

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11259

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
October 30, 2003

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

NOV 03 2003

FIRST CLASS

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In the Matter of :  
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MICHAEL BATTERMAN and : ORDER  
RANDALL B. BATTERMAN III :  
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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on September 15, 2003. I held a telephonic prehearing conference yesterday, and the Division of Enforcement (Division) and Respondents participated.

Respondents have now filed answers to the OIP. Although the answers were untimely, I find good cause for accepting them. I also vacate my earlier Order directing Respondents to show cause why they should not be held in default.


The OIP is based on an injunction entered against Respondents on July 23, 2003, in SEC v. Batterman, 00 Civ. 4835 (S.D.N.Y.) (LAP). Respondents have recently appealed that injunction to the U.S. Court of Appeals for the Second Circuit (Case No. 03-6213).

The parties seek a fifteen-day postponement pursuant to Rule 161(c)(2) of the Commission's Rules of Practice, claiming that "they have agreed in principle to a settlement of all major terms." After listening to the parties at the prehearing conference, however, it is not clear that there is an agreement in principle on "all" major terms. Respondents intend to pursue their appeal before the Second Circuit. The settlement offers they intend to make are contingent on the Commission's promise promptly to vacate any sanctions imposed in this proceeding if Respondents eventually prevail in their appeal of the underlying injunction. The Division is not clear if it will insist on a global settlement of all issues in both proceedings, or if it will close the books on this administrative proceeding while the Office of the General Counsel continues to litigate on the Commission's behalf before the Second Circuit.

I have considerable doubts as to whether this so-called "agreement in principle on all major terms" is reality or mirage. I therefore find that Rule 161(c)(2), which makes a fifteen-day stay compulsory, has not been satisfied. Nonetheless, in the exercise of my discretion under Rule 161(a) of the Commission's Rules of Practice, I will give the parties fifteen days to memorialize the terms of their "settlement" in writing. Counsel for the Division should use that

period to consult with the appropriate supervisors in the Northeast Regional Office and in Washington, D.C.

The hearing previously scheduled for November 5, 2003, will be postponed to a date to be determined. A telephonic prehearing conference will be held on November 20, 2003, at 2 p.m. Eastern time. The Division should initiate the call and obtain a court reporter.

  
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James T. Kelly  
Administrative Law Judge