

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 9912 / September 15, 2015

SECURITIES EXCHANGE ACT OF 1934  
Release No. 75922 / September 15, 2015

INVESTMENT ADVISERS ACT OF 1940  
Release No. 4194 / September 15, 2015

INVESTMENT COMPANY ACT OF 1940  
Release No. 31824 / September 15, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-15790

In the Matter of  
MOSHE MARC COHEN

ORDER REQUESTING ADDITIONAL  
SUBMISSIONS

On March 20, 2015, the Commission granted the petition of Moshe Marc Cohen and the cross-petition of the Division of Enforcement for review of an administrative law judge's initial decision and set a briefing schedule.<sup>1</sup> As explained below, it appears that, based on the parties' filings and a preliminary review of the record in this case, the Commission's consideration of this matter would be assisted by the submission of additional briefing and evidence pertaining to two of Cohen's arguments.

In his petition for review, which was filed *pro se*, Cohen claims that he was unreasonably denied the opportunity to call two witnesses, Baruch Gottesman and Michael Horowitz, at the hearing.<sup>2</sup> On the morning of August 27, 2014, after two days of presenting evidence, the Division closed its case. That afternoon, Cohen called one witness; he did not have any other witnesses present, whereupon the law judge concluded the hearing over Cohen's objection. According to Cohen's petition, the law judge "stated during a pre-hearing conference that the hearing would last for 10 days." He further claims that counsel for the Division represented that the Division would present its case for five days and Cohen would be given the following five days to present rebuttal. The transcripts of the March 21, 2014 and July 7, 2014 pre-hearing conferences, however, do not reflect any such statements or representations.

<sup>1</sup> *Moshe Marc Cohen*, Exchange Act Release No. 74557 (Mar. 20, 2015).

<sup>2</sup> *See* Pet. for Review at p. 3.

Cohen also claims that the law judge “had an off the record conversation” with a witness.<sup>3</sup> According to Cohen, he requested a “5-minute bathroom break” at the conclusion of the Division’s direct examination of Timothy Stone. He asserts that, during this break and while he was outside the hearing room, the law judge held an *ex parte* conversation with Stone. The transcript of the hearing reflects that the law judge asked Stone several follow-up questions and that some discussion was held off the record, but it does not make clear when Cohen left or re-entered the hearing room.

Given Cohen’s contentions and the record developed below, and to assist the Commission’s consideration of these matters, it appears appropriate to give the parties an opportunity to clarify and supplement the factual basis, if any, with respect to these contentions.<sup>4</sup>

Accordingly, it is ORDERED:

- that Cohen shall file a brief, not to exceed 1,000 words, by September 29, 2015 that sets forth in detail the events and circumstances that he considers relevant for the Commission’s consideration of the above claims; and
- that the Division shall file a response brief, not to exceed 1,000 words, by October 13, 2015.

The briefs must be limited to these issues. They must contain specific citations to the evidence relied upon.<sup>5</sup> Any evidentiary materials related to these matters (including but not limited to affidavits or declarations) not already in the record shall be attached to the briefs.

Attention is called to Rule of Practice 153, which provides, *inter alia*, that every filing must be signed and that such signature shall constitute a certification that, “to the best of [the signer’s] knowledge, information, and belief, formed after reasonable inquiry, the filing is well

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<sup>3</sup> See Pet. for Review at p. 5.

<sup>4</sup> See generally *Robert Fitzpatrick*, Exchange Act Release No. 42560, 2000 WL 294906, at \*1 (Mar. 22, 2000), *following remand*, Exchange Act Release No. 44956, 2001 WL 1251680 (Oct. 19, 2001), *reconsideration denied*, Exchange Act Release No. 45170, 2001 WL 1629595 (Dec. 19, 2001), *pet. denied*, 63 F. App’x 20 (2d Cir. 2003). This order is not to be construed as expressing the Commission’s views as to the materiality of the information requested or submitted, the merits of Cohen’s contentions, or the ultimate resolution of this appeal.

<sup>5</sup> See *Wood ex rel. United States v. Am. Institute in Taiwan*, 286 F.3d 526, 534 (D.C. Cir. 2002) (explaining that unsupported factual assertions by counsel in a brief or other pleading “are not evidence”); *Luis Miguel Cespedes*, Exchange Act Release No. 62374, 2010 WL 2546827, at \*2 n.6 (June 24, 2010) (similar).

grounded in fact.”<sup>6</sup> If a statement is made upon information and belief, its proponent shall state with particularity all facts on which that belief is formed. Pursuant to Rule of Practice 180(c), a party’s failure to make a required filing or to comply with this order in any respect may result in the Commission’s determination of the matter at issue against that party; a finding of waiver or abandonment; or such other sanction as the Commission finds appropriate.<sup>7</sup>

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields  
Secretary

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<sup>6</sup> 17 C.F.R. § 201.153.

<sup>7</sup> 17 C.F.R. § 201.180(c). No briefs in addition to those specified in this order may be filed without leave of the Commission.