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

Administrative Proceedings Rulings
Release No. 6944 / June 11, 2025

Administrative Proceeding
File No. 3-20828

In the Matter of

Gregory Lemelson[1]

Order Denying Postponement and Granting Subpoena Request

Respondent filed a motion to postpone the hearing date on June 3, 2025, based on an accompanying subpoena request. He concurrently filed a motion to dismiss with the Commission.[2] Respondent moved for dismissal on two grounds: first, that the Division of Enforcement's filing of a subpoena enforcement action in district court without authorization from the Commission allegedly tainted the appearance of Commission neutrality and impartiality, Mot. to Dismiss, at 5–11; and second, Division emails to a member of the Chairman's staff constitute an internal controls violation, *id.* at 12–14. Respondent alleges both practical and constitutional harms from these actions. Reply, at 2–5. The Division filed its opposition to the postponement and subpoena requests on June 6, 2025, and Respondent filed a reply on June 10.

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1 Respondent goes by his ecclesiastical name, Father Emmanuel Lemelson.

2 Although Respondent is is not precluded from seeking dismissal directly from the Commission, the Commission has traditionally disfavored interlocutory motions while a proceeding is pending before the ALJ, including in the context of a motion to dismiss. *See Edward M. Daspin*, Securities Act Release No. 10654, 2019 WL 2717085, at *2 (June 28, 2019) ("Although the Commission may intervene in an ongoing proceeding at any time either on its own initiative or at a party's urging, we have made clear that our emphatic preference is that claims should be presented in a single petition for review after the entire record has been developed and after issuance by the law judge of an initial decision. This policy embodies the general rule disfavoring piecemeal, interlocutory appeals." (footnotes omitted)).

Postponement

The Commission has "a policy of strongly disfavoring" requests for postponements, "except in circumstances where the requesting party makes a *strong showing* that the denial of the request or motion would *substantially prejudice* their case." 17 C.F.R. § 201.161(b)(1) (emphasis added).[3]

Respondent has failed to establish substantial prejudice. First, even assuming arguendo that Respondent correctly contends the Division improperly filed a district court action to enforce a subpoena, it has since voluntarily dismissed that action. The action did not cause Respondent to turn over any further documents to the Division that can be used against him at the hearing, and it did not create any impediment to his defense in this follow-on proceeding. The dismissal has cured the defect, if any, in the initiation of the now-terminated suit.[4] *Cf. United States v. Morrison*, 449 U.S. 361, 365–66 (1981) ("Our approach has thus been to identify and then neutralize the taint by tailoring relief appropriate in the circumstances .... The remedy in the criminal proceeding is limited to denying the prosecution the fruits of its transgression.").

Respondent asserts the now-dismissed subpoena enforcement action caused counsel "to devote significant time and attention" in May "to defending a bogus federal lawsuit rather than spending that time preparing for the impending hearing." Reply, at 2. Yet, this must be considered in the context that Respondent already had two and a half months more time to prepare for the hearing than the maximum of six months provided by the hearing timeline in the Rules of Practice. *See* 17 C.F.R. § 201.360(a)(2)(ii). Having carefully reviewed the subpoena enforcement action and Respondent's contention, I do not find that time reasonably allocated to the defense of such an action—one

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[3] Article III courts employ a similar standard in assessing motions to stay based on constitutional violations that is instructive given Respondent's contentions:

> There may well be cases where the Constitution *requires* a stay. But a plausible constitutional argument would be presented only if, at a minimum, denying a stay would cause "substantial prejudice" to the defendant.

Louis Vuitton Malletier S.A. v. LY USA, Inc., 676 F.3d 83, 100 (2d Cir. 2012) (quoting *Keating v. Off. of Thrift Supervision*, 45 F.3d 322, 325 (9th Cir. 1995)).

[4] Respondent is considering "options for seeking recovery of costs and fees incurred" in responding to the subpoena enforcement action. Reply, at 2 n.2.

that was dismissed voluntarily before Respondent filed any substantive opposition—provides cause to delay the hearing.

