

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 3967/July 7, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-17210

In the Matter of

PAUL LEON WHITE, II

ORDER FINDING
RESPONDENT IN
DEFAULT

Despite being granted an extension of time, Respondent Paul Leon White, II, has not filed an answer to the order instituting proceeding (OIP). The volume of White's other filings, however, shows that he could have answered the OIP but has intentionally failed to do so. As is discussed more fully below, White is in DEFAULT for refusing to answer the OIP. *See* 17 C.F.R. §§ 201.155(a)(2), .220(f).

Background

The Securities and Exchange Commission initiated this proceeding in April 2016. White, who is currently incarcerated in a New York state prison, was served with the OIP on April 21, 2016. *Paul Leon White, II*, Admin. Proc. Rulings Release No. 3841, 2016 SEC LEXIS 1732, at *1 (ALJ May 13, 2016); OIP at 1. As a result, his answer to the OIP was due May 11, 2016. *Paul Leon White, II*, 2016 SEC LEXIS 1732, at *1.

I held a telephonic prehearing conference May 13, 2016. *Paul Leon White, II*, 2016 SEC LEXIS 1732, at *1. Prior the May 13 conference, White mailed a six-page motion to waive various procedural requirements and to dismiss the proceeding based on various alleged violations of the Rules of Practice. During the prehearing conference, I denied White's motion to dismiss but granted in part his request to waive certain procedural requirements. Tr. 7-12; *see Paul Leon White, II*, 2016 SEC LEXIS 1732, at *2-3. Owing to his incarcerated status, I granted White until May 27, 2016, to mail his answer to the OIP. Tr. 15; *see Paul Leon White, II*, 2016 SEC LEXIS 1732, at *3. I also explained to White that his answer to the OIP need not be lengthy and that he only needed to admit or deny the allegations or state that he could do neither, and generally state his defenses, which he could develop more fully in later submissions. Tr. 11-12, 15. Finally, I set a summary disposition schedule. *See Paul Leon White, II*, 2016 SEC LEXIS 1732, at *1; Tr. 16.

Between the date of the conference and May 26, 2016, my office received the following from White:

- A two-page motion for an order granting him *in forma pauperis* status;
- A one-page motion to allow him to be represented by a non-attorney;
- A two-page motion for a more definite statement;
- A one-page letter expressing outrage that the Division of Enforcement had served him via UPS rather than the postal service; and
- A one-page letter to Division counsel regarding White's access to certain files.

I denied White's motions on May 26, 2016. *Paul Leon White, II*, Admin. Proc. Rulings Release No. 3872, 2016 SEC LEXIS 1871.

Between May 26, 2016 and May 31, 2016, my office received the following from White:

- A one-page letter dated May 18, 2016, in which White asserted that because of his "extremely limited access to [his] prison[']s] law library," "there [was] a great likelihood that" he would not be able to timely answer the OIP;
- A three-page second motion for a more definite statement; and
- A series of nine subpoenas duces tecum directed to a number of individuals, together with a three-page "affirmation in support."

I denied without prejudice White's request for subpoenas on June 6, 2016. *Paul Leon White, II*, Admin. Proc. Rulings Release No. 3894, 2016 SEC LEXIS 1990, at *3-8.

On June 6, 2016, my office received the following from White:

- A one-page letter again seeking *in forma pauperis* status;
- A five-page second motion to extend time to answer the OIP;
- A four-page motion seeking to dismiss the proceeding, asking for an extension of time until June 15, 2016, to answer the OIP, and arguing that he was not trying to relitigate his conviction;
- A two-page "motion for pre-hearing submission pursuant to Rule 222"; and
- A five-page motion seeking various documents and lists of witnesses.

In his second extension motion, "White assert[ed] that due to conditions in his prison's library and his lack of access to a word processor, he requires additional time to answer the OIP." *Paul Leon White, II*, Admin. Proc. Rulings Release No. 3902, 2016 SEC LEXIS 2031, at *3 (ALJ June 8, 2016).

Two days later, I ordered White to show cause why he should not be found in default for failing to answer the OIP.¹ *Paul Leon White, II*, 2016 SEC LEXIS 2031, at *4-5. I noted that White's claim that his circumstance limited his ability to timely respond was belied by the flood of filings he had submitted. *Id.* at *4. I gave White until June 22, 2016, to respond to the order to show cause. *Id.* at *4-5. I also deferred ruling on White's pending motions until he answers the OIP. *Id.* at *5.

