

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

Administrative Proceedings Rulings
Release No. 6784 / August 17, 2020

Administrative Proceeding
File No. 3-15755

In the Matter of
Mark Feathers

**Order Addressing Five of
Respondent's Motions**

This order addresses five motions filed by Respondent Mark Feathers: (1) a motion to terminate the proceeding due to violations of the Double Jeopardy Clause (July 29, 2020); (2) a motion to terminate the proceeding due to abuse of power and violations of the Administrative Procedure Act (July 30, 2020); (3) a motion for a 180-day stay so that Respondent can pursue Rule 60 relief in his related civil case (July 30, 2020); (4) a motion for a stay so that Respondent can challenge my decision about the admissibility of the Stalker expert report (August 2, 2020); and (5) a motion for an order directing the Securities and Exchange Commission to post Respondent's filings on the Commission's website (August 2, 2020). The Division of Enforcement responded to these motions on August 5, 2020, and Respondent replied on August 12, 2020.

Double Jeopardy

Respondent argues that this proceeding is unconstitutional under the Double Jeopardy Clause because he has already been criminally punished and civilly sanctioned. The clause provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb."¹ The Double Jeopardy Clause "protects only against the imposition of multiple *criminal* punishments for the same offense."² The associational bar sought in this follow-on administrative proceeding "is not a criminal punishment within the meaning

¹ U.S. Const. amend. V.

² *Hudson v. United States*, 522 U.S. 93, 99 (1997).

of the Double Jeopardy Clause.”³ For that reason, this proceeding is not barred by the Double Jeopardy Clause.⁴ Respondent’s motion is DENIED.

Abuse of Power and APA Violations

Respondent argues that because the Commission brought this administrative proceeding and will decide the outcome, this proceeding is an abuse of power by a government agency. But the Commission’s dual function in bringing and adjudicating a proceeding does not violate due process or the Administrative Procedure Act.⁵ Congress, by law, gave the Commission the authority to bring and decide this type of administrative proceeding.⁶ And the procedures used follow the Administrative Procedure Act’s provisions on agency adjudication.⁷ Respondent’s motion is DENIED.

Stay for Rule 60 Relief

Respondent requests a 180-day stay so that he may seek relief under Rule 60 of the Federal Rules of Civil Procedure from the district court’s judgment in his related civil case. Respondent may pursue any remedies available to him in the district court, but the pendency of an appeal, or a motion for post-judgment relief, is not grounds for a stay of this proceeding.⁸ If the district court grants the relief Respondent seeks and dissolves the injunction, he may ask the Commission to dismiss this proceeding or vacate any sanction ordered.⁹

³ *Tzemach David Netzer Korem*, Securities Exchange Act of 1934 Release No. 70044, 2013 WL 3864511, at *9 (July 26, 2013).

⁴ *See Kornman v. SEC*, 592 F.3d 173, 188–89 (D.C. Cir. 2010); *United States v. Merriam*, 108 F.3d 1162, 1164–65 (9th Cir. 1997).

⁵ *See Withrow v. Larkin*, 421 U.S. 35, 56–58 (1975); *Sheldon v. SEC*, 45 F.3d 1515, 1518–19 (11th Cir. 1995); *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1105–07 (D.C. Cir. 1988).

⁶ *See* 15 U.S.C. § 78o(b)(4), (6).

⁷ *See* 5 U.S.C. §§ 554, 556, 557.

⁸ *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 WL 1941502, at *3 n.21 (Aug. 23, 2002).

⁹ *See, e.g., Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 WL 6608201 (Dec. 18, 2012) (vacating associational bar after the conviction it was based on was overturned on appeal).

This motion, and Respondent’s motion submitted on August 16, 2020, seeking a stay on the same basis, are DENIED.

Stay for Challenge to Evidentiary Ruling

Respondent asks for a stay to challenge my determination about the admissibility of the Stalker report. I have previously explained to Respondent how he could attempt to demonstrate that the Stalker report should be considered in this proceeding.¹⁰ Respondent may contest this ruling on review by the Commission and, if the Commission’s decision is adverse, on appeal to the appropriate court of appeals.¹¹ He cannot challenge this ruling in a district court action.¹² This motion is DENIED.

Posting of Filings to the Commission’s Website

Respondent notes that some of his filings are posted to the Commission’s public website and some are not. He asks me to direct the Commission to post all of his motion filings. But the Commission’s “Administrative Proceedings Documents” page is maintained by the Commission’s Office of the Secretary, which posts administrative proceeding documents to the Commission’s website. The page neither purports to display any proceeding’s official docket nor “reflect[s] the actual status of [any] case.”¹³ Rather, information displayed is “[non]exhaustive,” and is instead provided “for informational purposes

¹⁰ *Mark Feathers*, Admin. Proc. Rulings Release No. 6768, 2020 SEC LEXIS 2561, at *2–3 (ALJ June 12, 2020) (requiring (1) a showing of how the report is relevant and (2) a sworn declaration or affidavit from Stalker stating that she would testify consistently with the report); *Mark Feathers*, Admin. Proc. Rulings Release No. 6771, 2020 SEC LEXIS 3125 (ALJ July 1, 2020) (denying reconsideration).

¹¹ 15 U.S.C. § 78y; 17 C.F.R. §§ 201.410–.411.

¹² *See, e.g., Cochran v. SEC*, No. 19-10396, 2020 WL 4593226, at *1 (5th Cir. Aug. 11, 2020) (holding, in accord with five other courts of appeals, that a party may not challenge “an SEC enforcement action in federal district court before the agency proceeding ends”).

¹³ *See* U.S. Securities and Exchange Commission, Administrative Proceeding Documents, <https://www.sec.gov/litigation/apdocuments.shtml> (last modified June 15, 2020).

only.”¹⁴ Respondent’s request should be directed to the Office of the Secretary, which can grant the relief he seeks.

James E. Grimes
Administrative Law Judge

Served by e-mail on all participants.

¹⁴ *Id.*