

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9722 / February 5, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 74215 / February 5, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-15974

In the Matter of
NATURAL BLUE RESOURCES, INC.,
JAMES E. COHEN, and
JOSEPH A. CORAZZI

ORDER DENYING PETITION FOR
INTERLOCUTORY REVIEW

Pending before a law judge are administrative proceedings against James E. Cohen and Joseph A. Corazzi for their alleged roles in a penny stock offering by Natural Blue Resources, Inc. ("Natural Blue"). On February 2, 2015, Corazzi filed a "verified statement" with the Commission in which he asserts that the administrative law judge incorrectly denied his request for a continuance of the proceedings and his subsequent request to certify that denial for interlocutory review. We construe Corazzi's "verified statement" as a petition for interlocutory review of the law judge's decision not to delay the proceedings. For the reasons below, Corazzi's petition is denied.

BACKGROUND

The Commission issued its Order Instituting Proceedings on July 16, 2014.¹ The order alleges that Cohen and Corazzi orchestrated a fraudulent scheme to secretly operate Natural Blue, a publicly traded company, by calling themselves outside consultants. This arrangement allegedly enabled Cohen and Corazzi to be de facto officers of Natural Blue without disclosing their own criminal and regulatory violations to potential investors. The OIP contends that Cohen

¹ *Natural Blue Res., Inc.*, Securities Exchange Act Release No. 72617, 2014 WL 3491568 (July 16, 2014). The law judge issued an initial decision by default against Natural Blue on November 26, 2014, for failing to file an answer or otherwise defend the proceeding. In doing so, the law judge ordered Natural Blue to cease and desist from violations of the antifraud and reporting provisions of the federal securities laws and to pay a civil penalty of \$130,000. *Natural Blue Res., Inc.*, Initial Decision Release No. 710, 2014 WL 6680118, at *3 (Nov. 26, 2014). The Commission issued an order that the default decision had become final as to Natural Blue on January 7, 2015.

and Corazzi used Natural Blue to obtain money and significant shares of stock, while making decisions that resulted in Natural Blue generating no revenue and engaging in no viable business operations. Because of this alleged misconduct, the OIP asserts that Cohen and Corazzi violated Securities Act Sections 17(a)(1) and 17(a)(3),² Exchange Act Section 10(b),³ and Exchange Act Rules 10b-5(a) and 10b-5(c).⁴

At a prehearing conference on September 9, 2014, the parties mutually consented to a hearing date of February 9, 2015. Corazzi's counsel subsequently withdrew from representing him effective December 1, 2014. Approximately six weeks later, on January 13, 2015, Corazzi asked the law judge to postpone all procedural dates for four months so that he could obtain new counsel. In support of his motion, Corazzi stated that his brother had passed away in December 2014; that Corazzi himself had "been sick for nearly four weeks, and only began to recover on or about [January 1, 2015]"; that he could not procure sufficient funds to hire new counsel "for at least another month or two"; and that a prospective attorney advised him that the attorney did not have enough time to adequately prepare for the hearing scheduled to begin February 9, 2015. Corazzi claimed that he also needed additional time to review the Division's "voluminous" investigative file.

The law judge denied Corazzi's request on January 13, 2015. The law judge acknowledged that "Corazzi unfortunately experienced loss and illness during December 2014," but found that he had nevertheless been aware of the hearing date for four months and of his counsel's withdrawal for at least six weeks.⁵ The law judge also observed that Corazzi had conceded that he was unlikely to obtain sufficient funds to hire new counsel in the near future. And the law judge found that Corazzi had received the Division's investigative file in August 2014, which was before he agreed to the February 9, 2015, hearing date. Although the law judge denied Corazzi's request to postpone the proceeding, she nevertheless delayed the deadline for filing exhibit and witness lists and expert reports until January 26, 2015.

On January 16, 2015, Corazzi moved the law judge to certify her decision for interlocutory review by the Commission. The law judge denied Corazzi's motion the same day, finding that her denial of his request for postponement involved no controlling questions of law as to which there was substantial ground for difference of opinion and that immediate review of her order would delay completion of the proceeding.⁶

² 15 U.S.C. §§ 77q(a)(1) and (3).

³ *Id.* § 78j(b).

⁴ 17 C.F.R. §§ 240.10b-5(a) and (c).

