

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1883/October 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15764

In the Matter of	:	
	:	ORDER ON MOTION FOR
GARY L. MCDUFF	:	EXTENSION OF TIME
	:	

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings on February 21, 2014, pursuant to Section 15(b) of the Securities Exchange Act of 1934. Motions for summary disposition were filed and fully briefed by both the Division of Enforcement (Division) and Respondent Gary L. McDuff (McDuff).

On September 5, 2014, I issued an Initial Decision, granting the Division's Motion for Summary Disposition, denying McDuff's Motion for Summary Disposition, and imposing an associational bar against McDuff. *Gary L. McDuff*, Initial Decision Release No. 663, 2014 SEC LEXIS 3207. In the Initial Decision, I informed the parties that they may file a motion to correct a manifest error of fact (motion to correct) within ten days of the Initial Decision. *Id.* at *25.

On September 29, 2014, McDuff, through an agent, faxed to the Office of the Secretary a motion for an expansion of time to file a motion to correct (Motion). In the Motion, McDuff asserts that he received the Initial Decision on September 19, 2014, and that he has been denied telephone and email access until the week beginning September 29, 2014. McDuff claims that he needs those services to access information to incorporate into a motion to correct, and requests that the ten day limit for filing a motion to correct begin to run from the time McDuff is restored access to those services.

Before discussing the merits of the Motion, there is the issue whether a motion to correct would be untimely. Commission Rule of Practice (Rule) 111(h) provides that "[a]ny motion to correct must be filed within ten days of the initial decision." 17 C.F.R. § 201.111(h). There is some authority suggesting that the ten day period runs from the date of issuance of the initial decision, making a motion to correct in this case due on September 15, 2014, two weeks before McDuff filed the Motion. *See, e.g., Mitchell M. Maynard*, Admin. Proc. Rulings Release No. 645, 2008 SEC LEXIS 3143 (Sept. 8, 2008). However, nothing in the text of Rule 111(h) clearly indicates whether the ten day period runs from the date of issuance or the date of service. 17 C.F.R. § 201.111(h).

The right to file a motion to correct would be nullified if, as here, the respondent did not receive the Initial Decision until after the ten day period from issuance of the Initial Decision expired. *Cf.* 17 C.F.R. § 201.103(a) (“The Rules of Practice shall be construed and administered to secure the *just*, speedy, and inexpensive determination of every proceeding.” (emphasis added)); *Joseph P. Doxey*, Admin Proc. Rulings Release No. 1514, 2014 SEC LEXIS 2032, at *2 (June 12, 2014). In the Motion, McDuff claims that he did not receive the certified mail containing the Initial Decision until September 19, 2014, fourteen days after the Initial Decision was issued. Tracking information obtained from the U.S. Postal Service website supports McDuff’s claim. Because McDuff is currently imprisoned and his communication is limited, it is possible that September 19, 2014, was the first time McDuff had an opportunity to read the Initial Decision. McDuff would suffer undue prejudice if he were required to file a motion to correct by September 15, 2014, before having had an opportunity to receive, let alone review, the Initial Decision. For this reason, I do not find that McDuff’s motion to correct would be untimely.

Turning to the Motion, multiple factors support granting McDuff additional time to prepare and file a motion to correct. McDuff claims that he was incorrectly prevented from using email and telephone until the week beginning September 29, 2014. Although I have no ability to substantiate McDuff’s claims, I have no reason to doubt them either. Moreover, I recognize that prisoners have limited access to computer resources, McDuff has proceeded in this matter *pro se*, and that the Division would suffer no prejudice if McDuff were granted an extension. All these factors support granting the Motion.

Accordingly, it is ORDERED that McDuff shall have until Wednesday, October 17, 2014, to file a motion to correct. Under Rule 111(h), a “motion to correct is properly filed . . . only if the basis for the motion is a patent misstatement of fact in the initial decision.” 17 C.F.R. § 201.111(h). In his motion to correct, McDuff should clearly identify what he believes are the patent misstatement of facts in the Initial Decision.

Cameron Elliot
Administrative Law Judge