

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 787/August 8, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15191

In the Matter of	:	ORDER REQUESTING MOTION FOR
	:	SUMMARY DISPOSITION
BRIAN D. FOX	:	
	:	
	:	

On January 29, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Public Administrative Proceedings and Imposing Temporary Suspension Pursuant to Rule 102(e)(3) of the Commission's Rules of Practice (OIP) in this proceeding. Based on the injunction and prohibition entered in SEC v. Fox, No. 4:11-CV-0211-CVE-PJC (N.D. Okla. Nov. 2, 2012), the OIP temporarily suspended Brian D. Fox (Fox) from appearing or practicing before the Commission. OIP at 2. On May 31, 2013, the Commission accepted Fox's petition to lift the temporary suspension. The Division of Enforcement filed a response to Fox's petition on June 14, 2013. On June 28, 2013, the Commission issued an Order that denied Fox's petition to lift the stay and directed a hearing. On July 18, 2013, the Court of Appeals for the 10th Circuit affirmed the District Court's judgment and its denial of Fox's post-judgment motion. SEC v. Fox, No. 13-5013 (10th Cir.).

The issue in this proceeding is whether Fox should be disqualified from appearing before the Commission pursuant to Commission Rule of Practice 102(e)(3)(ii).

I held a prehearing conference on July 29, 2013, at which Fox requested additional time and argued that he has never had an opportunity to argue the merits of the District Court's findings. I ruled that since the OIP was issued in January further delay was not warranted and that the doctrine of collateral estoppel meant that this proceeding would not relitigate the District Court's rulings.

The Commission held in AMS Homecare, Inc., Exchange Act Release No. 68078 (Oct. 22, 2012), 104 SEC Docket 59973, 59974, that "[t]he Commission's Rules of Practice provide for the holding of a hearing before the issuance of an initial decision, except where a party has moved for summary disposition. No such hearing was held, nor, as noted, did either party file a motion for summary disposition." (internal citations omitted).

Similar to AMS Homecare, there are no material facts in dispute so no hearing is needed. I erred in not requesting leave to file motions for summary disposition from the parties and granting them at the prehearing conference, therefore; I GRANT leave to file and ORDER the filing of motions for summary disposition pursuant to 17 C.F.R. § 201.250, by August 22, 2013.

Brenda P. Murray
Chief Administrative Law Judge