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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4385/November 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17507

In the Matter of JOSEPH L. PITTERA, ESQ.	ORDER ON PARTIES' JOINT PREHEARING STATEMENT AND PROPOSED SCHEDULE

On November 18, 2016, the parties submitted their joint prehearing conference statement, in which the parties reported their agreement that no hearing is necessary and that this matter should be resolved by summary disposition under Rule of Practice 250, 17 C.F.R. § 201.250. The parties further agreed that "a limited universe of documents" is relevant. Joint Prehr'g Conf. Statement at 4. The parties identified two issues to be decided: (1) whether the default judgment and injunction against Respondent issued by the district court—which led to this proceeding being instituted—remains in effect while Respondent's motion to vacate the default judgment is pending and (2) the appropriate sanction, if any, against Respondent "under well-established public interest factors." *Id.* at 2.

In weighing the public interest of a sanction on an attorney, the Commission considers "the egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations." *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd*, 450 U.S. 91 (1981); *see Steven Altman, Esq.*, Securities Exchange Act of 1934 Release No. 63306, 2010 SEC LEXIS 3762, at *68 & n.68 (Nov. 10, 2010) (applying the *Steadman* factors to an attorney disciplinary proceeding under Exchange Act Section 4C and Rule 102(e)). This office typically considers hearing testimony to resolve factual disputes relevant to the public-interest factors, particularly in judging a respondent's sincerity, remorse, and likelihood of recidivism.

Should the parties continue to believe no hearing is necessary, each party should submit an acknowledgment of waiver of a hearing by December 1, 2016. Specifically, Respondent should acknowledge waiving his ability to testify on his own behalf, to call character or other witnesses, and to cross-examine any witnesses, including Adi Elfenbein, whose investigative testimony might be offered as evidence by the Office of Litigation and Administrative Practice (OLAP) and potentially admitted. *See* Joint Prehr'g Conf. Statement at 4. Given the presumption in Rule

235, 17 C.F.R. § 201.235, that witnesses will testify orally in an open hearing, Respondent should also acknowledge that any attempt to submit declarations or prior sworn statements not in accord with that rule may result in the exclusion of such documents from the record, unless such documents contain undisputed facts in accordance with Rule of Practice 250, 17 C.F.R. § 201.250. OLAP should acknowledge waiving its ability to call witnesses.

To the extent both parties acknowledge waiving their right to a hearing, I ADOPT the parties' proposed schedule as follows: OLAP shall file its initial brief by December 9, 2016; Respondent shall file his opposition brief by January 9, 2017; and OLAP shall file its reply brief by January 23, 2017.

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Jason S. Patil
Administrative Law Judge