

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88718 / April 21, 2020

Admin. Proc. File No. 3-19697

In the Matter of
RANDALL GOULDING, ESQ.

ORDER DENYING MOTION
TO LIFT TEMPORARY SUSPENSION
AND DIRECTING HEARING

On February 7, 2020, we issued an order instituting proceedings (“OIP”) against Randall Goulding, Esq., pursuant to Commission Rule of Practice 102(e)(3)(i)(A) and (B).¹ The OIP temporarily suspended Goulding, an attorney licensed in Illinois, from appearing or practicing before the Commission.² Goulding has now filed a petition, pursuant to Rule of Practice 102(e)(3)(ii),³ requesting that his temporary suspension be lifted. For the reasons set forth below, we have determined to deny Goulding’s petition and set the matter down for hearing.

On March 25, 2009, the Commission filed a complaint in the United States District Court for the Northern District of Illinois against Goulding, the investment adviser he controlled, The Nutmeg Group, LLC (“Nutmeg”), and other defendants.⁴ The complaint alleged that Goulding, Nutmeg, and the other defendants violated various provisions of the Investment Advisers Act of 1940 (“Advisers Act”) and the rules thereunder. The Commission filed an amended complaint in the case alleging, among other things, that Goulding and Nutmeg misappropriated client

¹ Rule 102(e)(3)(i), 17 C.F.R. § 201.102(e)(3)(i), provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney ... who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party ... to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

² *Robert Goulding, Esq.*, Securities Exchange Act of 1934 Release No. 88155, 2020 SEC LEXIS 396 (Feb. 7, 2020).

³ 17 C.F.R. § 201.102(e)(3)(ii).

⁴ *SEC v. The Nutmeg Group, LLC et al.*, Civil Action No. 09-cv-01775.

investments, assessed inflated management and performance fees, misrepresented account values to investors, and failed to maintain required books and records. The amended complaint further alleged that Goulding violated Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.⁵

On November 12, 2019, the United States District Court for the Northern District of Illinois entered final judgment against Goulding after finding that he engaged in the above-described conduct and thereby violated Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The court did not find that Goulding’s violations were not willful. The court also permanently enjoined Goulding from future violations, direct or indirect, of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

In issuing the OIP, we found it “appropriate and in the public interest” that Goulding be temporarily suspended from appearing or practicing before the Commission based on (1) the permanent injunction from violating Federal securities laws entered against Goulding, by reason of his own misconduct, by the Northern District of Illinois, a court of competent jurisdiction, in an action brought by the Commission, and (2) the findings of the Northern District of Illinois, in an action brought by the Commission, that Goulding violated the Federal securities laws. We stated that the temporary suspension would become permanent unless Goulding filed a petition seeking to lift it within 30 days after service of the OIP, pursuant to Rule of Practice 102(e)(3)(ii). We further advised that, pursuant to Rule of Practice 102(e)(3)(iii), upon receipt of such a petition, we either would lift the temporary suspension or set the matter down for hearing, or both.

In his petition, Goulding argues that the temporary suspension should be vacated for a number of reasons. He argues that Rule of Practice 102(e)(1)(iii) is “unconstitutionally vague since the rule does not clearly identify the *mens rea* that the Commission must prove” and that a penalty under Rule of Practice 102(e)(1)(iii) involves a penal or quasi-criminal remedy and therefore cannot be based upon a court’s rulings made pursuant to the preponderance of the evidence standard applicable in a civil case. He also argues that the obey-the-law injunction imposed by the Northern District of Illinois and cited in the temporary suspension order is invalid because it fails to track the statutory language and fails to inform Goulding of what conduct is prohibited. Finally, he argues that at a hearing on the merits he will show that the Northern District of Illinois’ findings and conclusions are wrong.

