

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

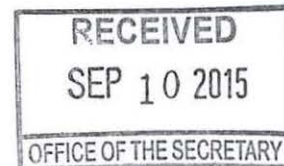
ADMINISTRATIVE PROCEEDING

File No. ~~3-16708~~
3-16706

In the Matter of

SACHIN K. UPPAL,

Respondent.



**RESPONSE OF DIVISION OF ENFORCEMENT TO RESPONDENT
SACHIN K. UPPAL'S MOTION FOR EXTENSION OF TIME TO FILE AN ANSWER**

The Division of Enforcement ("Division") submits this Response to Respondent Sachin K. Uppal's Motion for Extension of Time to File an Answer ("Motion for Extension"). For the reason set forth below, the Division does not oppose a reasonable extension of Respondent's time to file an Answer.

I. FACTS

On July 28, 2015, the Securities and Exchange Commission ("Commission") issued its Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing ("OIP") against Sachin K. Uppal ("Uppal" or "Respondent"). On July 30, 2015, the Division sent, via certified mail, a letter to Respondent informing him that, pursuant to Rule 230 of the Rules of Practice, documents related to its investigation were available for inspection and copying at the Commission's Chicago Regional Office (Exhibit 1, attached hereto). This letter, together with a copy of the OIP and of the Order Scheduling Hearing and Designating Presiding Judge, were personally served on Respondent on August 4, 2015. (Exh. 2).

The non-privileged documents contained in the investigatory file in this case are 215 pages in length and consist of filings from the docket in the criminal case, correspondence and emails between Uppal and the Division, two memoranda of interviews of Uppal conducted by the Federal Bureau of Investigation,¹ publicly-available corporate filings with the State of Michigan, and two background reports on Respondent from Thompson Reuters' CLEAR database and from LEXIS/NEXIS. The Division sent copies of the non-privileged documents from the investigatory file to Respondent by certified mail on September 4, 2015.

On August 10, 2015, this court held a telephonic prehearing conference. During this conference, the Court stated that the Division presented evidence that the OIP was personally served on the Respondent on August 4, 2015 (Transcript of Prehearing Conference, p. 3). The court informed the Respondent that, because the rules provide that he has 20 days from the date of service of the OIP to file an Answer, the due date for filing an Answer was August 24.² Uppal stated that he understood this. (Tr., pp. 3 – 4). In addition, as noted in the following excerpt from the transcript of the prehearing conference, the Court informed Respondent that, whenever he files something with the Court, he must send a copy of the filing to the Division:

JUDGE GRIMES: And what a lot of people don't realize is, when you submit something to me, which you do by sending it to secretary's office, you also need to send copies of it to Mr. Kohn.

MR. UPPAL: Okay.

¹ The United States Attorney's Office for the Eastern District of Michigan informed the Division that they gave the FBI interview memoranda, known as Form 302, to Uppal.

² Rule 220(b) of the Commission's Rules of Practice states, in relevant part, that "a party required to file an answer . . . shall do so within 20 days after service upon the party of the order instituting proceedings.

JUDGE GRIMES: So he receives it. He will do the same. He will send things to the Commission and he will send a copy to you, so that everybody is operating on the same page. Does that make sense?

MR. UPPAL: It does, yes.

(Tr. pp. 4 – 5).

Also in the prehearing conference, the Division informed the Court that, in accordance with the Rules of Practice, it had made its investigative file available to Uppal by letter (Tr. p. 12; Exh. 1). Uppal then asked if he could request the investigatory file and if the Division would inform him of the costs related to producing the file. (Tr. p. 13). At that time, the Division understood, perhaps mistakenly, that Uppal meant to follow up with the Division about the investigatory file and related costs.

Immediately after the conclusion of the prehearing conference, when the Court had left the call, the Division and Uppal continued to talk. The Division asked Uppal if he would consider a settlement to this matter. Uppal declined because he did not want to consent to a permanent bar from the securities industry. Also during the parties' discussion, Uppal did not address the issue of the investigatory file. Uppal did, however, indicate that he would file an Answer so that the Court would hear his side of the case. Uppal did not indicate that he needed the investigatory file to prepare his Answer. The Division concluded from the parties' discussion that the next step would be the filing of Uppal's Answer.

On August 17, Respondent sent an email to the Division requesting an extension of three to four weeks to file his Answer to the OIP. He stated that “[t]he issue is . . . I have not yet received my case file. . . .” (Exh. 3). Respondent also asked in his email if he needed “to write Judge Grimes or is something (*sic*) you could convey to him? (*Id.*). The Division did not learn of

Respondent's email until August 21 because of the features of the email system used by federal inmates. Inmates must use a web-based service known as CorrLinks. The system does not notify recipients of inmate email that a new message has arrived. Instead, the recipient must establish their own CorrLinks account and log into their account to determine if there is any new email. On August 21, the Division responded to Uppal's email, informing him that he needed to file a motion with the Court and to send a copy to the Division. (Exh. 4). Later that same day, Respondent sent an email to the Division stating that he "filed a motion and you and the judge will be getting a copy." (Exh. 5).

