

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

Administrative Proceedings Rulings
Release No. 5243 / November 29, 2017

Administrative Proceeding
File No. 3-18127

In the Matter of
Martin Shkreli

Order Denying Motion for Stay

In responding to a motion for summary disposition filed by the Division of Enforcement, Respondent Martin Shkreli moved to stay this proceeding. The Division opposes Shkreli's motion. Because Shkreli has not shown that a stay is warranted, his motion is denied.

A jury convicted Shkreli in August 2017 of two counts of securities fraud and one count of conspiracy to commit securities fraud.¹ Relying on Shkreli's conviction, the Securities and Exchange Commission instituted this proceeding to determine whether a remedial sanction should be imposed.² I recently denied in part the Division's motion for summary disposition.³ A hearing is currently scheduled to take place starting in late January 2018.⁴

Following his conviction, Shkreli filed a motion under Federal Rule of Criminal Procedure 29 for a judgment of acquittal.⁵ Shkreli predicts that the district court will rule on his motion by the end of December and that if it is

¹ See *Martin Shkreli*, Admin. Proc. Rulings Release No. 5233, 2017 SEC LEXIS 3638, at *7 (ALJ Nov. 17, 2017).

² *Id.* at *1.

³ *Id.* at *17.

⁴ *Id.*

⁵ Mot. at 1. Because the Division does not dispute Shkreli's factual assertions, I will accept them as established for purposes of this order.

denied, he will be sentenced on January 16, 2018.⁶ In that event, he says he will appeal his conviction.⁷ If the district court rules in Shkreli's favor, Shkreli says there will be no basis for this proceeding.⁸

The Commission "strongly disfavor[s]" stay motions.⁹ As a result, it has set a high bar for parties who seek a stay. A movant must "show[]" that denying his stay motion "would 'substantially prejudice [his] case.'"¹⁰

Shkreli argues that denying his motion will substantially prejudice him because the Division will be able to rely on a conviction that might later be overturned.¹¹ But if I impose a remedial sanction and the district court later grants Shkreli's motion or the court of appeals vacates his conviction, Shkreli will be able to ask the Commission for relief.¹² Moreover, having to litigate this proceeding does not constitute substantial prejudice.¹³

Shkreli also says a stay is required so that he can rely on evidence presented during the trial of his co-conspirator, which will continue through at least the end of November.¹⁴ But because Shkreli's hearing will not occur until late January, denying his stay motion will not prejudice him. Further, even if the co-conspirator's trial were not going to take place until after Shkreli's hearing, there is no rule preventing Shkreli from calling the

⁶ Mot. at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Lynn Tilton*, Investment Advisers Act of 1940 Release No. 4735, 2017 WL 3214456, at *1 (July 28, 2017) (quoting 17 C.F.R. § 201.161(b)(1)).

¹⁰ *Id.* (quoting 17 C.F.R. § 201.161(b)(1)).

¹¹ Mot. at 1.

¹² *David R. Wulf*, Advisers Act Release No. 4356, 2016 WL 1085661, at *5 n.21 (Mar. 21, 2016).

¹³ *Cf. Tilton v. SEC*, 824 F.3d 276, 285–86 (2d Cir. 2016) (holding that the burden of having to go through allegedly unwarranted administrative proceedings, even at "substantial" expense, "does not amount to an irreparable injury"); *Tilton*, 2017 WL 3214456, at *2 ("[T]he burden of being haled into an allegedly improper forum does not constitute an irreparable injury warranting interruption of an ongoing proceeding.") (citation omitted).

¹⁴ Mot. at 1.

witnesses from that trial to testify in his hearing. Shkreli also argues that granting a “stay will conserve resources.”¹⁵ But Shkreli’s reliance on the possible conservation of resources is misplaced; the Commission weighs “prompt enforcement of the federal securities laws” more heavily than efficiency.¹⁶ Shkreli’s motion is DENIED.

James E. Grimes
Administrative Law Judge

¹⁵ *Id.* at 2.

¹⁶ *Tilton*, 2017 WL 3214456, at *2; *see Wulf*, 2016 WL 1085661, at *5 n.21 (“[T]he pendency of an appeal of a civil or criminal proceeding does not justify any delay in related ‘follow-on’ administrative proceedings.” (citation omitted)).