

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 3267/October 29, 2015

ADMINISTRATIVE PROCEEDING

File No. 3-15764

In the Matter of

GARY L. MCDUFF

ORDER GRANTING EXTENSION

On September 5, 2014, I issued an initial decision in this proceeding. *Gary L. McDuff*, Initial Decision Release No. 663, 2014 SEC LEXIS 3207. On April 23, 2015, the Securities and Exchange Commission vacated the initial decision and remanded this proceeding for further development of the record. *See Gary L. McDuff*, Exchange Act Release No. 74803, 2015 SEC LEXIS 1657. I instructed both parties to file supplemental briefing to their earlier motions for summary disposition. In doing so, I warned the Division of Enforcement that if it failed to establish that McDuff had been acting as a broker at the time of his misconduct, I may grant McDuff's motion. *Gary L. McDuff*, Admin. Proc. Rulings Release No. 2613, 2015 SEC LEXIS 1646, at *2 (Apr. 30, 2015). The parties timely filed their supplemental briefs.

On October 2, 2015, I denied the Division's summary disposition motion, determining that the Division's legal theory relied on facts that, even if true, failed to establish McDuff's broker status. *Gary L. McDuff*, Admin. Proc. Rulings Release No. 3190, 2015 SEC LEXIS 4040, at *16-22, *24-25. I also ordered the Division to show cause by October 30, 2015, why the proceeding should not be dismissed and what evidence and legal theory it would present on the broker issue at hearing. *Id.* at *24-25.

On October 28, 2015, the Division submitted a motion to postpone the show cause date to November 6, 2015, citing a heavy workload that has prevented the preparation of a proper response. The Division represents that McDuff opposes the extension because he is unclear whether the show cause order gives him a right to respond to the Division's filing. He would drop his opposition if permitted to file a request for me to take judicial notice of a recent filing he made in the civil case underlying this proceeding.

The show cause order applies only to the Division, and therefore I find that a one-week extension would not substantially prejudice McDuff. Accordingly, for good cause shown under 17 C.F.R. § 201.161(b), I GRANT the Division's motion. If, upon receipt of the Division's response to the show cause order, I find that additional briefing is necessary, I will give McDuff the opportunity to file a reply.

Cameron Elliot
Administrative Law Judge