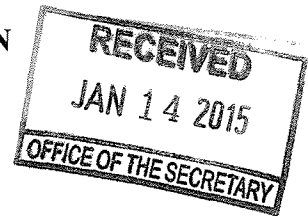


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of

JOHN THOMAS CAPITAL MANAGMENT
GROUP LLC d/b/a PATRIOT28 LLC,

and

GEORGE R. JARKESY, JR.,

Respondents.

File No. 3-15255

MOTION TO STAY ADMINISTRATIVE PROCEEDING

Respondents John Thomas Capital Management d/b/a Patriot28 LLC (“Patriot28” or “Adviser”) and George Jarquesy (“Jarquesy” or “Manager”) (collectively “Respondents”), submit this Motion to Stay Administrative Proceeding, and show as follows:

I.

Procedural History

The Administrative Proceeding

The Commission issued an “Order Instituting Public Administrative and Cease-And-Desist Proceedings” (“OIP”) in March, 2013, initiating an administrative proceeding against Respondents. On December 5, 2013, the Commission issued an Order Approving Settlement with co-respondents that included 86 *ex parte* findings of fact and conclusions of law directly against Respondents. On January 28, 2014,

the Commission issued an Order Denying Petition for Interlocutory Review, rejecting Respondents' request to dismiss the Administrative Proceeding over disqualification of the Commission from its prejudgment of Respondents' case.

The District Court Proceeding

On January 29, 2014, Respondents filed suit in the United States District Court for the District of Columbia Circuit seeking injunctive and declaratory relief against the Securities and Exchange Commission for the violation of Respondents' Fifth and Seventh Amendment rights and the violation of the doctrine of separation of powers. The district court denied Respondents' motion for temporary restraining order after hearing on January 31, 2014.

The Evidentiary Hearing

On February 3, 2014, the evidentiary hearing commenced before Administrative Law Judge Carol Fox Foelak in New York City. The evidentiary hearing continued, with several breaks, until March 14, 2014. The district court issued a published memorandum opinion on June 10, 2014, dismissing Respondents' claims for lack of subject matter jurisdiction.

The Chief Administrative Law Judge filed with the Commission a Motion for Extended Time to File Initial Decision, which the Commission later granted on August 13, 2014, allowing an additional six (6) months for Judge Foelak to file the Initial Decision. The Commission granted this request recognizing that so much extra time was warranted "in the public interest" due largely to "the size and complexity of the proceeding,"

The Appeal Before the Court of Appeals for the D.C. Circuit

On August 12, 2014, Respondents filed Notice of Appeal in the United States Court of Appeals for the District of Columbia Circuit, followed by a Motion for Expedited Consideration. The Commission responded by filing a Motion for Summary Affirmance and Opposition to Appellants' Motion for Expedited Consideration. In that motion the Commission noted that expedited appeals are "rarely granted" and only where the appellant has shown "that the decision under review is subject to substantial challenge" or that "the delay will cause irreparable injury." Apparently recognizing that this was indeed a "rare" case containing a "substantial challenge" to the Commission's proceedings, the Court of Appeals entered an order on November 18, 2014, denying summary affirmance and setting Respondents' appeal on an accelerated timetable, ordering the submission of the case for oral argument during the September Term, 2014, which concludes in June of 2015.

Acceleration of the Review by the Circuit Court—and then by the Commission

The Initial Decision was filed on October 17, 2014, the last day allowed under the Commission's earlier order granting the additional six (6) months for filing it. Respondents filed their Petition for Review on November 7, 2014, and the Division of Enforcement filed its Cross-Petition for Review on November 17, 2014.

On November 18, 2014, the Court of Appeals for the D.C. Circuit entered its order expediting the briefing and submission of the appeal from the denial of injunctive relief. Then on December 11, 2014, the Commission entered an extraordinary order of its own fast-tracking the statutory review process, granting

the Division's earlier request for expedited review, based ostensibly on nothing more than unsupported "concerns" of the Division and the need for "finality" for the investors who are supposedly "awaiting the outcome" of these administrative proceedings. The Division has offered no actual evidence to support these "concerns" because none exists; the ALJ declined to order an accounting due to the complete lack of evidence in the record to substantiate concerns about any ongoing operations and investments.

II.
The Commission's Expedited Review
Threatens to Obstruct the Jurisdiction of the D.C. Circuit

According to the Commission's own briefing in the D.C. Circuit, a court of appeals will only order expedited appellate review when the appellant has presented a "substantial challenge" and shown that the normal appellate timetable would cause "irreparable injury" to the appellant. The "irreparable injury" to Respondents here is the Commission's subjecting Respondents to continuation or completion of the administrative proceeding.

Respondents' claims in the D.C. Circuit are for injunctive relief—to stop the Commission from continuing to impose the injurious and constitutionally objectionable administrative proceeding upon the Respondents. Any Commission Final Decision entered prior to the decision of the Court of Appeals will effectively defeat the jurisdiction of that court, as there would then no longer be any proceeding left to enjoin.

To respect and vindicate the jurisdiction of the D.C. Circuit, it is incumbent upon the Commission to stay its own proceedings to allow sufficient time for the

appellate court to hear and decide these “substantial challenges.” The Commission’s extraordinary decision to accelerate its review, following closely on the heels of the D.C. Circuit’s own scheduling order in Respondents’ case, places the Commission’s actions on a procedural and jurisdictional collision course with the D.C. Circuit’s review. The Commission’s decision—based on unsupported and conclusory “concerns” for allegedly impatient investors—appears without recent precedent and sharply contrasts with the unhurried, methodical tempo previously exhibited by the Commission in according the ALJ an extra six months to file the Initial Decision.

Conclusion and Prayer for Relief

To mitigate any obstruction of the jurisdiction of the U.S. Court of Appeals for the D.C. Circuit, the Commission should stay the proceedings on review of the Initial Decision pending the decision of the court at the present term.

Respectfully Submitted,



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