

ACT

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10007

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
January 9, 2003

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

JAN 10 2003

In the Matter of :
: CLARKE T. BLIZZARD and :
: RUDOLPH ABEL :
_____ :

ORDER

CTFD. NO. 1ST CLASS

Prior to the hearing in this matter, the Securities and Exchange Commission (Commission) disqualified Attorney Daniel I. Small from continuing to represent Respondent Rudolph Abel and several individuals whom the Division of Enforcement (Division) had proposed to call as witnesses. See Clarke T. Blizzard and Rudolph Abel, 77 SEC Docket 1515 (Apr. 24, 2002) (Disqualification Order) (disqualifying Mr. Small); Clarke T. Blizzard and Rudolph Abel, Admin. Proc. No. 3-10007 (July 18, 2002) (unpublished) (Order Denying Stay) (denying request for stay pending judicial review of disqualification). Mr. Abel appeared pro se at the hearing.¹


On December 19, 2002, Mr. Small reported that Mr. Abel retained him to prepare post-trial pleadings, arguing that the Disqualification Order permits this and that possible conflicts in testimony on which it was based did not materialize. On January 2, 2003, the Division opposed Mr. Small's representation. By Order on January 6, the undersigned ruled that the Commission had disqualified Mr. Small from representing Mr. Abel during "the proceeding," not one phase of it.

Under consideration is Mr. Small's January 7 letter replying to the Division's January 2 letter and requesting reconsideration of the January 6 Order. He reiterates his argument that no conflict exists, cites pleadings opposing his request for judicial review that the Commission filed with the U.S. Court of Appeals for the D.C. Circuit, and emphasizes that Mr. Abel has been deprived of the counsel of his choice. Mr. Small notes the difficulties Mr. Abel will face - either to continue pro se or to pay prohibitive amounts for new counsel who would have to learn a complex matter from the beginning.

¹ The hearing commenced October 15, 2002, and concluded November 18. The record was closed November 18. The dates for the parties' post-hearing briefs and proposed findings of fact and conclusions of law are January 31, 2003, for the Division of Enforcement (Division) and February 28 for Respondents. The Division's reply is due March 31.

Whatever the merits of Mr. Small's arguments, the Commission has disqualified him from representing Mr. Abel during "the proceeding," not one phase of it.² The undersigned is not authorized to review Commission rulings. Accordingly, Mr. Small's request for reconsideration is denied.

IT IS SO ORDERED.



Carol Fox Foelak
Administrative Law Judge

² See Order Denying Stay at 1 (Mr. Small disqualified "from representing both Abel and any witness to be called against Abel in the proceeding pending against him"). Also, "the Disqualification Order was based on 'the serious potential for prejudice to the integrity of the proceeding' . . . inherent in Small's representation of Abel with respect to subject matters . . . substantially related to his representation of the Witnesses. . . . [,] not on an identified conflict in the anticipated testimonies of Abel and any of the Witnesses." Id. at 2.