In June, after I ordered White to show cause, my office received the following from White:

- A five-page letter raising multiple complaints, together with a one-page request for additional time to reply to the Division's opposition to his second motion for a more definite statement (received June 15, 2016);
- A one-page motion asking for additional time to reply to the Division's opposition to his first set of motions (received June 21, 2016);
- A one-page letter to Division counsel (received June 21, 2016);
- A two-page cover letter and three-page motion to extend time to respond to the Division's motion for summary disposition (received June 24, 2016);
- A one-page motion to extend time to reply to the Division's opposition to White's third motion to extend time to answer the OIP (received June 27, 2016); and
- A one-page motion to extend time to answer the order to show cause (received June 27, 2016).

Finally, on July 5, 2016, my office received a thirteen-page filing styled as a response to the order to show cause. In this filing, White asks for more time to answer the OIP, argues that the order to show cause violates the Commission's Rules of Practice, and argues that the Division's motion for summary disposition also violates the Rules of Practice.

¹ The Commission strongly favors giving a respondent notice of his possible default and an opportunity to address it. *See Vladislav Steven Zubkis*, Exchange Act Release No. 51364, 2005 WL 597022, at *2 (Feb. 18, 2005) (“[W]e generally consider it a prudent practice for a law judge who is considering the issuance of a default order against a respondent to first order that respondent to show cause why a default is not warranted.”); *see also Richard S. Kern*, Exchange Act Release No. 51115, 2005 WL 711681, at *2 (Feb. 1, 2005) (“[I]t is a long-standing and helpful—although not explicitly required—practice in cases where a Respondent is apparently in default for the law judge to order a respondent to show cause within a brief period why he or she should not be found in default.”).

Discussion

Under Rule of Practice 220(f), 17 C.F.R. § 201.220(f), a respondent who fails to file a timely answer to an OIP may be found in default under Rule of Practice 155(a), 17 C.F.R. § 201.155(a). Rule 155 in turn provides that if a party is deemed to be in default, an administrative law judge “may determine the proceeding against that” respondent and may deem as true the allegations in the OIP. 17 C.F.R. § 201.155(a).

The operative portion of the OIP in this matter consists of four numbered paragraphs. The first paragraph contains biographical allegations, such as whether White was associated with a broker-dealer and held himself out as an investment adviser. The second paragraph alleges facts related to his indictment. The third paragraph, which is one sentence in length, alleges that White was convicted of seven counts of grand larceny and one count of a scheme to defraud. The fourth paragraph alleges that White was sentenced to twenty-one to sixty-three years’ imprisonment and to pay restitution of nearly \$3 million. In short, the operative portion of the OIP alleges facts that are within the scope of White’s personal knowledge and which he could answer without undue difficulty.

Despite being incarcerated, White has submitted more filings than any previous respondent in any follow-on proceeding I have adjudicated.² Through his actions, White has demonstrated an understanding of the Commission’s Rules of Practice and an ability to draft and submit filings. Given (1) the amount of time he has been afforded to answer the OIP and to show cause, (2) the number of other filings he has submitted, and (3) what little would be required to answer the OIP, it is plain that White could have, but has not, answered the OIP. Indeed, White’s *thirteen-page* purported response to the order to show cause, which is filled with irrelevant and mistaken arguments, seems designed to show that he could easily answer the OIP but that for reasons unknown, he refuses to do so. I therefore conclude that White’s failure to answer the OIP is the result of an intentional decision on his part. As a result, White is in DEFAULT. Given that White is in default, his pending motions are denied as moot. An order adjudicating the Division’s pending motion for summary disposition, construed as a motion for sanctions, will follow.

White may move to set aside the determination that he is default by complying with Rule 155(b), 17 C.F.R. § 201.155(b). Rule 155(b) provides:

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. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of

² A follow-on proceeding is one that seeks to impose sanctions after an individual is convicted of or enjoined from committing certain securities-related acts.

the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

17 C.F.R. § 201.155(b).

James E. Grimes
Administrative Law Judge