

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 6601/June 13, 2019

ADMINISTRATIVE PROCEEDING

File No. 3-16795

In the Matter of :
:
JOSEPH J. FOX : ORDER

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934 on September 8, 2015. The OIP embodied a partial settlement and ordered additional proceedings to determine what, if any, non-financial remedial sanctions pursuant to Section 15(b) of the Exchange Act are in the public interest. The OIP included extensive findings of facts concerning Respondent Joseph J. Fox's conduct and specified, at ¶ V., that Respondent "will be precluded from arguing that he did not violate the federal securities laws as described in this [OIP]" and "the findings of this [OIP] shall be accepted as and deemed true by the hearing officer."

Following an April 25, 2016, Initial Decision by ALJ Cameron Elliot, the Commission imposed associational bars on Respondent, with the right to re-apply after five years. *See Joseph J. Fox*, Initial Decision Release No. 1004, 2016 SEC LEXIS 1515 (Apr. 25, 2016), *opinion of the Commission*, Securities Act Release No. 10328, 2017 SEC LEXIS 969 (Mar. 24, 2017), *petition for reconsideration filed*. 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 who had not previously participated in the proceeding, unless the parties expressly agreed to alternative procedures, including agreeing that the proceeding remain with the previous presiding administrative law judge. *Pending Admin. Proc.*, Securities Act 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 ordered previously, the proceeding will be resolved through motion[s] for summary disposition and responsive pleadings supplemented by a video or in-person hearing in Washington, D.C.; a schedule was adopted with the agreement of the parties. *Joseph J. Fox*, Admin. Proc. Rulings Release Nos. 6496, 2019 SEC LEXIS 478 (A.L.J. Mar. 14, 2019); 6584, 2019 SEC LEXIS 1216 (A.L.J. May 23, 2019). In accordance with the schedule, the Division of Enforcement filed a motion for summary disposition on April 18, 2019, and Respondent's opposition was due on June 3, 2019. On June 4, 2019, Respondent submitted a Request for a Hearing to Discuss the Uncovering of Prosecutorial Misconduct by the Division of Enforcement and Improper Communication Between the

Former ALJ in this Matter, ALJ Cameron Elliott, and Certain Non-Parties, to which the Division responded on June 6, 2019.

Respondent states that he received subpoenaed documents from the Division on May 22, 2019, and that review of the documents showed that ALJ Elliot “had improperly received communication from some of the same malicious individuals who had been working for several years to destroy Mr. Fox and his family,” causing ALJ Elliot to rule adversely to Respondent, and that the Division knew, or should have known of the communication. Respondent requests a hearing on this and states that he will not be responding to the Division’s motion for summary disposition. The Division opposes the request for a hearing and disputes Respondent’s factual allegations.

Ruling

Respondent’s request for a hearing will be denied. Without regard to the truth or falsity of his factual allegations, they have no relevance to any issues to be decided by the undersigned in this proceeding.

The parties have been advised previously that any allegation concerning ALJ Elliot has no relevance to any issues to be decided by the undersigned in this proceeding. *Joseph J. Fox*, Admin. Proc. Rulings Release No. 6541, 2019 SEC LEXIS 878, at *2-3 (A.L.J. Apr. 15, 2019) (pointing to the Commission’s explicit direction in the August 22 Order, 2018 SEC LEXIS 2058, at *3-4, that the undersigned ALJ “*shall not give weight to or otherwise presume the correctness of any prior opinions, orders, or rulings issued in the matter*”).

Concerning Fox’s allegation of misconduct by Division staff, the issues that the Commission authorized to be heard by the assigned ALJ in this proceeding concern Fox, not Division staff, and the undersigned does not have authority “to expand the scope of matters set down for hearing beyond the framework of the original order instituting proceedings.” *J. Stephen Stout*, File No. 3-9034, 1996 SEC LEXIS 3557, at *2 n.2. *See also Harold F. Harris*, Exchange Act Release No. 53122 A, 2006 SEC LEXIS 68, at *23 (Jan. 13, 2006).

IT IS SO ORDERED.

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