

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 684/October 18, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14536

In the Matter of	:	
	:	
MONTFORD AND COMPANY, INC.	:	ORDER ON APPLICATION
D/B/A MONTFORD ASSOCIATES, and	:	FOR INTERLOCUTORY
ERNEST V. MONTFORD, SR.	:	APPEAL
	:	

The Securities and Exchange Commission (Commission) issued an Order Instituting Public Administrative and Cease-and-Desist Proceedings (OIP) on September 7, 2011, pursuant to Sections 203(e), (f), and (k) of the Investment Advisers Act of 1940. Respondents filed an Answer on September 28, 2011. A hearing is scheduled to begin on November 7, 2011.

At a prehearing conference on October 3, 2011, I denied Respondents' Motion to Dismiss Out-of-Time OIP. Respondents filed an Application for Certificate of Interlocutory Review (Application) on October 12, 2011.

On October 13, 2011, the Division of Enforcement (Division) filed its Opposition to the Application (Opposition), and Respondents filed a Reply in Support of the Application (Reply).

Argument

Respondents state that the Application should be granted. They contend my ruling denying their Motion to Dismiss Out-of-Time OIP was incorrect because it confuses Section 929U of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which provides "[n]ot later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of its intent to not file an action," with the Commission's directive that an Initial Decision shall be issued no later than 300 days from the date of service of the OIP. Respondents also argue that my ruling will have unintended consequences. Application at 4-7.

The Division believes that the thrust of the Application is Respondents' position that "there is still no representation that any person made the complexity determination required by Dodd-Frank." Application at 3 n.1; Opposition at 2. It contends that the Application should be denied because my ruling relied on factual findings and did not involve a controlling question of law as to which there is substantial ground for differences of opinion, citing SEC v. First Jersey Securities, Inc., 587 F. Supp. 535, 536 (S.D.N.Y. 1984). Opposition at 2-3. Also, the Division notes that Respondents fail to cite any difference of opinion among administrative rulings or show that an immediate review may materially advance the completion of the proceeding. Opposition at 3-4. The Division cites to Dodd-Frank Section 929U(a)(2) for its position that the Division Director is not required to articulate or memorialize the reason for deciding that an investigation is sufficiently complex. Opposition at 5.

In their Reply, Respondents reaffirm the correctness of their position. They: (1) fault the Division for not supporting the legal analysis, and for not demonstrating to their satisfaction that the Division took the action that Dodd-Frank sets out for an extension; and (2) contend that my decision was not based in fact.

Ruling

Rule 400(c)(2) of the Commission's Rules of Practice provides that a hearing officer shall not certify a ruling unless: (i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and (ii) an immediate review of the order may materially advance the completion of the proceeding. Rule 400 also provides that interlocutory review petitions are disfavored.

I DENY the Application because it fails to meet the requirements of Rule 400(c)(2). My ruling was based on findings of fact and law. Respondents have not shown that the ruling involves a controlling question of law as to which there is substantial ground for differences of opinion, and the appeal will impede rather than advance resolution of the allegations in the OIP.

Brenda P. Murray
Chief Administrative Law Judge