

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1360/ April 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15815

In the Matter of

L&L ENERGY, INC.
AND DICKSON LEE, CPA

ORDER STAYING PROCEEDING

On March 27, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against L&L Energy, Inc. (L&L), and Dickson Lee, CPA (Lee) (collectively, Respondents), pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Commission Rule of Practice (Rule) 102(e). A hearing is currently scheduled to begin on April 23, 2014.

On April 2, 2014, the U.S. Attorney for the Western District of Washington (U.S. Attorney) filed an Application to Intervene and Motion to Stay Administrative Proceeding (Motion to Stay), pursuant to 17 C.F.R. § 201.210(c)(3), and a Memorandum of Law in Support of Motion to Stay. The U.S. Attorney seeks to intervene in this proceeding for the limited purpose of bringing the Motion to Stay, which requests a stay of this proceeding pending resolution of a criminal proceeding being pursued by the U.S. Attorney against Lee in United States v. Lee, 14-cr-24 (W.D. Wash.) (criminal proceeding). Attached to the Motion to Stay is a copy of the January 29, 2014, indictment (indictment) filed in the criminal proceeding, which the U.S. Attorney represents was unsealed on March 26, 2014. According to the U.S. Attorney, a trial is scheduled for June 2014 in the criminal proceeding.

The U.S. Attorney states that this proceeding and the criminal proceeding involve overlapping factual allegations and common legal questions, as both proceedings focus on the same conduct of Lee and L&L, and that both proceedings will involve largely the same witnesses, documents, and other evidence. The Division of Enforcement (Division) does not object to a stay of this proceeding. The U.S. Attorney has inquired whether Respondents would consent to a stay, but has yet to receive a response.

Simultaneously, the Division filed a Motion to Toll the Time to Produce Its Investigative File During the Pendency of the Motion to Stay (Motion to Toll), seeking an order tolling the time for production of its investigative file to Respondents under Rule 230 until I determine whether a stay of this proceeding is appropriate and/or until the criminal proceeding is resolved.

Ruling

Under Rule 210, leave to participate on a limited basis may be granted to an authorized representative of a U.S. Attorney “for the purpose of requesting a stay during the pendency of a criminal

investigation or prosecution arising out of the same or similar facts that are at issue in the pending Commission enforcement or disciplinary proceeding,” and that a motion for stay shall be favored upon a showing that it is in the public interest or for the protection of investors. 17 C.F.R. § 201.210(c)(3). Although the time for Respondents to respond to the Motion to Stay has not yet expired, it is evident that a stay is warranted under Rule 210. This proceeding and the criminal proceeding involve the same or similar facts and issues, a stay would avoid prejudicing the pending criminal proceeding, and, absent a stay, the pending criminal proceeding may impair the effective presentation of evidence in this proceeding.

The only remaining issue is whether the stay should cover the Division’s obligation to “make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division’s recommendation to institute proceedings.” 17 C.F.R. § 201.230(a)(1). Unless otherwise directed by the Commission or hearing officer, the Division shall commence making documents available to a respondent for inspection and copying no later than seven days after service of the OIP. 17 C.F.R. § 201.230(d).

There is no indication that Respondents will be prejudiced if they do not receive the Division’s investigative file while this proceeding is stayed. The OIP directs that an Initial Decision be issued within 300 days from service of the OIP, pursuant to Rule 360(a)(2), which in turn automatically tolls the time period in which an Initial Decision must be issued while a stay is in effect pursuant to Rule 210(c)(3). I am not aware of any plan to conduct this hearing on an expedited basis upon the lifting of the stay. Respondents will have the same time frame within which to review the Division’s investigative file as they otherwise would have had absent a stay.

Moreover, in postponing an administrative proceeding, the Commission reasoned that “substantial prejudice could result to the District Attorney’s prosecution of the pending criminal prosecution if the administrative proceeding were not postponed, such as from disclosure of the government’s investigative files in this administrative action.” A.S. Goldman & Co., 54 S.E.C. 349, 352 (1999). Although the U.S. Attorney did not specify in the Motion to Stay that the criminal proceeding would be prejudiced by the Division’s production of its investigative file, the U.S. Attorney did represent that disposition of this proceeding as currently scheduled would substantially prejudice the criminal proceeding and hinder the criminal enforcement of the securities laws. I take as a given that when the U.S. Attorney requested a stay, she intended that nothing further occur in this proceeding.

For these reasons, I GRANT the Application to Intervene, Motion to Stay, and Motion to Toll, and ORDER this proceeding STAYED pending resolution of the criminal proceeding. The time for the Division’s production of its investigative file under Rule 230(d) will recommence upon the lifting of the stay. The U.S. Attorney shall file a written status report on July 1, 2014, and every ninety days that follow, stating whether the stay should remain in effect, and shall inform my Office if the situation changes before the due date of any status report.

Brenda P. Murray
Chief Administrative Law Judge