Second, that a Division employee detailed to work in the Office of the Chairman continued to receive internal Division emails, including emails related to this case, a month after changing roles has no bearing on the issues prescribed by the OIP to be decided at the hearing by the ALJ. The alleged control deficiency does not implicate the impartiality of the ALJ.[5] If the Commission denies or defers ruling on the motion to dismiss, the hearing can proceed as scheduled. If the Commission grants the motion, there will be no further proceedings. Thus, at the outset, Respondent has failed to make the "strong showing" that abiding by the schedule he proposed will "substantially prejudice" his case. 17 C.F.R. § 201.161(b)(1).

Although the absence of substantial prejudice should be sufficient, by itself, to dispose of Respondent's request, the rule pertaining to postponements directs the ALJ to consider at least five relevant factors:

"(i) The length of the proceeding to date;"

This proceeding is now more than three years old.

"(ii) The number of postponements, adjournments or extensions already granted;"

The Commission granted Respondent's first request for postponement in August 2022. Although the initial postponement was modest in extent, the Commission did not act on the parties' pending motions for summary disposition while Respondent challenged the underlying judgment against him before the First Circuit and Supreme Court. *See SEC v. Lemelson*, 57 F.4th 17 (1st Cir. 2023), *cert. denied*, 144 S. Ct. 486 (2023).

In October 2024, the Commission denied Respondent's stay motion and ordered the case to be heard by an ALJ. *See Gregory Lemelson*, Advisers Act

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[5] Neither the control deficiency alleged by Respondent in this proceeding, nor the control deficiency that led the Commission to dismiss certain proceedings in 2023, involved an ALJ, staff in the Office of Administrative Law Judges, or any files, work product, or communications of the Office of Administrative Law Judges. *See In re Pending Admin. Proceedings*, Securities Act Release No. 11198, 2023 WL 3790795 (June 2, 2023) The prior control deficiency "related to the separation of enforcement and adjudicatory functions within [the agency's] system for administrative adjudications" in which Enforcement staff accessed memoranda prepared by staff in Office of General Counsel's Adjudications Group. *Id.*

Release No. 6755, at 2, 4 (Oct. 23, 2024), https://www.sec.gov/files/litigation/opinions/2024/ia-6755.pdf. Because the Commission deemed this case "[u]nder the 75-day timeline, the hearing officer shall issue an order scheduling the hearing to begin approximately 2 1⁄2 months (but no more than six months) from the date of service of the order instituting the proceeding." 17 C.F.R. § 201.360(a)(2)(ii). Although the hearing should have started no later than April 23, 2025, based on Respondent's representations that he would be outside the country on previously scheduled travel, and that his chosen counsel was likewise unavailable, the earliest hearing date that the parties could agree to—July 7, 2025—represented a two-month, two-week delay. On January 30 and February 10, I denied Respondent's stay requests. He sought interlocutory review and a stay from the Commission, which were denied. In the meantime, Respondent refused to comply with a subpoena.

"(iii) The stage of the proceedings at the time of the request;"

The hearing will begin in just under four weeks from today.

"(iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission;"

The indefinite stay sought will further compound the two-and-a-half month delay of the proceeding noted above.

"(v) Any other such matters as justice may require."

Finally, the Division correctly contends that the public interest weighs against further postponement. *See Arden Way Assocs. v. Boesky*, 660 F. Supp. 1494, 1500 (S.D.N.Y. 1987) (public interest in integrity of securities market militates in favor of expeditious prosecution of civil litigation); *In re CFS–Related Sec. Fraud Litig.,* 256 F. Supp. 2d 1227, 1241 (N.D. Okla. 2003) ("The Court has a strong interest in keeping litigation moving to conclusion without unnecessary delay.").

The initial decision that follows the hearing, and any review that is potentially sought, may moot completely or partially the issues that remain to be resolved. At a minimum, a prompt and orderly hearing will provide a complete record for review.

Subpoena

Respondent's subpoena request is granted. Although the three categories of documents sought do not appear to relate directly to issues to be decided at the hearing, Respondent has asserted their potential relevance to issues the Commission might consider upon a petition for review, if any is sought. In administrative proceedings, the Commission's standard of relevance is very

low. *See City of Anaheim*, Exchange Act Release No. 42140, 1999 WL 1034489, at *2 & n.7 (Nov. 16, 1999) ("The notion of 'relevance' embodied in [the Commission's rules] . . . is much broader than that concept under the Federal Rules of Evidence. . . . Our law judges should be inclusive in making evidentiary determinations."); *Alessandrini & Co.*, Exchange Act Release No. 10466, 1973 WL 149302, at *8 (Oct. 31, 1973) ("[SEC] administrative proceedings . . . favor liberality in the admission of evidence, and . . . all evidence which can conceivably throw any light upon the controversy should normally be admitted in such proceedings." (internal quotation marks omitted)); *cf. Multi-Med. Convalescent & Nursing Ctr. of Towson v. NLRB*, 550 F.2d 974, 978 (4th Cir. 1977) ("[W]e strongly advise administrative law judges: if in doubt, let it in.").

