

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12228

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
August 29, 2006

In the Matter of :
:
JAMES E. FRANKLIN : ORDER
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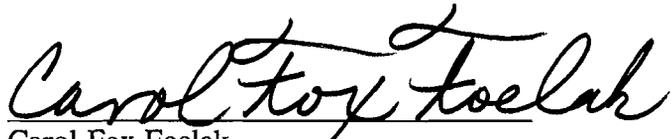
On June 29, 2006, James E. Franklin (Franklin) was barred, by default, from participating in an offering of penny stock. James E. Franklin, Exchange Act Release No. 54069 (A.L.J. June 29, 2006) (Default Order). Under consideration are Franklin's motion, filed July 21, 2006, to set aside the default pursuant to 17 C.F.R. § 201.155(b) and the Division of Enforcement's opposition, filed July 26, 2006, to Franklin's motion.

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Franklin on March 6, 2006, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleged that he was permanently enjoined in 2005 from violating the antifraud and other provisions of the federal securities laws. The only sanction authorized by the OIP was a penny stock bar. Franklin was served with the OIP on May 31, 2006. He failed to file an Answer, due twenty days after service of the OIP. See 17 C.F.R. § 201.220(b); OIP at 3. Accordingly, the undersigned found him in default and determined the proceeding against him. See 17 C.F.R. §§ 201.155(a), .220(f); OIP at 3.

"A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding." 17 C.F.R. § 201.155(b). Franklin's motion was "made within a reasonable time," and he describes various personal difficulties as "the reasons for his failure to appear or defend." Concerning the nature of his proposed defense, Franklin argues that, having brought an action for an injunction, disgorgement, and civil penalties against him in U.S. District Court, the Commission is foreclosed from bringing an administrative proceeding against him seeking a penny stock bar. This argument fails as a defense because Section 15(b) of the Exchange Act specifically authorizes an administrative proceeding seeking to bar an individual that is based on an injunction against that individual. See Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act. Nonetheless, to ensure fairness, Franklin will be given

an opportunity to file an Answer to the OIP by September 13, 2006.¹ If he files an Answer by that date, the default will be set aside, and further procedures will be ordered, as appropriate.

IT IS SO ORDERED.


Carol Fox Foelak
Administrative Law Judge

¹ Franklin requests a sixty-day extension of time to file his Answer, which was due June 20, 2006. The September 13 date is an extension of more than sixty days.