

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2960 / July 22, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16223

In the Matter of

SANDS BROTHERS ASSET MANAGEMENT, LLC,
STEVEN SANDS,
MARTIN SANDS, and
CHRISTOPHER KELLY

MOTION TO THE COMMISSION
FOR EXTENSION

The Securities and Exchange Commission commenced this proceeding on October 29, 2014. The Order Instituting Proceedings (OIP) alleges that: Sands Brothers Asset Management, LLC (SBAM), a registered investment adviser, willfully violated Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-2 thereunder (custody rule) because, for fiscal years 2010 to 2012, it failed to undergo surprise audits or timely distribute audited financial statements to investors of pooled investment vehicles managed by SBAM as an alternative means of compliance with the custody rule; and the other Respondents willfully aided, abetted, and caused SBAM's violations. OIP at 1-2, 5-7. As service of the OIP was accomplished by November 3, 2014, the Initial Decision is due August 30, 2015.

In accordance with Rule of Practice 360(a)(3), I have determined, after consulting with the presiding law judge Cameron Elliot, that it will not be possible to issue the Initial Decision in the time specified. The parties completed briefing on summary dispositions motions by February 24, 2015. However, due to concerns related to the fairness and integrity of the proceeding, deciding such motions has been delayed and no hearing is currently scheduled.

On February 25, Judge Elliot ordered Martin H. Kaplan, Esq., of Gusrae Kaplan Nusbaum PLLC, to show cause why he should not be disqualified as SBAM's counsel. *Sands Bros. Asset Mgmt., LLC*, Admin. Proc. Rulings Release No. 2349, 2015 SEC LEXIS 702. Judge Elliot raised this issue because, among other reasons, Kaplan previously represented Respondent Christopher Kelly during at least part of the Division of Enforcement's investigation, but then asserted as SBAM's main defense to the Division's motion for summary disposition that it was "Kelly's failure to comport SBAM's conduct with the Custody Rule" which prevented SBAM's compliance. *Id.* at *2-5 (quoting SBAM Opp. at 6).

On April 7, Judge Elliot disqualified Kaplan and Gusrae Kaplan Nusbaum PLLC from representing SBAM in this proceeding, based on findings that: Kaplan had taken a position materially adverse to his former client Kelly in this proceeding; Kaplan had formulated a defense to pin the blame on Kelly, and even conveyed his view about Kelly's responsibility to the Division in August 2013, well before he executed an engagement letter with Kelly; and any purported conflict waiver in that letter was invalid because Kaplan knew at the time he executed the engagement letter that there was a conflict of interest, and he did not disclose that conflict to Kelly. *Sands Bros. Asset Mgmt., LLC*, Admin. Proc. Rulings Release No. 2503, 2015 SEC LEXIS 1250.

On April 22, Judge Elliot denied requests to certify the April 7 Disqualification Order to the Commission for interlocutory review. *Sands Bros. Asset Mgmt., LLC*, Admin. Proc. Rulings Release No. 2566, 2015 SEC LEXIS 1485. SBAM then sought interlocutory review directly from the Commission, which the Commission denied on May 13. *Sands Bros. Asset Mgmt., LLC*, Advisers Act Release No. 4083, 2015 SEC LEXIS 1931.

Thereafter, SBAM's new counsel filed a notice of appearance. On June 17, Judge Elliot held a prehearing conference to address the status of the proceeding. Judge Elliot denied SBAM's motion for a ninety-day stay, but granted the parties until August 21 to file additional briefs; granted SBAM leave to move for summary disposition; and directed SBAM's new counsel to identify the extent to which new counsel agrees or disagrees with statements or arguments made by SBAM's former counsel. *Sands Bros. Asset Mgmt., LLC*, Admin. Proc. Rulings Release No. 2829, 2015 SEC LEXIS 2444 (June 17, 2015). After completion of such briefing, Judge Elliot will then be in a position to decide whether to permit further briefing and/or whether and when to set a hearing. *Id.*

If a hearing is warranted this proceeding, it will be difficult to schedule one earlier than November based on Respondents' stated availability and Judge Elliot's current hearing schedule. And if there is a hearing, sufficient time should be allowed for the filing of post-hearing briefs, review of the record, and preparation of an Initial Decision. *See* 17 C.F.R. § 201.360(a)(2).

For these reasons, I request a six-month extension of the Initial Decision due date, to February 29, 2016.

Brenda P. Murray
Chief Administrative Law Judge