

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4838/May 30, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17645

In the Matter of

GARY C. SNISKY

NOTICE OF STAY

In light of the U.S. Court of Appeals for the Tenth Circuit's recent decision denying rehearing en banc in *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016), *reh'g and reh'g en banc denied*, No. 15-9586, 2017 WL 1717498 (10th Cir. May 3, 2017), the Securities and Exchange Commission has stayed all administrative proceedings assigned to an administrative law judge in which a respondent has the option to seek review in the Tenth Circuit of a final order of the Commission. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10365, 2017 WL 2224348 (May 22, 2017).

On October 27, 2016, the Commission issued an order instituting proceedings (OIP) under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940. Both these statutes provide a person aggrieved by a Commission order with review in a circuit court of appeals in the circuit in which the person resides or has his principal place of business. 15 U.S.C. §§ 78y(a)(1), 80b-13(a).

The OIP is based on an underlying civil judgment in the District Court of Colorado enjoining Snisky from violating several provisions of the securities laws and does not describe Snisky's residence. OIP at 1. The OIP does note, however, that the complaint in the civil case alleged that Snisky used his Longmont, Colorado-based investment entity to conduct fraudulent activities. *Id.* at 2. One can also reasonably infer from the filings in the related criminal proceeding that Snisky resided in Colorado before being incarcerated at FCI Fort Dix, New Jersey, as the result of his guilty plea. *See United States v. Snisky*, No. 13-cr-473, ECF No. 74 at 2 (D. Colo. Oct. 27, 2014); *see Answer* at 1 (filed Nov. 21, 2016) (establishing Snisky's prison address). It is likely that Snisky remains a Colorado resident despite his incarceration outside the state. *See Smith v. Cummings*, 445 F.3d 1254, 1260 (10th Cir. 2006) ("Because domicile is a voluntary status, a prisoner is presumed to be a citizen of the state of which he was a citizen before his incarceration, even if he is subsequently incarcerated in another state.")

It appears that Snisky might well have a right of appeal to the Tenth Circuit due to his connections to the state of Colorado. Accordingly, this proceeding is stayed.

Brenda P. Murray
Chief Administrative Law Judge