

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3650/February 26, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16946

In the Matter of

GEORGE CHARLES CODY PRICE

ORDER GRANTING
RESPONDENT'S MOTION FOR
LEAVE TO FILE A SURREPLY

On November 5, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP), pursuant to Section 203(f) of the Investment Advisers Act of 1940, against Respondent George Charles Cody Price. The OIP alleges that on June 26, 2015, a final judgment was entered by consent against Price, permanently enjoining him from future violations of the antifraud provisions of the federal securities laws, in *SEC v. ABS Manager, LLC*, No. 13-cv-0319 (S.D. Cal.). Price was served with the OIP on November 16, 2015, and filed an answer on December 7, 2015. *George Charles Cody Price*, Admin. Proc. Rulings Release No. 3337, 2015 SEC LEXIS 4816 (ALJ Nov. 23, 2015).

At a November 30, 2015, prehearing conference, Price requested a settlement conference and I granted his request. Tr. 9-12. I also granted leave to the Division of Enforcement to file a motion for summary disposition (MSD) and set due dates for the motion in the event the settlement conference did not result in an agreement in principle. *George Charles Cody Price*, Admin. Proc. Rulings Release No. 3366, 2015 SEC LEXIS 4921, at *4 (ALJ Dec. 2, 2015).

Administrative Law Judge Cameron Elliot conducted a settlement conference with the parties on December 16, 2015. The settlement conference did not result in an offer of settlement. The Division filed an MSD with the declaration of Lynn M. Dean, including exhibits 1-3, on December 21, 2015; Price filed in opposition (MSD Opposition) on January 28, 2016, attaching exhibits and the declaration of Price, with exhibit A, a copy of Price's declaration filed in the underlying proceeding in support of his motion for summary judgment; and the Division filed its reply (MSD Reply), with a supplemental declaration of Dean on February 1, 2016.

The subject of this order is Price's February 11 motion for leave to file a surreply, to which the Division filed an opposition on February 12, 2016.

In his motion, Price states that he seeks to record his opposition to the Division's supplemental declaration filed with its MSD Reply. Motion at 1. More specifically, he argues that the assertions in paragraphs three through seven of the supplemental declaration contain

hearsay and new facts, including several factually misleading assertions. *Id.* at 1-2. Price categorizes these new facts as follows: (1) “that Price committed additional misdeeds after the SEC initiated the underlying civil complaint”; (2) “that Price is – to this day – misleading investors”; and (3) “that Price misled Morgan Stanley about loans extended to ABS Fund, LLC.” *Id.* at 2.

The Division opposes Price’s motion, arguing that the Rules of Practice do not provide for surreplies and that in this instance, a surreply is “neither warranted nor necessary to deciding the matters raised by the Division’s motion.” *Opp.* at 1. The Division states that it raised the issues it did in its MSD Reply in response to mitigating factors raised by Price in his MSD Opposition. *Id.* The Division argues that Price’s surreply does not rebut the Division’s statements in the MSD Reply and is irrelevant to the disposition of the MSD. *Id.* Additionally, the Division contends that Price cannot deny the allegations in the complaint because he has explicitly agreed, by consent, not to do so. *MSD Reply* at 3-4, 8. Finally, the Division maintains that Price cannot re-litigate the underlying civil proceeding and that Price’s arguments do not mitigate the factors relevant to sanctions. *Id.* at 4-8.

Ruling

Paragraphs three through six of Dean’s supplemental declaration relay allegations surrounding Price’s conduct in, and relating to, the underlying civil proceeding. *See Supp. Decl.* at 1-3. Paragraph seven relays a more recent allegation, though it is unclear whether the alleged conduct occurred before or after the Division filed the MSD. *Id.* at 3. Because the Division could have raised most of these facts earlier in support of its public interest analysis in the MSD, I will allow Price to respond to these allegations in a surreply. While Rule 250 does not provide for a surreply, it also does not forbid it. *See* 17 C.F.R. § 201.250.

Pursuant to Rule 111(h), 17 C.F.R. § 201.111(h), I GRANT Price’s motion for leave to file a surreply and ACCEPT the proposed surreply attached as Exhibit A to his motion.

Brenda P. Murray
Chief Administrative Law Judge