

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 87057 / September 23, 2019

Admin. Proc. File No. 3-17693

In the Matter of  
  
SEAN P. FINN  
and  
M. DWYER LLC

ORDER REMANDING PROCEEDING

On November 21, 2016, the Commission issued an order instituting proceedings (“OIP”) against Sean P. Finn and M. Dwyer LLC pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> The OIP alleged that respondents had been enjoined from future violations of Exchange Act Section 15(a) and Sections 5(a) and 5(c) of the Securities Act of 1933 by a federal district court. The OIP instituted proceedings to determine what, if any, remedial action was appropriate in the public interest pursuant to Exchange Act Section 15(b).

On May 8, 2019, the presiding administrative law judge (“ALJ”) issued an initial decision granting the Division of Enforcement’s motion for summary disposition and sanctions.<sup>2</sup> The ALJ found respondents in default for failing to answer the OIP, respond to the Division’s motion, or otherwise defend the proceeding. The ALJ concluded that, pursuant to Exchange Act Section 15(b)(6), it was appropriate in the public interest to bar respondents from the securities industry and from participating in any penny stock offering.

On May 13, 2019, the Commission’s Office of the Secretary received from Finn a response to the Division’s motion. Finn, incarcerated and proceeding pro se, requested that the ALJ stay the proceeding pending a challenge he filed in federal district court to the injunction entered against him. Finn added that, in the event that request was denied, he “objects to the unfounded summations, and assemblage of evidence, contained in” the Division’s motion.

On July 10, 2019, the ALJ issued a notice stating that he “recently learned of a filing by Respondent Finn that was received by the Commission’s Office of the Secretary on May 13, 2019 . . . styled as a response to the Division of Enforcement’s motion for summary disposition.”

<sup>1</sup> *Sean P. Finn*, Exchange Act Release No. 79367, 2016 WL 6872218 (Nov. 21, 2016).

<sup>2</sup> *Sean P. Finn*, Initial Decision Release No. 1375, 2019 WL 2053576 (May 8, 2019).

Citing Commission precedent,<sup>3</sup> the ALJ concluded that “[b]ecause Finn’s stay motion was not received . . . until after the initial decision was issued, I do not have the authority to consider it.”

No party has filed a petition for review of the initial decision, and the time to do so has expired.<sup>4</sup> On our own initiative, however, we have determined that it is appropriate to remand the proceeding to provide the ALJ with authority to consider Finn’s filing.<sup>5</sup> We express no view on how the ALJ should exercise that authority. Accordingly, it is ORDERED that the initial decision is vacated and the proceeding is remanded to the ALJ.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>3</sup> See, e.g., *Alchemy Ventures, Inc.*, Exchange Act Release No. 70708, 2013 WL 6173809, at \*3 (Oct. 17, 2013) (noting that “once the initial decision is issued, our rules largely divest the law judge of authority over the proceedings”).

<sup>4</sup> See *Finn*, 2019 WL 2053576, at \*6 (“[A] party may file a petition for review of this initial decision within twenty-one days after service of the initial decision.”).

<sup>5</sup> See Rule of Practice 100(c), 17 C.F.R. § 201.100(c) (providing that the “Commission, upon its determination that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply”); see also *Vladislav Steven Zubkis*, Exchange Act Release No. 51364, 2005 WL 597022, at \*2 (Feb. 18, 2005) (remanding for ALJ to consider motion to set aside default order because “as a general matter” such motions “should be first considered by the law judge, who is most familiar with the issues, rather than by the Commission”).