

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

Administrative Proceedings Rulings
Release No. 5209 / October 31, 2017

Administrative Proceeding
File No. 3-17508

In the Matter of

Michael Ralph Casey, Esq.

Notice of Lack of Authority

On October 24, 2017, the Securities and Exchange Commission's Office of the General Counsel (OGC) moved, pursuant to 17 C.F.R. § 200.30-10(a)(8), for an order from me discontinuing this administrative proceeding against Michael Ralph Casey, Esq., without prejudice.

Facts

On May 31, 2016, the U.S. District Court for the Southern District of Florida entered a default final judgment enjoining Casey from violating Sections 5 and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 in *SEC v. Howard*, No. 12-cv-61731 (S.D. Fla. May 31, 2016), ECF No. 50.¹ On August 22, 2017, the district court, issued a final judgment ordering Casey to disgorge \$27,500,000, together with prejudgment interest of \$6,390,618.58, and to pay a civil penalty of \$160,000. *SEC v. Howard*, ECF No. 56.

Based on the district court's permanent injunction, the Commission entered an order instituting proceedings (OIP) on August 26, 2016, temporarily suspending Casey from appearing or practicing before the Commission pursuant to Rule 102(e)(3)(i)(A) and (B) of the Commission's Rules of Practice. *Michael Ralph Casey, Esq.*, Exchange Act Release No. 78707, 2016 SEC LEXIS 3248; *see* 17 C.F.R. § 201.102(e)(3)(i)(A)-(B).

¹ I take official notice of the docket in the district court case. 17 C.F.R. § 201.323.

The OIP gave Casey thirty days after service of the OIP to file a petition with the Commission to lift the temporary suspension.² OIP at 3. There is no evidence that Casey was ever served with the OIP despite OGC's multiple attempts to do so. Mot. at 3.

The Commission has not referred this proceeding to the Office of Administrative Law Judges.

Discussion

The Commission has delegated authority to the Chief Administrative Law Judge:

(a) With respect to proceedings conducted before an administrative law judge,

* * *

(8) To grant motions of staff counsel to discontinue administrative proceedings as to a particular respondent who has died or cannot be found, or because of a mistake in the identity of respondent named in the order for proceedings.

* * *

(c) Notwithstanding anything in the foregoing, in any case in which the Chief Administrative Law Judge believes it appropriate he or she may submit the matter to the Commission.

17 C.F.R. § 200.30-10.

By its language, the delegation of authority relied on by OGC regarding the discontinuance of a proceeding applies to only those proceedings held

² See 17 C.F.R. § 201.102(e)(3)(ii), (iii) (providing that a person temporarily suspended may petition the Commission to lift the suspension, at which time the Commission may set the matter for a hearing before a hearing officer if it so chooses).

before an administrative law judge.³ Because this proceeding is not before an administrative law judge, *see* OIP at 3, I have no authority to act and respectfully refer the matter to the Commission.

Brenda P. Murray
Chief Administrative Law Judge

³ Not all proceedings are conducted before an administrative law judge. *See* 17 C.F.R. § 201.110 (“All proceedings shall be presided over by the Commission or, if the Commission so orders, by a hearing officer.”).