

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Raymond P. Moore**

Civil Action No. 19-cv-02594-RM-STV

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC., et al.,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD., et al.,

Relief Defendants.

ORDER

This civil enforcement action is before the Court on Plaintiff's Motion for Summary Judgment (ECF No. 702), seeking summary judgment on Claims 1-7, and 9 against Defendants Stewart and Sewall. No Defendant has responded to the Motion, and the time to do so has lapsed. For the reasons below, the Motion is granted.

I. BACKGROUND

Plaintiff United States Securities and Exchange Commission ("SEC") filed this action in 2019, alleging that Defendants were operating a fraudulent trading program through which they raised more than \$125 million from investors for unregistered securities offerings. (ECF No. 1, ¶ 1.) The SEC's Motion implicates the following claims from the Complaint:

- Claim 1 – fraud (misstatements and omissions) in violation of § 10(b) of the Exchange Act and Rule 10b-5(b);
- Claim 2 – fraud (misstatements and omissions) in violation of § 17(a)(2) of the Securities Act;
- Claim 3 – fraud in violation of § 10(b) of the Exchange Act and Rule 10b-5(a) and (c);
- Claim 4 – fraud in violation of § 17(a)(1) and (3) of the Securities Act;
- Claim 5 – offer and sale of unregistered securities in violation of §§ 5(a) and (c) of the Securities Act;
- Claim 6 – fraud by an investment advisor in violation of § 206(1) of the Advisers Act;
- Claim 7 – fraud by an investment advisor in violation of § 206(2) of the Advisers Act; and
- Claim 9 – fraud on investors in a pooled investment vehicle in violation of § 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

(ECF No. 1, ¶¶ 177-97, 201-03.)¹

In 2021, Defendants Stewart and Sewall were indicted on fifteen counts of wire fraud and conspiracy to commit wire fraud for their roles in perpetrating the scheme. (*United States v. Stewart*, No. 21-cr-00034-WJM, ECF No. 1.) The Indictment alleged, inter alia, that Defendants Stewart and Sewall made numerous materially false misrepresentations or omissions in offering materials, falsely claimed they had developed proprietary trading algorithms for successful trading in the foreign currency exchange market, falsely claimed they had never had a losing month, and falsely claimed their results were audited and verified by third parties. (*Id.* at ¶¶ 8-17.) Over the course of a twelve-day trial, the government presented ample evidence to support

¹ The SEC is not seeking summary judgment on Claims 8 and 10, which are alternatively pled aiding and abetting claims. (*See* ECF No. 702 at 1 n.1.)

these allegations and demonstrate that Defendants Stewart and Sewall used false pretenses to induce investors to wire money to entities they controlled, including Defendant Mediatrix. *United States v. Sewall*, 2026 WL 959897, at *1-2 (D. Colo. Apr. 9, 2026). The evidence also demonstrated that although Mediatrix frequently lost money investing in the foreign currency exchange market, such losses were kept hidden from the investors because they received statements showing only profitable trades and because “falsehoods continually infected Mediatrix’s marketing pitches and materials.” *Id.* Moreover, despite “an ever-widening gap between what clients saw when they checked their account balances and what Mediatrix could pay if clients chose to withdraw some or all of that balance,” Defendants Stewart and Sewall earned millions of dollars in performance fees and markup revenue. *Id.*

The jury found Defendants Stewart and Sewall guilty on all fifteen counts. (*Stewart*, No. 21-cr-00034-WJM, ECF No. 315.) They were sentenced to 288 and 276 months’ imprisonment, respectively, and ordered to pay restitution of more than \$93 million jointly and severally. (*Id.* at ECF Nos. 474, 771.)

II. LEGAL STANDARDS

A. Summary Judgment

Summary judgment is appropriate only if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Gutteridge v. Oklahoma*, 878 F.3d 1233, 1238 (10th Cir. 2018). Applying this standard requires viewing the facts in the light most favorable to the nonmoving party and resolving all factual disputes and reasonable inferences in his favor. *Cillo v. City of Greenwood Vill.*, 739 F.3d 451, 461 (10th Cir. 2013). However, “[t]he mere

existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

“The substantive law of the case determines which facts are material.” *United States v. Simmons*, 129 F.3d 1386, 1388 (10th Cir. 1997). A fact is “material” if it pertains to an element of a claim or defense; a factual dispute is “genuine” if the evidence is so contradictory that if the matter went to trial, a reasonable jury could return a verdict for either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Whether there is a genuine dispute as to a material fact depends upon whether the evidence presents sufficient disagreement to require submission to a jury or is so one-sided that one party must prevail as a matter of law. *Id.* at 251-52; *Stone v. Autoliv ASP, Inc.*, 210 F.3d 1132, 1136 (10th Cir. 2000).

