

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3582/ February 8, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16914

In the Matter of

EVELYN LITWOK

ORDER

On October 21, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondent Evelyn Litwok under Section 203(f) of the Investment Advisers Act of 1940. This proceeding is a follow-on proceeding based on *United States v. Litwok*, 2:02-CR-0427 (E.D.N.Y., amended judgment Aug. 12, 2013), in which Litwok was convicted of tax evasion. The Second Circuit affirmed Litwok's conviction. *United States v. Litwok*, 611 F. App'x 12 (Apr. 28, 2015).

Litwok was personally served with the OIP on November 3, 2015. *Evelyn Litwok*, Admin. Proc. Rulings Release No. 3344, 2015 SEC LEXIS 4840 (Nov. 24, 2015). To date, Litwok has failed to file an answer to the OIP, which was due November 23, 2015. She did not appear at the prehearing conference held on November 23, of which she was notified. *Id.* She also failed to show cause by December 4, 2015, as directed in my order to show cause. *Id.* She has not responded to the Division's motion for default and sanctions, which was filed on January 25, 2016.

On February 4, 2016, the Division forwarded to my office a letter that Litwok mailed to Division counsel, but addressed to "Administrative Law Judge." In her letter, Litwok requests an additional ninety days "to answer the initial filing." I construe this as a request for an additional ninety days to file an answer to the OIP. Litwok asserts that: she just recently found permanent housing; she has a 28 U.S.C. § 2255 motion pending before the district court, in which she seeks to challenge her underlying criminal conviction and "assumed" the Commission would wait until that collateral proceeding was over before commencing this administrative proceeding; and she needs time to find documents necessary to file an answer, as those documents are "scattered in a number of friends['] homes." The Division opposes Litwok's request.

Litwok's request is DENIED. Litwok has until February 25, 2016, to file a response to the Division's motion for default and sanctions.

Litwok has been aware of this proceeding for months and has failed to participate despite numerous opportunities to do so. In fact, the Division represents that she notified it on November 24, 2015, that she was in receipt of papers sent to her in connection with this proceeding. In mid-January, Litwok submitted a change of address. She is not a newcomer to this administrative forum, as she participated pro se in a prior Commission proceeding. *See Evelyn Litwok*, Initial Decision Release No. 426, 2011 SEC LEXIS 2669 (ALJ Aug. 4, 2011), *proceeding dismissed*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012). Litwok provides no specifics about what documents she needs to file an answer; the OIP's allegations concern matters within her personal knowledge which she could have answered in accordance with Rule of Practice 220, 17 C.F.R. § 201.220. Her pending challenge to her conviction is not a basis for delaying this proceeding. *See Daniel J. Gallagher*, Exchange Act Release No. 70305, 2013 SEC LEXIS 2578, at *6 n.11 (Sept. 3, 2013); *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *11 n.21 (Aug. 23, 2002). Accordingly, Litwok's failures to file a timely answer or show cause remain unjustified and unexcused. *Cf. Jacob Keith Cooper*, Securities Act Release No. 10035, 2016 WL 453458, at *4 (Feb. 5, 2016) (explaining that deadlines "in agency proceedings" matter).

Lastly, Litwok is reminded that any submission must be filed in paper format with the Commission's Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street N.E., Mail Stop 1090, Washington, D.C. 20549. Among other requirements, each filing must include a signed original and three copies, and a certification that a copy has been served on Division counsel. *See* 17 C.F.R. §§ 201.151, .152, .153.

James E. Grimes
Administrative Law Judge