

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

Administrative Proceedings Rulings
Release No. 6755 / April 28, 2020

Administrative Proceeding
File No. 3-15755

In the Matter of
Mark Feathers

**Order Denying
Motion for Stay**

Respondent Mark Feathers submitted a motion for a stay on April 18, 2020, the Division of Enforcement submitted a response in opposition on April 27, and Feathers submitted a reply later that day. Feathers seeks a stay so that he may challenge the constitutionality of this proceeding in federal district court. In particular, Feathers is concerned that this proceeding's recent reassignment from a different administrative law judge to me, in combination with "modified, and/or heightened, new subpoena requirements [I] placed" on him, creates an appearance of bias and is unconstitutional.

Under the Securities and Exchange Commission's Rules of Practice, my authority to issue a stay is generally limited to two situations—on a joint motion of the parties notifying me that they have agreed to a settlement and on a motion of a criminal prosecutorial authority requesting a stay during the pendency of a criminal investigation or prosecution.¹ I do not have the authority to grant a motion for an open-ended stay under the circumstances requested by Feathers.²

I do have the authority under Rule 161 to order a temporary postponement for good cause, but Feathers has not made a showing of good cause. Feathers

¹ 17 C.F.R. § 201.161(c)(2), .210(c)(3).

² See *Richard Cannistraro*, Exchange Act Release No. 39521, 1998 WL 2614, at *1 (Jan. 7, 1998) (holding that under Rule 161, "any postponement must be for a definite period of time and cannot be open-ended").

must litigate his constitutional claims in this forum. If the Commission issues a decision adverse to him, he can seek review before a federal court of appeals. A federal district court, however, lacks jurisdiction to consider the type of claim Feathers proposes to bring.³

Also, Feathers has not shown that the proceeding's reassignment raises legal concerns. First, Feathers's concern about a change in subpoena requirements following my assignment to this proceeding ignores the fact that the change did not result from the reassignment; it resulted from Feathers's concession during a telephonic prehearing conference I held that he already possesses all the non-privileged documents he seeks.⁴ Second, although administrative law judges are, by statute, to be assigned "in rotation so far as practicable,"⁵ agencies are afforded discretion in both assigning and reassigning judges.⁶ As I explained at the April 14 prehearing conference, "the previously assigned administrative law judge requested reassignment due to his case load."⁷ And Feathers offers nothing to suggest that the reason for the reassignment was anything other than what I stated.

For these reasons, the motion for a stay is DENIED.

James E. Grimes
Administrative Law Judge

Served by e-mail on all parties.

³ See *Raymond J. Lucia Cos. v. SEC*, No. 18-cv-2692, 2019 WL 3997332, at *2–3 (S.D. Cal. Aug. 21, 2019) (collecting case-law).

⁴ Prehr'g Tr. 75–78, 80–82.

⁵ 5 U.S.C. § 3105.

⁶ See *Ramspeck v. Fed. Trial Exam'rs Conference*, 345 U.S. 128, 139–40 (1953) (the Administrative Procedure Act does not require "mechanical rotation"); *Aacon Auto Transp., Inc. v. ICC*, 792 F.2d 1156, 1163 (D.C. Cir. 1986) (interpreting the discretion afforded by *Ramspeck* as allowing for the reassignment of administrative law judges).

⁷ Prehr'g Tr. 45.