

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3631/February 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17035

In the Matter of

SHREYANS DESAI

ORDER FOLLOWING
PREHEARING
CONFERENCE

On January 5, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. Desai was served with the OIP on January 11, 2016, at Federal Medical Center Devens in Ayer, Massachusetts. *Shreyans Desai*, Admin. Proc. Rulings Release No. 3603, 2016 SEC LEXIS 529 (ALJ Feb. 11, 2016).

The OIP alleges that the United States District Court for the District of New Jersey in *SEC v. Desai*, 2:11-cv-05597

- (1) entered a default judgment on October 3, 2012, against Shreysiddh Capital LLC (SSC), a company Desai founded and of which he was President and CEO, and ordered SSC to disgorge \$116,858.29, plus prejudgment interest of \$13,865.33; and
- (2) entered a final judgment on November 30, 2015, against Desai enjoining him from future violations of Section 17(a) of the Securities Act of 1933; Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

The OIP alleges further that Desai pled guilty to two counts of wire fraud in *United States v. Desai*, 2:12-cr-05597 (D.N.J.) and on December 5, 2014, he was sentenced to a 15-month prison term followed by three years of supervised release and ordered to pay restitution in the amount of \$121,260.

On February 3, 2016, Desai, appearing *pro se*, moved to postpone the hearing for 90 to 180 days, representing that he: (1) does not have access to evidence; (2) has only limited access to witnesses and experts; (3) is still in proceedings with respect to the criminal proceeding; and

(4) needs additional time to review the “SEC’s new admittance that there is only one victim in the alleged fraud conspiracy.”

On February 10, 2016, the Division of Enforcement filed the Declaration of Christina M. McGill with exhibits A-D. The Division opposes Desai’s request for a postponement. It represents that it has made repeated calls and sent several letters to Desai, which he has not answered. The Division requests that I order Desai to file an answer, and states that once the answer is filed, it will request leave to file a motion for summary disposition.

Desai participated in a telephonic prehearing conference held on February 18, 2016. At the prehearing conference, Desai represented that: (1) he has no records from his civil or criminal proceedings and cannot access the investigative file on a disk; and (2) he is to be released to a halfway house on March 17 and from federal custody on April 30, 2016. I RULED that I would consider Desai’s February 3 petition, as his answer, and I ORDERED Desai to make a filing by April 10, 2016, stating whether he had obtained legal counsel and describing the evidence he would present if I ordered the in-person hearing that he has requested. The Division will request that Desai receive a bar to the full extent allowed by Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.

I explained to Desai that the case law allows this administrative proceeding to continue despite appeals in underlying district court actions and he would not be allowed to contest those findings in this proceeding. I erred in saying that this proceeding was based only on the final judgment in the underlying civil action. The OIP alleges two civil judgments, one against SSC and one against Desai, and one criminal action. There is significant case law that a motion for summary disposition is appropriate in this “follow-on” proceeding where the Division can show that the alleged underlying court rulings do, in fact, exist. *See, e.g., Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 & nn.21-24 (Feb. 4, 2008). However, given that Respondent is *pro se* and currently incarcerated, I am allowing Respondent ample time to review his files and discuss with an attorney to give him a full opportunity to present evidence that a permanent bar against him would not be in the public interest.

I will issue an order on how we will move the proceeding to resolution after I receive the filing from Desai due by April 10, 2016.

Brenda P. Murray
Chief Administrative Law Judge