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ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11765

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
January 21, 2005

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE  
JAN 21 2005  
FIRST CLASS


In the Matter of :  
:  
DANIEL E. CHARBONEAU : ORDER

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on December 6, 2004. The OIP alleges, in ¶ II.2., that Respondent Charboneau (Respondent) was permanently enjoined from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder (antifraud provisions) in SEC v. FoneCash, Inc., Civil Action No. 1:02CV00651-RMC (D.D.C. Nov. 15, 2004). Based on this, the Division of Enforcement (Division) is seeking a penny stock bar against Respondent.

Respondent's Answer to the OIP does not address the allegation in ¶ II.2., but states that the allegations in ¶ II.3. are so vague and ambiguous that he cannot reasonably respond and moves for a more definite statement. The OIP, however, is based on the allegation in ¶ II.2. that he was enjoined from violations of the antifraud provisions in SEC v. FoneCash, Inc., while ¶ II.3. purports to summarize the Commission's complaint in that case. Thus, the OIP is not so vague and ambiguous that Respondent cannot reasonably respond, and his motion for a more definite statement will be denied.

Respondent, who is incarcerated, also asks for a stay of the proceeding, based on logistical constraints imposed on him, pending his release. The Division opposes a stay, noting that the case is a "follow-up" proceeding based on his injunction, not a retrial of the underlying case.<sup>1</sup> The Division requests leave to file a Motion for Summary Disposition, pursuant to 17 C.F.R. § 201.250. The Division's request will be granted; the Motion for Summary Disposition will be due February 4, 2005. The logistical constraints cited by Respondent will not prevent him from responding; his response will be due February 18, 2005. The proceeding will not be stayed.

IT IS SO ORDERED.

  
Carol Fox Foelak  
Administrative Law Judge

<sup>1</sup> Respondent states that he has appealed the injunction. However, the pendency of an appeal does not preclude "follow-up" action. Joseph P. Galluzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002).