

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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In the Matter of  
DAVID MURA : INITIAL DECISION  
: March 11, 2015

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APPEARANCES: Aaron P. Arnzen and Joseph P. Ceglio for the  
Division of Enforcement, Securities and Exchange Commission

David Mura, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

### SUMMARY

This Initial Decision (ID) concludes that no disgorgement or civil penalties will be imposed on David Mura (Mura) due to his inability to pay.

### I. PROCEDURAL BACKGROUND

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings on September 24, 2012, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act). On December 5, 2014,<sup>1</sup> the Commission issued an order (Continuation Order), pursuant to Mura's offer of settlement, making various findings of facts and conclusions of law and imposing a cease-and-desist order and other sanctions on Mura and otherwise resolving all issues in this proceeding except for the determination of whether Mura should be ordered to pay disgorgement and penalties and, if so, the amount of such disgorgement and penalties.<sup>2</sup> *David Mura*, Exchange Act Release No. 73754, 2014 SEC LEXIS 4750.

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<sup>1</sup> An Initial Decision was issued in the interim. *David Mura*, Initial Decision Release No. 491, 2013 SEC LEXIS 1700 (A.L.J. June 14, 2013). Thereafter, the Commission vacated the Initial Decision and remanded the case for further proceedings. *David Mura*, Exchange Act Release No. 72080, 2014 SEC LEXIS 1530 (May 2, 2014).

<sup>2</sup> Familiarity with the findings of facts and conclusions of law in the Continuation Order is assumed for the purpose of this ID.

As permitted by the Continuation Order, the determination concerning disgorgement and penalties is being made by means of summary disposition, pursuant to 17 C.F.R. § 201.250. Continuation Order at ¶ IV.(d). As agreed upon by the parties, this determination is being made through filings that include Mura's Form D-A (17 C.F.R. § 209.1). *See David Mura*, Admin. Proc. Rulings Release No. 2151, 2014 SEC LEXIS 4867 (A.L.J. Dec. 18, 2014). Accordingly, this ID is based on: (1) Mura's Form D-A and supplemental information received on January 20 and 27, 2015; and (2) the Division of Enforcement's responsive submission, received on February 6, 2015. These filings were submitted under seal and will be subject to a protective order pursuant to 17 C.F.R. § 201.322.<sup>3</sup>

## II. FINDINGS AND CONCLUSIONS

As Mura has urged, and the Division does not dispute, Mura's liabilities, including a large outstanding judgment, far exceed the value of his assets, and he has a limited income. Under these circumstances, in the public interest, Mura will not be ordered to pay disgorgement or civil penalties. *See* Section 21B(d) of the Exchange Act;<sup>4</sup> 17 C.F.R. § 201.630(a).<sup>5</sup> In fact, to order him to pay disgorgement or penalties would be futile, as such a judgment would be uncollectible.

In light of the above, Mura will not be ordered to pay disgorgement or civil penalties.

IT IS SO ORDERED.

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<sup>3</sup> Although the record in a public hearing is presumed to be public, the harm resulting from disclosure of Mura's financial situation outweighs the benefits. *See* 17 C.F.R. § 201.322(b). Disclosure of financial information concerning an individual is presumed harmful. It is specifically limited in various statutes, for example, Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and the Privacy Act, 5 U.S.C. § 552a. There is no benefit from disclosure in this case.

<sup>4</sup> Exchange Act Section 21B authorizes the Commission to impose a civil penalty in a proceeding, such as this one, instituted pursuant to Exchange Act Section 15(b). Section 21B(d) provides:

In any proceeding in which the Commission . . . may impose a penalty under this section, a respondent may present evidence of [his] ability to pay such penalty. The Commission . . . may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may related to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

<sup>5</sup> "The [Administrative Law Judge] may, in . . . her discretion, consider evidence concerning ability to pay in determining whether disgorgement . . . or a penalty is in the public interest."

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak  
Administrative Law Judge