

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 652/May 25, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13689

In the Matter of	:	ORDER DISCONTINUING THE
DAVID L. McMILLAN	:	PROCEEDING WITHOUT PREJUDICE

On November 19, 2009, the Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting 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). On May 10, 2010, the Division of Enforcement filed a Motion to Discontinue Administrative Procedure as Respondent Cannot Be Located (Motion) with attached Declaration of Thomas Gleim, Private Investigator. The Motion represents that David L. McMillan (McMillan) was subject to a final default judgment entered in SEC v. McMillan, No. 06-CV-0951 (D. Ariz. Oct. 20, 2009) that permanently enjoined him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act. The Motion requests that the proceeding against McMillan be discontinued and the matter dismissed because the Commission has not been able to serve McMillan with a copy of the OIP despite considerable efforts to do so. Among other things, a private detective spent almost forty hours in an unsuccessful search.

Ruling

The Commission has delegated to the Chief Administrative Law the authority to “grant motions of staff counsel to discontinue administrative proceedings as to a particular respondent who has died or cannot be found, or because of a mistake in the identity of a respondent named in the order for proceedings.” 17 C.F.R. § 200.30-10(a)(8).

Given that the Division has made considerable unsuccessful efforts to serve McMillan over a six-month period and that the Commission cannot act until McMillan has been served, I GRANT the Motion and ORDER that the proceeding is discontinued without prejudice.

Brenda P. Murray
Chief Administrative Law Judge