

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3790/April 19, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17035

In the Matter of

SHREYANS DESAI

ORDER SETTING
SCHEDULE FOR MOTION
FOR SUMMARY
DISPOSITION

On January 5, 2016, the Securities and Exchange Commission issued an order instituting proceedings 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*, No. 11-cv-05597 (D.N.J. 2015)

- (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.

OIP at 2.

The OIP alleges further that on May 5, 2014, Desai pled guilty to two counts of wire fraud in *United States v. Desai*, No. 12-cr-05597 (D.N.J. 2014) and on December 5, 2014, he was sentenced to a fifteen-month prison term followed by three years of supervised release and ordered to pay restitution in the amount of \$121,260. *Id.* at 2-3.

On February 3, 2016, while he was incarcerated at FMC Devens, Desai, appearing *pro se*, moved to postpone the hearing in this matter for 90 to 180 days, representing that he: (1) did not have access to evidence; (2) had only limited access to witnesses and experts; (3) was still in proceedings with respect to a criminal matter; and (4) needed additional time to review the “SEC’s new admittance that there is only one victim in the alleged fraud conspiracy.” Petition at 2. On February 11, 2016, I denied Desai’s petition to postpone the proceeding until a parallel

criminal action is completed or he has been released from custody, and ordered a telephonic prehearing conference. *Shreyans Desai*, 2016 SEC LEXIS 529, at *2-4.

At a prehearing conference on February 18, 2016, I ruled that I would consider Desai's February 3, 2016, letter to be his answer. Tr. 24-25. The Division of Enforcement stated that based on the final judgment in the civil action and Desai's guilty plea in the parallel criminal action, neither of which Desai denied, it was requesting a schedule for a motion for summary disposition, and that Desai receive a bar from participation in the securities industry to the full extent allowed by Sections 15(b) of the Exchange Act and 203(f) of the Advisers Act. Tr. 5, 10, 18. Desai stated that he wanted an in-person hearing, needed time to retain legal counsel, and was being released to a half-way house on March 17, 2016. Tr. 14-16. I gave Desai until April 10, 2016, to make a filing "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." *Shreyans Desai*, Admin. Proc. Rulings Release No. 3631, 2016 SEC LEXIS 648 (ALJ Feb. 22, 2016); Tr. 24.

On March 30, 2016, Desai filed an "Opposition, Part A to Your Honor's Order of February 22, 2016, Exhibit A" (opposition). The opposition does not disclose if Desai has retained an attorney, and does not describe any material fact in dispute or the evidence Desai would present at an in-person hearing. Rather, Desai alleges that Siddharth Patel was a partner in SSC and should be made a party to this proceeding, and he will not be able to defend himself if the Division does not answer questions Desai posed in his letter to the Division dated March 23, 2016. Opposition at 1-2. On April 19, 2016, Desai filed a letter, with three attachments, repeating prior arguments and requesting oral argument and that trading restrictions be lifted.

Ruling

Desai's March 30, 2016, opposition does not disclose any material facts in dispute that need to be resolved or any reason for an in-person hearing. *See Seghers v. SEC*, 548 F.3d 129, 133 (D.C. Cir. 2008) (rejecting due process challenge to summary disposition in Commission proceeding); *Daniel Imperato*, Exchange Act Release No. 74596, 2015 SEC LEXIS 1377, at *8 n.16 (Mar. 27, 2015) ("We have repeatedly upheld the use of summary disposition in circumstances where a respondent has been enjoined and the sole determination concerns the appropriate sanction."), *recons. denied*, Exchange Act Release No. 74886, 2015 SEC LEXIS 1769 (May 6, 2015); *Mitchell M. Maynard*, Advisers Act Release No. 2875, 2009 SEC LEXIS 1621, at *27 (May 15, 2009) (same), *recons. denied*, Advisers Act Release No. 2901, 2009 SEC LEXIS 2398 (July 16, 2009). Accordingly, I GRANT the Division leave to file a motion for summary disposition. I ORDER that the motion is due by May 6, 2016; Desai's opposition to the motion is due by May 25, 2016; and the Division's reply, if any, is due by June 6, 2016. 17 C.F.R. §§ 201.154, .250.

Brenda P. Murray
Chief Administrative Law Judge