Moreover, "[t]he standard of relevance is even broader when it comes to document subpoenas." *Gregory M. Dearlove, CPA*, Admin. Proceedings Rulings Release No. 625, 2006 WL 1866516, at *2 (ALJ Jan. 9, 2006), *partially granting motion to quash on other grounds*, Admin. Proceedings Rulings Release No. 626, 2006 WL 1866517 (ALJ Jan. 19, 2006). This is because a document subpoena, like any discovery tool, is not strictly limited to admissible evidence but to determine if relevant information exists. *See* Fed. R. Civ. P. 26(b)(1); *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 WL 6850921, at *3 n.11 (Dec. 5, 2014) ("Although we are not governed by the Federal Rules of Civil Procedure, those rules sometimes provide helpful guidance.").

Respondent's request arises in an atypical procedural posture where he submits the ALJ should grant discovery about matters that might ultimately be considered by the Commission on review.[6] Since those matters, as alleged by Respondent, relate to the integrity of this proceeding, I cannot say that they are necessarily irrelevant for purposes of a document subpoena and the

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[6] Normally, issues raised by the parties (and any evidence in support) must be first presented to the ALJ and made part of the record for Commission consideration on review, and the failure to do so can result in waiver. *See Gregory Lemelson*, Advisers Act Release No. 6869, at 3 (Apr. 1, 2025), https://www.sec.gov/files/litigation/opinions/2025/ia-6869.pdf (directing Respondent to submit issues involving broader challenges to this proceeding to the ALJ, and explaining that the Commission can later consider them in its review of any ALJ initial decision); *cf.* 17 C.F.R. § 201.452 (governing admission of additional evidence by the Commission on a showing "that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously"); *Guy P. Riordan*, Exchange Act Release No. 61153, 2009 WL 4731397, at *14 n.72 (Dec. 11, 2009) (deeming a respondent's argument waived when it was not made before the ALJ), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

arguments that Respondent seeks to advance before the Commission. *Cf. Clarke T. Blizzard*, Advisers Act Release No. 2032, 2002 WL 714444, at *2 (Apr. 24, 2002) ("We have an obligation to ensure that our administrative proceedings are conducted fairly in furtherance of the search for the truth and a just determination of the outcome. Even the appearance of a lack of integrity could undermine the public confidence in the administrative process upon which our authority ultimately depends." (footnote omitted)).

So, rather than delay action on such discovery, the subpoena will be granted so that, if a petition for review follows the initial decision, the record reflects that Respondent has sought the information and whether that information is available. In granting Respondent's request, I also credit the fact that the categories of documents requested appear narrow in scope and the quantity of documents implicated also appears to be manageable. Aside from its argument about relevance, the Division has not otherwise suggested at this stage that the subpoena is unreasonable, oppressive, excessive in scope, or unduly burdensome. *See* 17 C.F.R. § 201.232(b) (standards for issuance).

The Division shall produce all responsive documents[7] it does not seek to withhold no later than June 17, 2025, along with "the privilege log asserting the Division's privileges and declaration" described in my previous order,[8] including a statement if there are no responsive documents to a particular category. By June 24, 2025, Respondent should file any supplemental exhibits and/or objections arising from the Division's response.

/s/ Jason S. Patil
Administrative Law Judge

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[7] This subpoena is limited to records within the custody of the Division of Enforcement and does not direct any action or search by the Commissioners or their staff.

[8] The Division noted in opposing the subpoena request that "in all likelihood, any materials responsive to the proposed subpoena would be protected from disclosure by the attorney-client privilege, deliberative process privilege, and attorney work-product doctrine." Division Opp'n, at 1 n.1. The Division stated it would provide the privilege log described in my previous order if required. *Id.*