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

Administrative Proceedings Rulings
Release No. 5596 / February 14, 2018

Administrative Proceeding
File No. 3-18127

In the Matter of

Martin Shkreli

Order Ratifying Prior Actions and Denying Motion for Reconsideration

Ratification

On November 30, 2017, the Commission ratified my appointment as an administrative law judge and directed me to afford the parties in pending cases the chance to present new evidence relevant to my reexamination of the record in those cases.[1] As a result, I gave the parties an opportunity to submit new evidence and also offered them the opportunity to file a brief addressing whether I should ratify or revise any action I have taken in this case.[2]

Neither party submitted new evidence. The Division, however, submitted a letter in which it asserted that I should ratify all previous actions taken.[3] I have reconsidered the record in this proceeding. Based on that reconsideration, I RATIFY all actions taken by an administrative law judge in this proceeding before November 30, 2017. I decline to revise any prior

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1 *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 WL 5969234, at *1–2 (Nov. 30, 2017).

2 *Martin Shkreli*, Admin. Proc. Ruling Release No. 5266, 2017 SEC LEXIS 3833 (ALJ Dec. 5, 2017).

3 Letter from Paul Gizzi at 1 (Jan. 5, 2018).

action. The process contemplated by the Commission's remand order is complete.

Reconsideration

The Division of Enforcement also asks me to reconsider my order denying in part its motion for summary disposition.[4] Because the Division relies on evidence it could have presented before, its motion is DENIED.

The Commission's evaluation of motions to reconsider its decisions is informed by federal court practice.[5] Under federal practice, a motion to reconsider constitutes an "extraordinary remedy."[6] A motion to reconsider seeks to "correct manifest errors of law or fact or . . . present[] . . . newly discovered evidence."[7] As a result, a movant cannot rely on evidence that the movant could have discovered or presented before the order at issue was entered.[8]

Neither Rule of Civil Procedure 59 nor Rule 60 applies, however, because the Division is not seeking reconsideration of a final order in district court. And Commission precedent interpreting Rule of Practice 470 is not directly on point because Rule 470 applies to "reconsideration of a final order issued by the Commission," not rulings of administrative law judges.[9] But the idea

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4 *Martin Shkreli*, Admin. Proc. Ruling Release No. 5233, 2017 SEC LEXIS 3638 (ALJ Nov. 17, 2017).

5 *KPMG Peat Marwick LLP*, Securities Exchange Act of 1934 Release No. 44050, 2001 WL 223378, at *1 n.7 (Mar. 8, 2001).

6 *Kona Enters., Inc., v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).

7 *Reuben D. Peters*, Exchange Act Release No. 51237, 2005 WL 424918, at *1 (Feb. 22, 2005).

8 *Kona Enters.*, 229 F.3d at 890; *Feeley & Wilcox Asset Mgmt. Corp.*, Exchange Act Release No. 48607, 2003 WL 22316308, at *2 n.18 (Oct. 9, 2003); *see Leidos, Inc. v. Hellenic Republic*, -- F.3d --, 2018 WL 663145, at *3 (D.C. Cir. Feb. 2, 2018) ("Rule 59(e) . . . may not be used to . . . present evidence that could have been [presented] prior to the entry of judgment.").

9 *See* 17 C.F.R. § 201.470.

behind the precedent cited above is still instructive.[10] Motions to reconsider are disfavored because piecemeal litigation is inefficient and unfair.[11]

Although the Commission's Rules of Practice do not provide for motions to reconsider interlocutory orders, the same is true of the Federal Rules of Civil Procedure.[12] District courts nonetheless enjoy broad discretion in ruling on such motions.[13] Operating on the premise that I have similar discretion,[14] I determine that, at least in this circumstance, in which the Division has already had two bites at the summary-disposition apple—it could have presented its evidence when it originally filed its motion or by the January 5, 2018 deadline to submit post-ratification evidence—it is appropriate to rely on the logic behind the precedent above.[15]

None of the evidence the Division submits in support of its motion can be described as newly discovered. The evidence was in existence before the Division filed its motion for summary disposition. The Division does not argue that any extraordinary circumstance exists that would justify relying on its evidence to reconsider the partial denial of its motion for summary

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[10] *Cf. Namer v. Scottsdale Ins. Co.*, 314 F.R.D. 392, 393 (E.D. La. 2016) (noting the practice of "evaluat[ing] motions to reconsider interlocutory orders under the same standards that govern Rule 59(e)"); *Wells' Dairy, Inc. v. Travelers Indem. Co. of Illinois*, 336 F. Supp. 2d 906, 909 (N.D. Iowa 2004) (stating that courts considering motions to reconsider interlocutory orders "look[] to the kinds of consideration under [Rules 59 and 60] for guidance"); *KPMG Peat Marwick*, 2001 WL 223378, at *1 n.7 (discussing reasons motions to reconsider are disfavored in reference to federal district and appellate decisions).

[11] *See KPMG Peat Marwick*, 2001 WL 223378, at *1 n.7

[12] *See SFF-TIR, LLC v. Stephenson*, 264 F. Supp. 3d 1148, 1216 (N.D. Okla. 2017).

[13] *See id.* at 1219; *Brodie v. Worthington*, 841 F. Supp. 2d 91, 94 (D.D.C. 2012).

[14] *See* 17 C.F.R. § 201.111.

[15] *Cf. Official Comm. of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 167 (2d Cir. 2003) (discussing reconsideration under Rule 54(b) and holding that "where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again") (quoting *Zdanok v. Glidden Co.*, 327 F.2d 944, 953 (2d Cir. 1964)).

disposition. Because its motion to reconsider relies on evidence that could have been presented in the first instance, the Division's motion to reconsider the partial denial of its motion for summary disposition is DENIED.[16]

James E. Grimes
Administrative Law Judge

[16] *Cf. Feeley & Wilcox*, 2003 WL 22316308, at *2 n.18. This order is without prejudice to the Division's ability to present evidence at the merits hearing.