

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 6531/April 1, 2019

ADMINISTRATIVE PROCEEDING

File Nos. 3-17874 and 3-17875

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In the Matter of

TALMAN HARRIS and  
VICTOR ALFAYA

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ORDER

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The Securities and Exchange Commission instituted proceedings against Respondents Talman Harris and Victor Alfaya with Orders Instituting Proceedings (OIP), pursuant to Section 15(b) of the Securities Exchange Act of 1934 on March 10, 2017, and the two proceedings were consolidated on March 13, 2017. The proceeding is a follow-on proceeding based on *SEC v. Cope*, No. 1:14-cv-7575 (S.D.N.Y.), in which Respondents were enjoined from violating the antifraud provisions of the federal securities laws and on *United States v. Scholander*, No. 1:15-cr-335 (N.D. Ohio), in which Respondents were convicted of conspiracy to commit securities fraud and wire fraud. On October 30, 2017, an Initial Decision imposed associational bars on Respondents. *Talman Harris*, Initial Decision Release No. 1213, 2017 SEC LEXIS 3450 (A.L.J.).

On August 22, 2018, in light of *Lucia v. SEC*, 138 S. Ct. 2044 (2018), the Commission ordered a new hearing in each pending proceeding, including this one, before an administrative law judge (ALJ) who had not previously participated in the proceeding, unless the parties expressly agreed to alternative procedures. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at \*2-3 (August 22 Order). Accordingly, the proceeding was reassigned to the undersigned. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018).

As to each affected proceeding, including this one, the Commission ordered that the newly assigned presiding ALJ “shall not give weight to or otherwise presume the correctness of any prior opinions, orders, or rulings issued in the matter” and “shall issue an order directing the parties to submit proposals for the conduct of further proceedings.” August 22 Order, 2018 SEC LEXIS 2058, at \*4. The Commission specified, “if a party fails to submit a proposal, the ALJ may enter a default against that party.” *Id.* Accordingly, after the reassignment of the proceeding, Harris was afforded the opportunity to file an Answer to the OIP, and the parties were ordered to submit proposals for the conduct of further proceedings by December 14, 2018; Harris was warned that an associational bar would be imposed on him by default if he failed to answer or to submit a proposal. *Talman Harris*, Admin. Proc. Rulings Release No. 6121, 2018 SEC LEXIS 2696 (A.L.J. Sept. 28, 2018).

In response, Harris submitted a letter dated October 9, 2018, in which he “den[ied] all of the charges in this civil matter” and proposed dismissal by summary disposition in accordance with 17 C.F.R. § 201.250. He also stated that he was not afforded an attorney. However, a respondent in an administrative proceeding does not have a right to a government appointed attorney. *See Boruski v. SEC*, 340 F.2d 991, 992 (2d Cir. 1964); *V.F. Minton Sec., Inc.*, Exchange Act Release No. 32074, 1993 SEC LEXIS 642, at \*18 (Mar. 31, 1993), *pet. denied*, 18 F.3d 937 (5th Cir. 1994).<sup>1</sup>

In a letter dated December 14, 2018, the Division of Enforcement argued that Harris had not submitted a proposal for the conduct of further proceedings and should be deemed in default and barred from the securities industry. However, Harris’s summary denial will be considered an answer and his proposal for dismissal by summary disposition will be considered a proposal for the conduct of further proceedings. The Division may file an opposition to his motion for summary disposition and/or a motion for summary disposition of its own by April 24, 2019. Any responsive opposition or reply may be filed by May 24, 2019.

As Harris requests, this order shall be served on: Denis Kelleher, Esq., Clayman Rosenberg LLP, Suite 1301, 305 Madison Ave., New York, NY 10165.

IT IS SO ORDERED.

/S/ Carol Fox Foelak  
Carol Fox Foelak  
Administrative Law Judge

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<sup>1</sup> Harris also requested that this proceeding be stayed pending the outcome of his criminal proceeding. That request is moot as that proceeding has concluded. *See United States v. Scholander*, ECF No. 398 (Jan. 25, 2019) (amended criminal judgment), *appeal dismissed sub nom. United States v. Harris*, No. 19-3088, ECF No. 5 (6th Cir. Feb. 13, 2019) (granting Harris’s motion to dismiss his appeal). Harris also stated that he was not served a subpoena, but it is not clear what this means or how it could be relevant to this administrative proceeding.