

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 1209/January 30, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-15628

In the Matter of

DANIEL IMPERATO

ORDER FINDING RESPONDENT IN
VIOLATION OF ORDERS, REJECTING
RESPONDENT'S E-MAIL AND TELEPHONE
COMMUNICATIONS, AND WARNING OF
POSSIBLE SANCTIONS AND DEFAULT

On November 27, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Daniel Imperato (Imperato), pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). By Orders issued December 12, 2013, and January 10, 2014 (collectively, the Orders), Imperato was notified that: (1) his communications with this Office must be in writing and filed in hardcopy with the Office of the Secretary, pursuant to Commission Rules of Practice (Rules) 151 and 152;¹ (2) courtesy copies of filings may be transmitted to this Office by e-mail at alj@sec.gov, but e-mail does not substitute for a required hardcopy filing with the Office of the Secretary; (3) unless otherwise directed, Imperato shall not call this Office, the Office of the Secretary, or any other office or division of the Commission regarding this proceeding, but rather should file a motion in accordance with the Rules if he is unclear about the proper procedure or seeks clarification of an order; and (4) I will reject any further communications made to this Office that are not filed with the Office of the Secretary. Daniel Imperato, Admin. Proc. Rulings Release No. 1161, 2014 SEC LEXIS 94 (Jan. 10, 2014); Admin. Proc. Rulings Release No. 1100, 2013 SEC LEXIS 3909 (Dec. 12, 2013).

On January 28, 2014, Imperato was ordered to show cause by February 7, 2014, why this proceeding should not be determined against him due to his failure to file an Answer to the OIP, which was due by January 22, 2014. Daniel Imperato, Admin. Proc. Rulings Release No. 1204, 2014 SEC LEXIS 304 (Order to Show Cause). That same day, in response to the Order to Show Cause, Imperato called this Office and the Office of the Secretary, and sent multiple e-mails to this Office requesting that the Order to Show Cause be retracted.² He asserted that he had mailed his Answer on January 21, 2014, and that a U.S. Postal Service tracking number confirmed that the

¹ The Rules are available online at <http://www.sec.gov/about/rulesofpractice.shtml>.

² There is no indication that Imperato's e-mails were courtesy copies of formal filings made with the Office of the Secretary and served on the Division of Enforcement in accordance with Rules 150, 151, and 152.

Answer was delivered to the Commission on January 27, 2014. Included in the delivered package was a Motion for Subpoenas and Discovery (Motion), with nine subpoenas attached, all in a case captioned SEC v. Imperato, Case No. 9:12-CV-80021. The Motion seeks only issuance of the nine attached subpoenas.

Given Imperato's multiple communications to this Office and the Office of the Secretary that are noncompliant with the Rules and the Orders, I find Imperato in express violation of the Orders and the Rules described therein. Under Rule 180(a)(1), "[c]ontemptuous conduct by any person before the Commission or a hearing officer during any proceeding, including any conference, shall be grounds for the Commission or the hearing officer to . . . exclude that person from such hearing or conference, or any portion thereof[.]" 17 C.F.R. § 201.180(a)(1)(i). Under Rule 111(d), I have the authority to regulate the course of this proceeding and the parties' conduct. 17 C.F.R. § 201.111(d).

It is ORDERED that Imperato is WARNED that if he commits any further violation of the Orders, which explain the procedures to be followed in this proceeding, or any other orders I may issue, I will issue an order requiring Imperato to show cause within ten days of such violation why he should not be excluded from further participation in this proceeding and why any motion or opposition filed by him should not be stricken from the record. Cf. Richard Kern, Exchange Act Release No. 51115 (Feb. 1, 2005), 84 SEC Docket 2923, 2924-25 (show cause orders in cases of potential default are a "long-standing and helpful" practice).

It is FURTHER ORDERED that Imperato's e-mail and telephone communications are REJECTED and shall not be part of the record. See 17 C.F.R. § 201.180(b). E-mail and telephone communications are not substitutes for a properly filed motion requesting relief from, or a response to, the Order to Show Cause.

It is FURTHER ORDERED that Imperato must respond to the Order to Show Cause with a written filing by February 7, 2014. If Imperato fails to respond to the Order to Show Cause by February 7, 2014, he will be deemed in default and the proceeding will be determined against him. See 17 C.F.R. §§ 201.155(a), .180(b), (c). Imperato's Answer was due January 22, 2014. The Office of the Secretary received Imperato's Answer on January 28, 2014, after the Order to Show Cause was issued. Under Rule 151(a), "[p]apers required to be filed with the Commission must be received within the time limit, if any, for such filing." 17 C.F.R. § 201.151(a). Even if I was to accept January 27, 2014—the date of delivery according to Imperato—as the filing date of Imperato's Answer, his Answer was late under the Rules.

It is FURTHER ORDERED that Imperato's Motion for Subpoenas and Discovery is DENIED. I lack authority to issue subpoenas in a U.S. District Court case.

Lastly, Imperato is reminded that any motion for summary disposition is due February 19, 2014, and any opposition is due March 7, 2014.

Cameron Elliot
Administrative Law Judge