⁵ *Natural Blue Res., Inc.*, Admin. Proc. Rulings Release No. 2214, 2015 SEC LEXIS 143, at *3 (Jan. 13, 2015).

⁶ *Natural Blue Res., Inc.*, Admin. Proc. Rulings Release No. 2229, 2015 SEC LEXIS 198, at *3 (Jan. 16, 2015).

On February 2, 2015, Corazzi filed the instant "verified statement," in which he contends that "there is a bona fide disagreement regarding the interpretation of continuance law jurisprudence as to whether or not [he] is entitled to a continuance," but cites no authority. Corazzi also contends that immediate review by the Commission would expedite matters because if he were to prevail in any subsequent appeal on the issue, then he claims another hearing would have to be held. Corazzi further states that his attendance at the February 9, 2015 hearing without counsel is "not intend[ed] to constitute a waiver of [his] right to have legal counsel at all stages of the proceeding, or a waiver of [his] claim that the ALJ's denial of [his] motion to continue and request for interlocutory review was appealable error."

ANALYSIS

I. Corazzi's petition for interlocutory review is not appropriate because it was not certified by the law judge.

Commission Rule of Practice 400(a) provides that "[p]etitions by parties for interlocutory review are disfavored" and will be granted by the Commission "only in extraordinary circumstances."⁷ The Commission "generally does not consider petitions for interlocutory review where," as here, "the law judge has 'declined to certify [the] petition for interlocutory review.'"⁸ Corazzi's failure to obtain certification is therefore basis enough for the Commission to deny his petition for interlocutory review.⁹

The law judge's decision not to certify Corazzi's petition was also consistent with the applicable standard for certification. Rule of Practice 400(c) states that a law judge "shall not

⁷ *Warren Lammert*, Exchange Act Release No. 56233, 2007 WL 2296106, at *3 (Aug. 9, 2007) (quoting 17 C.F.R. § 201.400(a)). In adopting this language, the Commission "ma[d]e clear that petitions for interlocutory review . . . rarely will be granted." *Id.* (quoting *Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission*, Exchange Act Release No. 49412, 2004 WL 503739, at *12 (Mar. 12, 2004) (hereinafter *Adoption of Amendments to the Rules of Practice*)).

⁸ *Eric David Wagner*, Exchange Act Release No. 66678, 2012 WL 1037682, at *2 (Mar. 29, 2012) (quoting *Montford & Co., Inc.*, Investment Advisers Act Release No. 3311, 2011 WL 5434023, at *2 (Nov. 9, 2011)); accord 17 C.F.R. § 201.400(c) (stating that any ruling that a party "submit[s] to the Commission for interlocutory review *must* be certified in writing" by the law judge as satisfying certain criteria (emphasis added)).

⁹ *See, e.g., John Thomas Capital Mgmt. Group LLC*, Exchange Act Release No. 71415, 2014 WL 294551, at *1 (Jan. 28, 2014) (denying petition for interlocutory review where respondents had not obtained certification from the law judge); *Vincent Poliseno*, Exchange Act Release No. 38770, 1997 WL 346154, at *1 (June 25, 1997) (denying petition for interlocutory review where the law judge did not certify his ruling). Even when a law judge certifies a petition for interlocutory review, the Commission will grant such petitions "only in extraordinary circumstances." 17 C.F.R. § 201.400(a).

certify a ruling unless," as relevant here, "(i) The ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and (ii) An immediate review of the order may materially advance the completion of the proceeding."¹⁰ Corazzi's central argument for interlocutory review is that the law judge abused her discretion by denying him additional time to procure counsel before the hearing. The law judge rejected this argument by comparing the relevant facts with established legal standards regarding extensions of time, finding in particular that significant time had elapsed since Corazzi's counsel had withdrawn and that Corazzi had agreed to the hearing date. These fact-bound, discretionary procedural rulings did not involve controlling questions of law, and the Commission's immediate review of those rulings would not materially advance the completion of the proceeding; rather, the rulings all presented the law judge with "mixed [questions] of law and fact" that were inappropriate for certification.¹¹