B. Issue Preclusion

“According to the doctrine of issue preclusion, when an issue of ultimate fact has been once determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.” *Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1093 (10th Cir. 2003) (quotation omitted); *see also Allen v. McCurry*, 449 U.S. 90, 94 (1980) (“[O]nce a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.”). Issue preclusion may be applied where “(1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been fully adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raise had a full and fair

opportunity to litigate the issue in the prior action.” *Adams*, 340 F.3d at 1083 (quotation omitted).

III. ANALYSIS

The SEC contends it is entitled to summary judgment on its claims against Defendants Stewart and Sewall because they cannot relitigate in this case the legal and factual determinations that support the criminal convictions in their criminal case. The Court agrees.

“It is well-established that ‘a prior criminal conviction may work an estoppel in favor of the Government in a subsequent civil proceeding.’” *SEC v. Apostelos*, No. 1:15-cv-00699, 2019 WL 3944755, at *5 (S.D. Ohio Aug. 21, 2019) (quoting *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 568 (1951)).

The securities violations alleged in this case are premised on the same conduct and fraudulent scheme as the criminal case, and it is evident that the factual issues in both proceedings are essentially the same. *See SEC v. C.J.’s Fin.*, No. 10-13083, 2012 WL 3600239, at *4-7 (E.D. Mich. July 30, 2012) (noting similarity between wire fraud statute and securities regulations and applying issue preclusion).

In the criminal case, the jury received the following instruction on the elements of wire fraud:

To find the defendants committed the crime of wire fraud you must be convinced that the Government has proved each of the following beyond a reasonable doubt:

First: the defendants devised or intended to devise a scheme to defraud the investors identified during this trial by making false and fraudulent representations regarding investments in a foreign currency exchange program;

Second: the defendants acted with a specific intent to defraud;

Third: the defendants cause another person to use interstate or foreign wire communication facilities for the purpose of carrying out the scheme;

Fourth: the scheme employed false or fraudulent pretenses, representations, or promises that were material.

(*Stewart*, No. 21-cr-00034-WJM, ECF No. 342 at 31-32.) Thus, in convicting Defendants Stewart and Sewall on the wire fraud counts, the jury necessarily found that (1) they knowingly devised or participated in a scheme to defraud investors by using false or fraudulent pretenses, representations, or promises, (2) those false pretenses, representations, or promises were material, (3) they acted with the intent to defraud, and (4) they transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme. The Court has little trouble concluding that issue preclusion applies here, particularly as the SEC's Motion is unopposed.

First, the same issues in this case were litigated in the criminal case. The criminal case established that Defendants Stewart and Sewall made misrepresentations and omissions that were material in connection with sales of securities and that they acted with the requisite scienter.

Second, judgment has entered against both Defendants. Defendant Sewall unsuccessfully appealed his conviction. Although Defendant Stewart's appeal is pending, the judgment against him has been fully adjudicated for issue preclusion purposes.

Third and fourth, Defendants Stewart and Sewall are parties in both the criminal case and this one, and they had a full and fair opportunity to litigate their liability in their criminal case.

Additionally, the SEC has identified evidence to support the additional elements of their claims, demonstrating that Defendants Stewart and Sewall (1) offered investments that were

securities, (2) were investment advisors, (3) employed a pooled investment vehicle, and (4) sold unregistered securities. Defendants have not even attempted to identify any evidence creating a genuine issue of material fact as to these elements of the relevant securities regulations.

IV. CONCLUSION

Based on the foregoing, the SEC's Motion for Summary Judgment (ECF No. 702) is GRANTED.

DATED this 14th day of September, 2026.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Raymond P. Moore', is written over a horizontal line.

RAYMOND P. MOORE
Senior United States District Judge