

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

Administrative Proceedings Rulings
Release No. 5137 / October 5, 2017

Administrative Proceeding
File No. 3-17950

In the Matter of

David Pruitt, CPA

Order Denying Motion for Stay

Respondent David Pruitt, CPA, moves to stay this proceeding because the Supreme Court is likely to grant review of a petition arguing that the way the Securities and Exchange Commission appoints its administrative law judges violates the Appointments Clause of the Constitution.¹ The Division of Enforcement opposes Pruitt's motion.

Although the Supreme Court may conclude that the Commission's administrative law judges are inferior officers who must be appointed by the Commission,² the Commission has repeatedly rejected Appointments Clause arguments concerning its administrative law judges.³ It has also recently

¹ Mem. at 3-11; see *Raymond J. Lucia Cos., Inc. v. SEC*, 868 F.3d 1021 (D.C. Cir. 2017) (en banc) (per curiam), *petition for cert. filed*, No. 17-130 (U.S. July 26, 2017); see also *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016), *reh'g denied*, 855 F.3d 1128 (2017), *petition for cert. filed*, No. 17-475 (U.S. Sept. 29, 2017).

² See *Freytag v. Comm'r*, 501 U.S. 868, 910 (1991) (Scalia, J., concurring) ("administrative law judges . . . are . . . executive officers"); see also *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 542 (2010) (Breyer, J., dissenting).

³ See *Harding Advisory LLC*, Securities Act of 1933 Release No. 10277, 2017 WL 66592, at *19 & nn.82, 90 (Jan. 6, 2017), *petition for review filed*, No. 17-1070 (D.C. Cir. Mar. 6, 2017).

rejected a stay request like the one Pruitt presents.⁴ Because I am bound by Commission precedent, Pruitt’s motion is denied.⁵

James E. Grimes
Administrative Law Judge

⁴ See *Lynn Tilton*, Investment Advisers Act of 1940 Release No. 4735, 2017 WL 3214456, at *2 (July 28, 2017) (denying a stay motion predicated on the likelihood that the Supreme Court will grant certiorari to resolve an Appointments Clause challenge).

⁵ In a footnote, Pruitt preserves his argument that the “multiple layers of tenure protection enjoyed by Commission ALJs violate the separation of powers.” Mem. at 11 n.2. I also reject this argument. See *optionsXpress, Inc.*, Securities Act Release No. 10125, 2016 WL 4413227, at *52 (Aug. 18, 2016); see also *Charles L. Hill, Jr.*, Admin. Proc. Release No. 2675, 2015 SEC LEXIS 1899, at *7–22 (ALJ May 14, 2015).