II. Corazzi's request for an extension of time does not warrant interlocutory review on the Commission's own motion.

The Commission may direct interlocutory review on its own motion, but we see no basis for the Commission to do so here.¹² As the Commission has stated, "the Commission's emphatic preference—which embodies the 'general rule' disfavoring piecemeal, interlocutory appeals—is that claims should be presented in a single petition for review after 'the entire record [has been]

¹⁰ 17 C.F.R. § 201.400(c). Rule 400(c) also provides that a law judge may certify a ruling if "[h]is or her ruling would compel testimony of Commission members, officers or employees or the production of documentary evidence in their custody." *Id.*

¹¹ *Montford & Co.*, 2011 WL 5434023, at *2; *accord Century Pac., Inc. v. Hilton Hotels Corp.*, 574 F. Supp. 2d 369, 371 (S.D.N.Y. 2008) (finding that a "'question of law' certified for interlocutory appeal 'must refer to a 'pure' question of law that the reviewing court 'could decide quickly and cleanly without having to study the record.'" (quoting *In re WorldCom, Inc.*, No. M-47 HB, 2003 WL 21498904, at *10 (S.D.N.Y. 2003))); *SEC v. First Jersey Sec.*, 587 F. Supp. 535, 536 (S.D.N.Y. 1984) (holding that, although "an immediate interlocutory appeal would advance the ultimate termination of this litigation," an appeal "would necessarily present a mixed question of law and fact, not a controlling issue of pure law," and the district court's order was therefore "not appropriate for certification"); *City of Anaheim*, Exchange Act Release No. 42140, 1999 WL 1034489, at *1 (Nov. 16, 1999) (denying petition for interlocutory appeal of certified ruling because the ruling did not involve a "question of law that controls the outcome").

¹² The "discretion to grant interlocutory review" exists even when the law judge declines to certify the ruling in question. *Wagner*, 2012 WL 1037682, at *2; *see also City of Anaheim*, 1999 WL 1034489, at *1 n.3 (explaining that Rule 400 "in no way limits the Commission's discretion to direct that matters be submitted to it"); 17 C.F.R. § 201.400(a) (stating that the Commission may "at any time, on its own motion, direct that any matter be submitted to it for review"); *Adoption of Amendments to the Rules of Practice*, 2004 WL 503739, at *12 (stating that the Commission "retains discretion to undertake such [interlocutory] review on its own motion at any time").

developed' and 'after issuance by the law judge of an initial decision.'"¹³ That a party "may disagree with the law judge's determination" does not make a ruling appropriate for interlocutory review.¹⁴

As the Commission has explained, a decision not to postpone the proceedings "is one of several that the hearing officer must make as part of his regulation of the course of the proceeding and, absent extraordinary circumstances, should not be immediately appealable to the Commission."¹⁵ And post-initial decision review of such procedural decisions is generally sufficient to protect a party's rights.¹⁶ Here, the law judge appears to have acted reasonably in managing the proceedings. This is not a case, as Corazzi implies, in which there are "extraordinary circumstances" warranting postponement, such as when a respondent is left without assistance of counsel at or near the hearing date through no fault of his or her own.¹⁷ Instead, Corazzi agreed to the hearing date and has known for at least six weeks that he was no

¹³ *John Thomas Capital Mgmt. Group LLC*, Exchange Act Release No. 71021, 2013 WL 6384275, at *2 (Dec. 6, 2013) (footnotes omitted).

¹⁴ *Montford & Co.*, 2011 WL 5434023, at *3.

¹⁵ *Gregory M. Dearlove*, Admin. Proc. Release No. 12064, 58 SEC 1077, 2006 SEC LEXIS 3191, at *6 (Jan. 6, 2006) (denying petition for interlocutory review); *accord Underhill Sec. Corp.*, Exchange Act Release No. 7668, 42 SEC 689, 1965 WL 87065, at *8 (Aug. 3, 1965) (stating that "[t]he determination whether to grant a continuance was a matter resting in the sound discretion of the [hearing] examiner" and finding that examiner's denial of one-month adjournment to give counsel more time to prepare his defense was proper where any lack of preparation was a result of "their own dilatory conduct").