In opposition to Goulding’s petition, the Office of General Counsel argues that Goulding’s petition has not advanced any meritorious arguments in support of the extraordinary relief he seeks, and that denying the petition will serve the public interest by continuing Goulding’s suspension pending the completion of this proceeding to determine the appropriate sanction to protect the Commission’s processes. The Office of General Counsel also argues that Goulding has violated the Advisers Act, including its anti-fraud provisions, and in the absence of a temporary suspension “would remain in a position to threaten the integrity of the Commission’s processes and potentially harm investors during the time necessary for this

⁵ 15 U.S.C. 80b-6(1), 80b-6(2), and 80b-6(4); 17 CFR 275.206(4)-8.

proceeding to be resolved.” Further, the Office of General Counsel asserts that suspensions under Rule 102(e) are remedial as they are intended to protect the investing public and the Commission’s processes and disputes Goulding’s argument that the proceedings are quasi-criminal. In addition, the Office of General Counsel indicates that it is unaware of any instance in which the Commission has lifted a temporary suspension imposed under Rule of Practice 102(e)(3) pending the outcome of an administrative proceeding, and it does not view Goulding as an appropriate candidate for such relief in light of the District Court’s findings. Finally, the Office of General Counsel asserts that Goulding’s argument in regards to the constitutional issues he raises are meritless, and his other arguments in regards to the findings and conclusions of the District Court are irrelevant because he cannot contest the District Court’s findings in this proceeding.

Rule of Practice 102(e)(3)(iii) provides that, “[w]ithin 30 days after filing of a petition [to lift a temporary suspension] in accordance with paragraph (e)(3)(ii) of this rule, the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both.”⁶ We have determined to deny Goulding’s petition and set the matter down for hearing before an administrative law judge.⁷ Continuing Goulding’s temporary suspension, pending a hearing on the issues raised in his petition, serves the public interest and protects the Commission’s processes. As discussed, Goulding was found by a court of competent jurisdiction to have violated the Federal securities laws and was permanently enjoined for his misconduct. The court’s action provided two statutory bases for the Commission to temporarily suspend Goulding without a preliminary hearing. Further, it appears that Goulding remains licensed as an attorney and based on the information in his petition intends to continue or resume practicing in this area. It therefore appears that Goulding remains in a position to harm the Commission’s processes if the temporary suspension is lifted and he is permitted to practice before the Commission pending the outcome of a hearing.

In our February 7 order, we found it “appropriate and in the public interest” to temporarily suspend Goulding. Goulding has not provided, nor do we find, any persuasive basis to question or revisit that determination. As discussed, a court of competent jurisdiction has permanently enjoined Goulding from violating the Federal securities laws. The findings made in the injunctive proceeding, which Goulding is precluded from contesting in this Rule 102(e) proceeding,⁸ and the permanent injunction issued against him justify the continuation of his temporary suspension. Under the circumstances, we find it appropriate to continue Goulding’s suspension pending the holding of a public hearing and decision by an administrative law judge.

⁶ 17 C.F.R. § 201.102(e)(3)(iii).

⁷ The Commission has denied other Rule 102(e)(3)(iii) petitions in order to serve the public interest and protect the integrity of its processes. *See, e.g.*, Joseph L. Pittera, Esq., Exchange Act Release No. 79168, 2016 SEC LEXIS 4012 (Oct. 26, 2016); Diane D. Dalmy, Esq., Exchange Act Release No. 76980, 2016 SEC LEXIS 354 (Jan. 27, 2016); R. Scott Peden, Esq., Exchange Act Release No. 75135, 2015 SEC LEXIS 2302 (June 9, 2015); Robert C. Weaver, Jr., Esq., Exchange Act Release No. 73949, 2014 SEC LEXIS 5071 (Dec. 29, 2014); Brian Williamson, Esq., Exchange Act Release No. 72435, 2014 SEC LEXIS 5096 (June 19, 2014); Virginia K. Sourlis, Esq., Exchange Act Release No. 69358, 2013 SEC LEXIS 1104 (Apr. 10, 2013).

⁸ *See* 17 C.F.R. § 201.102(e)(3)(iv) (stating that, in any hearing held on a petition filed in accordance with Rule 102(e)(3)(ii), the petitioner may not contest any findings made against him in the underlying proceeding).

As provided in Rule of Practice 102(e)(3)(iii), we will set the matter down for a public hearing. We note that Goulding's claims concerning this proceeding are more appropriately addressed, in the first instance, by the administrative law judge in the context of administering the hearing. We express no opinion as to the merits of Goulding's claims.

Accordingly, IT IS ORDERED that this proceeding be set down for a public hearing before an administrative law judge in accordance with Commission Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500.

IT IS FURTHER ORDERED that the administrative law judge shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

IT IS FURTHER ORDERED that the temporary suspension of Randall Goulding, Esq., entered on February 7, 2020, remain in effect pending a hearing and decision in this matter.

By the Commission.

Vanessa A. Countryman
Secretary