

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

Administrative Proceedings Rulings
Release No. 5658 / March 26, 2018

Administrative Proceeding
File No. 3-17645

In the Matter of
Gary C. Snisky

Order Ratifying Prior Actions

This administrative proceeding began with an order instituting proceedings issued on October 27, 2016. The proceeding is based on *SEC v. Snisky*, No. 13-cv-3149 (D. Colo. Aug. 12, 2016), in which Respondent is alleged to have been permanently enjoined from violating the registration and antifraud provisions of the federal securities laws. The Commission stayed the proceeding on May 22, 2017. *See Gary C. Snisky*, Admin. Proc. Rulings Release No. 4838, 2017 SEC LEXIS 1591 (ALJ May 30, 2017).

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).

On December 15, 2017, I ordered Snisky to file any new evidence that he considered relevant to my reexamination of the record by January 5, 2018. *Gary C. Snisky*, Admin. Proc. Rulings Release No. 5393, 2017 SEC LEXIS 4114. On January 5, 2018, the Division of Enforcement filed a motion asking me to ratify my prior actions. On January 29, 2018, I granted Snisky's motion to extend the date for filing new evidence to February 28, 2018. *Gary C. Snisky*, Admin. Proc. Rulings Release No. 5549, 2018 SEC LEXIS 300. On March 6, 2018, I extended the date for the Division's filing in reply to March 20, 2018, and the date for the ratification order to April 30, 2018. *Gary C. Snisky*, Admin. Proc. Rulings Release No. 5639, 2018 SEC LEXIS 667.

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.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. *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.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. *Id.* at 2-3. The Division also responds to Snisky's merits arguments. *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. *See* 5 U.S.C. § 3105. The Commission's ratification order “resolv[ed] any Appointments Clause claims” in this proceeding. *Pending*

¹ Snisky did not file an opposition to the Division's summary disposition motion by the April 10, 2017, due date. *See Gary C. Snisky*, Admin. Proc. Rulings Release No. 4711, 2017 SEC LEXIS 945, at *2 (ALJ Mar. 27, 2017). It appears he is doing so here.

² My denial of Snisky's motion for a stay was not procedural.

Admin. Proc., 2017 SEC LEXIS 3724, at *4. I am bound by the Commission's decision.

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.³ The process contemplated by the Commission's November 30 order is complete.

Brenda P. Murray
Chief Administrative Law Judge

³ I ratified my presiding administrative law judge designation on December 4, 2017. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5247, 2017 SEC LEXIS 3780.