¹⁶ *Cf. Kevin Hall, CPA*, Exchange Act Release No. 55987, 2007 WL 1892136, at *1–2 (June 29, 2007) (stating that "[r]espondents' motions with respect to efficacy of counsel during the investigation and their complaints about the production of documents do not warrant our interference with the orderly hearing process"); *Dearlove*, 2006 SEC LEXIS 3191, at *6 (stating that law judge's decision not to postpone the proceedings "will be subject to review, along with other aspects of the law judge's handling of the case, after issuance by the law judge of an initial decision").

¹⁷ *Cf. Philip L. Pascale, CPA*, Admin. Proc. File No. 3-11194 (Nov. 24, 2003) (finding that a short postponement of the hearing was warranted where respondent's counsel became incapacitated due to illness, and counsel learned about this condition so close to the hearing that substitute counsel could not be obtained); *Carleton Wade Fleming, Jr.*, Exchange Act Release No. 36215, 52 SEC 409, 1995 SEC LEXIS 2326, at *16–17 (Sept. 11, 1995) (holding that NASD's refusal to grant a continuance was improper where counsel had withdrawn and petitioner was required to proceed and present his case without counsel for three days of the hearing); *James Elderidge Cartwright*, Exchange Act Release No. 31087, 50 SEC 1174, 1992 WL 216695, at *3–4 (Aug. 25, 1992) (holding that NASD's refusal to grant a continuance was unreasonable where petitioner was ill on the hearing date and demonstrated his inability to proceed).

longer represented by counsel.¹⁸ Corazzi's claim that he has insufficient time to review the Division's "voluminous" investigatory file is similarly unpersuasive. Corazzi received the investigatory file more than five months ago, and the Commission consistently has declined to grant interlocutory review based on similar claims of large or complex records.¹⁹

Corazzi contends that interlocutory review of his request for procedural relief would nevertheless materially advance completion of the proceeding, but we disagree. Immediate Commission review of the law judge's pre-hearing decision is more likely to delay the proceedings only further. And if, *arguendo*, the law judge's refusal to grant Corazzi his requested

¹⁸ Cf. *Falcon Trading Group, Ltd.*, Exchange Act Release No. 36619, 52 SEC 554, 1995 WL 757798, at *5 (Dec. 21, 1995) (finding no abuse of discretion in NASD's denial of applicants' motions for continuance and adherence to the previously-scheduled hearing date where applicants were given six weeks' notice of the hearing date and had sufficient time to obtain new counsel after discovering that joint counsel had potential conflict of interest), *aff'd*, 102 F.3d 579 (D.C. Cir. 1996); *Alexander V. Stein*, Advisers Act Release No. 1497, 52 SEC 296, 1995 WL 358127, at *3 (June 8, 1995) (finding that it was not unreasonable or arbitrary for the law judge not to postpone proceedings where respondent "had well over a month to prepare any defense" and had not asked for a postponement until less than a week before the hearing).

¹⁹ Cf. *Harding Advisory LLC*, Securities Act Release No. 9561, 2014 WL 988532, at *5 (Mar. 14, 2014) (declining to grant interlocutory review of law judge's decision not to postpone the proceeding where respondents alleged that they would be deprived of due process if forced to go forward given the "voluminous investigatory files"); *Hall*, 2007 WL 1892136, at *1–2 (declining to grant interlocutory review of law judge's decision not to postpone the proceeding where respondents alleged that they needed additional time to review "late-produced documents"); *Dearlove*, 2006 SEC LEXIS 3191, at *2, 6 (denying application for interlocutory review of law judge's decision not to postpone proceeding where respondent claimed that he had inadequate time to review "the massive investigative file," noting that respondent's "argument about the legal and factual complexities of his case is one that potentially many respondents in Commission cases could make").

procedural relief is incorrect, the denial of that relief can "be effectively reviewed post-judgment" by vacatur and remand.²⁰

Accordingly, it is ORDERED that Corazzi's petition for interlocutory review is denied. For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

²⁰ *Dearlove*, 2006 SEC LEXIS 3191, at *6 n.7 (quoting *United States v. Breeden*, 366 F.3d 369, 375 (4th Cir. 2004)); *see also Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009) (determining that, even though a ruling "may burden litigants in ways that are only imperfectly reparable by appellate reversal," that possibility "has never sufficed" to warrant immediate interlocutory review (quoting *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 872 (1994))); *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1172 (D.C. Cir. 1985) (observing that review of "[o]rders relating to discovery matters . . . must usually wait until a final judgment is entered").