

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release. No. 3908 / September 2, 2014

Admin. Proc. File No. 3-14536

In the Matter of

MONTFORD AND COMPANY, INC.,
d/b/a MONTFORD ASSOCIATES, and
ERNEST V. MONTFORD, SR.

ORDER DISMISSING MOTION FOR
STAY FOR LACK OF JURISDICTION

On May 2, 2014, the Commission issued an opinion and order finding that Montford and Company, d/b/a Montford Associates ("Montford Associates"), and Ernest V. Montford ("Montford"; together with Montford Associates, the "Respondents") violated the antifraud and disclosure provisions of the Investment Advisers Act of 1940 by failing to disclose a material conflict of interest to their clients and making material misstatements to clients and in Forms ADV. Based on the violations, the Commission concluded it was in the public interest to impose an industry-wide bar against Montford; order disgorgement, jointly and severally, of \$210,000 plus prejudgment interest; assess civil money penalties of \$500,000 and \$150,000 against Montford Associates and Montford, respectively; and order Respondents to cease and desist from committing or causing violations and future violations of the provisions they violated.

On August 19, 2014, Respondents filed with the Commission a Motion to Stay the Commission's Sanctions Order Pending Judicial Review. In support of their motion, Respondents state that on June 27, 2014, they filed a petition for review of the Commission's opinion and order with the United States Court of Appeals for the District of Columbia Circuit. They request that, during the pendency of their appeal, the Commission stay the sanctions it imposed in its order. The Division of Enforcement opposes the motion.

We have determined to dismiss the motion. Rule of Practice 401(c) provides that "a motion seeking to stay the effectiveness of a Commission order pending judicial review may be made to the Commission at any time during which the Commission retains jurisdiction over the proceeding."¹ As relevant here, Advisers Act Section 213(a) provides that, upon the filing of a petition for review of a Commission order with the United States Court of Appeals, that "court shall have jurisdiction, which upon the filing of the record, shall be *exclusive*, to affirm, modify, or set aside such order, in whole or in part."² On August 12, 2014, seven days

¹ 17 C.F.R. § 201.401(c).

² 15 U.S.C. § 80b-13(a) (emphasis supplied).

before Respondents filed their stay motion with the Commission, the Commission's Office of the Secretary, by delegated authority, filed the record in this proceeding with the D.C. Circuit in response to Respondents' petition for review.³ As a result of the filing of the record with the court of appeals, the Commission lacks jurisdiction to grant the relief requested.

Accordingly, IT IS ORDERED that the Motion to Stay the Commission's Sanctions Order Pending Judicial Review is dismissed.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.⁴

Lynn M. Powalski
Deputy Secretary

³ Pursuant to Rule of Practice 323, we take official notice of this filing, which is publicly available through the Federal Judiciary's Public Access to Court Records (PACER) system. 17 C.F.R. § 201.323 (permitting official notice of, *inter alia*, "any material fact which might be judicially noticed by a [U.S.] district court"); *see, e.g., Peviani v. Hostess Brands, Inc.*, 750 F. Supp. 2d 1111, 1116 (C.D. Cal. 2010) (concluding that "a court may take judicial notice of . . . court records available . . . through the Pacer system" (quotation marks and citation omitted)).

⁴ 17 C.F.R. § 200.30-14(g)(5).