In the Matter of
Gary C. Snisky

Order Ratifying Prior Actions


On November 30, 2017, the Commission lifted the stay and reaffirmed my administrative law judge appointment; directed that I reconsider the record, including all substantive and procedural rulings; and instructed me to determine, based on reconsideration, whether to ratify or revise my prior actions in the proceeding. Pending Admin. Proc., Securities Act of 1933 Release No. 10440, 2017 SEC LEXIS 3724, at *4-5 (Nov. 30, 2017).

Snisky filed a letter dated January 29, 2018, requesting that the proceeding be dismissed. Snisky did not submit any new evidence. His arguments address alleged flaws in the Commission’s ratification process as well as issues that go to the merits of the proceeding.\textsuperscript{1} Snisky’s claims are difficult to sort out, but he appears to argue that this proceeding is illegitimate because Commission administrative law judges were not appointed as required by Article II of the Constitution. Letter at 1-3, 5-7. Snisky also argues that the case against him was improperly brought under Section 15(b) of the Securities Exchange Act of 1934 because he is neither a broker nor a person associated with a broker. \textit{Id.} at 4-5.

The Division’s reply, submitted March 16, 2018, enumerates four orders issued in the proceeding prior to November 30, 2017, which, according to the Division, were largely procedural.\textsuperscript{2} Reply at 2. The Division sees little merit in Snisky’s Appointments Clause challenge in view of the Commission’s November 30 order ratifying my appointment as an administrative law judge. \textit{Id.} at 2-3. The Division also responds to Snisky’s merits arguments. \textit{Id.} at 3-6.

**Ruling on Ratification**

Snisky has submitted no new evidence. I have reviewed the four orders that I issued prior to November 30, 2017: three concerned scheduling, and the other was a protective order that also set a motions schedule and denied Snisky’s motion to stay the proceeding. I also issued a notice of the Commission’s stay of the proceeding.

The only argument Snisky raises in his letter that is relevant to my prior actions in this proceeding relates to the Appointments Clause, but I see no merit in it. Whether or not Commission administrative law judges are inferior officers—a matter now before the Supreme Court—the Commission ratified my initial appointment, which itself was in accord with the statutes, regulations, and Commission procedures in effect when I was hired by the Commission. \textit{See} 5 U.S.C. § 3105. The Commission’s ratification order “resolv[ed] any Appointments Clause claims” in this proceeding. \textit{Pending

\begin{footnotesize}

\textsuperscript{2} My denial of Snisky’s motion for a stay was not procedural.
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I will not address Snisky’s merits arguments here. Rather, I will consider them his response to the Division’s motion for summary disposition and adjudicate them when I rule on the motion.

I have reconsidered the record, and I RATIFY all the actions I took in this proceeding before the Commission ratified my appointment. The process contemplated by the Commission’s November 30 order is complete.

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Brenda P. Murray
Chief Administrative Law Judge