

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2782/June 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16517

In the Matter of

CHARLES R. KOKESH

SCHEDULING ORDER

On April 28, 2015, the Securities and Exchange Commission issued an Order Instituting Proceedings (OIP) pursuant to Section 203(f) of the Investment Advisers Act of 1940. On May 15, I ordered the parties to conduct a prehearing conference. *Charles R. Kokesh*, Admin. Proc. Rulings Release No. 2679, 2015 SEC LEXIS 1920.

On June 5, the parties submitted a joint prehearing conference statement (Joint Statement). The Division served the OIP on Respondent on June 1, 2015. Joint Statement at 2. Respondent's Answer is due on Monday, June 22, 2015.

In their joint statement, "[t]he parties stipulate to the facts alleged in Section II of the OIP." Joint Statement at 2. The OIP alleges that

On March 30, 2015, a final judgment was entered against Respondent, permanently enjoining him from violating Section 37 of the Investment Company Act of 1940 and from aiding and abetting violations of Sections 13(a) and 14(a) of the Securities Exchange Act of 1934 and Rules[]12b-20, 13a-1, 13a-13, and 14a-9 thereunder and Sections 205(a), 206(1), and 206(2) of the Advisers Act in the civil action entitled *Securities and Exchange Commission v. Charles R. Kokesh*, Case No. 1:09-cv-1021 SMV/LAM, in the United States District Court for the District of New Mexico.

OIP at 1.

The parties "stipulate to the admissibility into evidence for all purposes of the following documents: (a) District court Memorandum Opinion and Order Granting Plaintiff's Motion for Entry of Final Judgment. Dkt. 184; (b) Final Judgment. Dkt. 185; [and] (c) Notice of Appeal. Dkt. 186." Joint Statement at 2 (formatting altered). The parties also agree that official notice may be taken of these documents. *Id.*

Respondent requests a stay of this proceeding “pending the outcome of his appeal” of the district court case. Joint Statement at 1-2. I “adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.” 17 C.F.R. § 201.161(b)(1). Denying the requested stay would not substantially prejudice Respondent. If he ultimately succeeds in overturning the district court judgment, he may request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending). See, e.g., *Jilaine H. Bauer, Esq.*, Securities Act of 1933 Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013); *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012). By contrast, if I stay the proceeding so long as Respondent pursues his appeal, the public’s interest in timely concluding this proceeding would be suspended indefinitely. Because Respondent’s stay request is limited to relief that he could receive in the future if he prevails on appeal, I will not stay the proceeding on that basis.

The Division contends that this case may be resolved by summary disposition. Joint Statement at 2-3. Respondent’s position is “that summary disposition is not appropriate because the underlying injunctions against him are without merit.” *Id.* at 3. Respondent may not use this administrative proceeding to collaterally attack the underlying proceeding. See *Blinder, Robinson & Co.*, 837 F.2d 1099, 1108-09 (D.C. Cir. 1988); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 (Oct. 12, 2007), *pet. denied*, 285 F. App’x 761 (D.C. Cir. 2008); *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10 & nn.20-22 (Aug. 23, 2002). As such, I will permit the Division to seek summary disposition. If that motion does not fully resolve the matter, then a hearing will be conducted.

I ORDER the following procedural schedule:

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| June 22, 2015: | Respondent’s Answer is due. |
| July 31, 2015: | The Division’s motion for summary disposition is due. |
| August 14, 2015: | Respondent’s opposition is due. ¹ |
| August 24, 2015: | The Division’s reply, if any, is due. |
| October 26-30, 2015: | Hearing, if necessary. ² |

The Division’s motion shall include: (1) proposed findings of fact with citations to supporting evidence or documents; (2) proposed conclusions of law addressing, among any other issues, the statutory basis for this action and why the Division believes summary disposition is appropriate; and (3) what sanctions are in the public interest, including a discussion of the public

¹ For good cause shown, Respondent may request an extension of this due date by August 7, 2015.

² The hearing location and additional prehearing deadlines will be established upon a determination that the matter cannot be decided on summary disposition.

interest factors under *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), with citations to supporting evidence or documents. *See Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014). In his opposition, Respondent will then address whether he agrees or disagrees with the Division's arguments and the relief it seeks, and may set forth his own proposed findings and conclusions, with supporting evidence or documents. The parties are encouraged to file their supporting evidence or documents, if any, with a declaration identifying each exhibit with a short description.

The parties' submissions and any evidence or documents in support shall be filed with the Commission's Office of the Secretary in hard-copy paper format, pursuant to Rules 151 and 152.17 C.F.R. §§ 201.151, .152. Electronic courtesy copies of the parties' submissions should be emailed to alj@sec.gov in both PDF text-searchable format and MS Word format. Electronic copies of the parties' exhibits should not be combined into a single PDF file, but submitted as separate attachments.

Based on the agreement of the parties, I find that the facts alleged in Section II of the OIP are true; and will take official notice of the aforementioned documents in the district court case involving Respondent (Dkt 184-186). *See* 17 C.F.R. § 201.323.

Respondent's motion to stay this proceeding is DENIED.

SO ORDERED.

Jason S. Patil
Administrative Law Judge