

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1373/April 14, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15799

In the Matter of

MICHAEL D. MONTGOMERY

ORDER FOLLOWING
PREHEARING CONFERENCE

On March 18, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act), alleging that Michael D. Montgomery (Montgomery) was convicted of wire fraud and filing a false tax return in United States v. Montgomery, No. 3:11-CR-5156-RJB (W.D. Wash. Dec. 27, 2012) (Montgomery). The OIP further alleges that Montgomery was sentenced to a prison term of 60 months followed by three years of supervised release, and ordered to make restitution in the amount of \$995,811.

On April 9, 2014, D'el Taylor, a Unit Counselor at FCI Englewood, Littleton, Colorado, e-mailed the Division of Enforcement (Division) stating that he delivered the OIP to Montgomery on April 3, 2014.¹ I find that Montgomery was served with the OIP on that date under Commission Rule of Practice 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i).

Montgomery appeared pro se at a telephonic prehearing conference on April 10, 2014. At the prehearing conference, Montgomery did not dispute the Division's representation that he received the OIP, but stated that he suffered a traumatic brain injury and could not recollect the underlying court proceeding in Montgomery, and he did not feel comfortable discussing the OIP's allegations without legal representation. I explained that I could take official notice of the record in Montgomery, and that the issue in this proceeding was whether, in view of Montgomery, he should be subject to a sanction pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. OIP at 2; 17 C.F.R. § 201.323.

The Division stated that it is requesting a collateral bar. I granted the Division leave to file a motion for summary disposition (Motion) and asked whether it wanted to do so orally or in

¹ I have sent a copy of the e-mail received by this Office to the Office of the Secretary for inclusion in the record of this proceeding.

writing. The Division did so orally on the record during the prehearing conference, citing entries 89, the judgment, and 94, the amended judgment, on the Montgomery docket sheet in support of the Motion. 17 C.F.R. § 201.250.

Ruling

Under the Commission's Rules of Practice (Rules), Montgomery's answer to the OIP's allegations is due Monday, April 28, 2014. 17 C.F.R. §§ 201.160, .220(b); OIP at 2. If Montgomery does not file an Answer, I will find him in default. 17 C.F.R. §§ 201.155(a)(2), .220(f).

If Montgomery does file an Answer, I will issue a procedural schedule for a written motion for summary disposition from the Division. At the prehearing conference I did not believe a written motion was necessary but, after further consideration and discussion with law clerks, it appears that a written motion would be the better procedure. The Rules do not appear to specifically provide for an oral motion for summary disposition, Montgomery is pro se, and given the Commission's ruling in Ross Mandell, Exchange Act Release No. 71668, 2014 SEC LEXIS 849 (Mar. 7, 2014), additional evidence from the underlying proceeding, in addition to the judgment and amended judgment, will be necessary to make the required public interest determination.

Brenda P. Murray
Chief Administrative Law Judge