 17, 2021, the Securities and Exchange Commission instituted an administrative proceeding against Donald Howard pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On September 6, 2023, the Commission amended the order instituting proceedings, adding allegations that the respondent's real name is Robert Louis Carver and that he used the name Donald Howard as an alias.² The amended order instituting proceedings (the "amended OIP") alleges that, on November 12, 2021, a federal district court entered a final judgment in a civil case brought by the Commission against the respondent, permanently enjoining him from future violations of Exchange Act Section 15(a)(1). We take official notice, however, that the district court entered judgment against the respondent under his alleged alias, "Donald Howard," and that the judgment has not been amended by the district court to include the respondent's alleged real name, "Robert Louis Carver."³

¹ *Donald Howard*, Exchange Act Release No. 93599, 2021 WL 5358757 (Nov. 17, 2021).

² *Robert Louis Carver*, Exchange Act Release No. 98291, 2023 WL 5770175, at *2-6 (Sept. 6, 2023).

³ See Amended Judgment Entry, *SEC v. Graham*, Case No. 1:20-CV-02505-PAB (N.D. Ohio Nov. 12, 2021), ECF No. 32; Amended Mem. Op. & Order, *Graham*, Case No. 1:20-CV-02505-PAB, ECF No. 31; Rule of Practice 323, 17 C.F.R. § 201.323 ("Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States . . .").

After Carver failed to answer the amended OIP or respond to an order to show cause why the Commission should not find him in default,⁴ the Division of Enforcement filed a motion requesting that the Commission find Carver in default and bar him from the securities industry and from participating in an offering of penny stock. Rule of Practice 155(a) provides that if a party fails to answer, to respond to a dispositive motion, or otherwise to defend the proceeding, we *may* deem the party in default and “determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which *may* be deemed to be true.”⁵ In the exercise of our discretion, we decline at this time to grant the Division’s motion given outstanding questions about the predicate for this follow-on action.

For example, we note that the Division has not sought to amend the OIP to include Carver’s related conviction for aggravated identity theft, mail fraud, and wire fraud as a predicate for this follow-on action.⁶ Nor has the Division filed a motion with the district court to amend the underlying injunction to reflect that Donald Howard’s real name is Robert Louis Carver, or that “Donald Howard” is an alias.⁷ As a result, the injunction on its face does not refer to the respondent in this proceeding by his real name. The injunction, standing alone, could also mistakenly be thought to apply against the different person whose identity Carver admitted to

⁴ *Robert Louis Carver*, Exchange Act Release No. 99094, 2023 WL 8469445, at *1 (Dec. 6, 2023) (order to show cause).

⁵ 17 C.F.R. § 201.155(a) (emphasis added); *see also* Rule of Practice 220(f), 17 C.F.R. § 201.220(f) (providing that, “[i]f a respondent fails to file an answer required by this [rule] within the time provided, such respondent may be deemed in default pursuant to [Rule] 155(a)”); 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2685 (4th ed. June 2024 update) (explaining that under the analogous federal rule providing for entry of judgment by default, the “party making the request is not entitled to a default judgment as of right, even when defendant is technically in default” and the requirements of the rule are satisfied (internal footnote omitted)).

⁶ Plea Agreement for Defendant Robert Louis Carver at 10, *United States v. Carver*, No. 8:23-CR-00060 (C.D. Cal. Dec. 1, 2023), ECF No. 3; *see also* Reporter’s Transcript of Change of Plea, *Carver*, No. 8:23-CR-00060, ECF No. 34. We take official notice of these court documents as well.

⁷ *See, e.g., Mitchell Repair Info. Co. v. Rutchey*, No. C08-500 RSM, 2009 WL 3242093, at *2-3 (W.D. Wash. Oct. 2, 2009) (finding that a natural person “is legally the same entity, the same individual, regardless of the name he uses,” and therefore judgment could be amended to add the person’s real name); *Trident Inv. Partners Inc. v. Evans*, No. CV-20-01848-PHX-DWL, 2021 WL 75826, at *11-12 (D. Ariz. Jan. 8, 2021) (directing clerk to amend caption to reflect pseudonym’s real name; ordering that all references to pseudonym in complaint be deemed references to real name; and entering judgment against real name); *Twitch Interactive, Inc. v. Johnston*, No. 16-cv-03404-BLF, 2019 WL 3387977, at *3-4, *13-14 (N.D. Cal. July 26, 2019) (same); *T-Mobile USA, Inc. v. Chong*, No. C13-29RAJ, 2014 WL 172271, at *1-2 (W.D. Wash. Jan. 13, 2014) (correcting complaint and entry of default to include defendant’s real name).

stealing when he pleaded guilty in the related criminal proceeding.⁸ And we note that, because the underlying civil action was brought by the Commission itself, the Division may be able to seek modification of the injunction to clarify these issues.

Accordingly, in the exercise of our discretion, we DENY the Division of Enforcement's motion for entry of default and imposition of remedial sanctions. In addition, the Division is ORDERED to file a status report by December 30, 2024, regarding the further steps it proposes to take or has taken in this administrative proceeding or the underlying district court proceeding, and every 28 days thereafter.

By the Commission.

Vanessa A. Countryman
Secretary

⁸ See *supra* note 6 and accompanying text.