Uppal's August 21 email was the first time Uppal indicated that he was waiting for anything. Because on August 21, Uppal needed to act quickly if he wanted an extension of the August 24 deadline, the Division focused that aspect of Uppal's email.

On August 26, Uppal filed with the Court his Motion for Extension.³ Uppal failed to send a copy of this request to the Division and failed to file a certificate of service as required by Rule 151(d) of the Rules of Practice. Uppal's stated reason for his Motion for Extension was that he had not yet received the "paper on and of my findings from [the Division]," and that he need this information to file a "proper reply to the counts."

On September 3, this Court entered an Order to Show Cause and Directing the Division to Respond to Respondent's Motion ("Show Cause Order"). The Show Cause Order states that "it appears that Uppal is requesting an extension . . . on the basis that he had not received the Division's investigative file." The Court directed the Division, in its response to Respondent's Motion for Extension, to address Uppal's "apparent claim that he has not been given access to the investigative file."

³ Uppal did not specify how much additional time he was requesting.

On September 4, the day after the Court issued its Show Cause Order, the Division sent to Uppal by certified mail all non-privileged documents from its investigative file (Ex. 6).

II. DISCUSSION

As this Court noted in its Show Cause Order, under Rule of Practice 180(b), Uppal's Motion for Extension could be stricken because it was not served on the Division.⁴ It is clear from the record that Uppal knew that he was required to send the Division a copy of any filing he made with the Court.⁵

In addition, as the Court noted in its Show Cause Order, the OIP's factual allegations consist of Uppal's background, his business activities, his current incarceration, and his criminal conviction. As this Court recognizes, the information in the factual allegations of the OIP should be within Uppal's personal knowledge and, therefore, it is not apparent why Uppal would need the Division's investigative file to prepare his Answer.

⁴ Rule 180(b) states, in part, that "The Commission or the hearing officer may reject, in whole or in part, any filing that fails to comply with any requirements of these Rules of Practice or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record."

⁵ In *In the Matter of Stonegate Securities, Inc.*, SEC Rel. No. 42720 (April 25, 2000), the Commission, in deciding whether to reject a filing by a Respondent, referred to the comment to Rule 180(b):

Whether a particular filing should be rejected or whether leave to cure a deficient filing should be granted requires a case-by-case determination. Parties, including those appearing pro se, are obligated to familiarize themselves with the Rules of Practice. The fact that a person may represent himself ... may be a factor in considering how to address a deficient filing, but should not, standing alone, be determinative.

Id. at 1, citing *Rules of Practice*, 60 Fed. Reg. 32,738, 32,778.

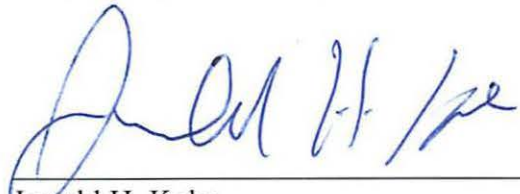
In this matter, the pretrial hearing transcript and Uppal's email to the Division demonstrate that he was more than familiar with the requirement that he send a copy of any filing to the Division. He cannot claim that, as a *pro se* respondent, he is unfamiliar with the requirement to send copies of any filings to the Division.

Nevertheless, the Division would not be prejudiced if Uppal is granted a short extension. Accordingly, the Division does not object to a reasonable extension of time for Uppal to answer the OIP.⁶

III. CONCLUSION

For the reasons set forth above, the Division does not oppose Respondent's Motion for Extension of Time to File an Answer.

Respectfully Submitted,



Jerrold H. Kohn
One of the Attorneys for the
Division of Enforcement
175 W. Jackson Blvd., Suite 900
Chicago, IL 60604
(312) 353-7217
kohnj@sec.gov

Dated: September 9, 2015

⁶ Unless the Court orders otherwise, the Division will file its Motion for Summary Disposition according to the schedule set out in the Court's August 11 Order Following Prehearing Conference.

EXHIBIT 1



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
CHICAGO REGIONAL OFFICE
SUITE 900
175 WEST JACKSON BLVD.
CHICAGO, ILLINOIS 60604**

**Jerrold H. Kohn
Senior Counsel
Division of Enforcement**

**Telephone: (312) 353-7217
Facsimile: (312) 353-7398
E-mail: kohnj@sec.gov.**

July 30, 2015

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

LEGAL MAIL – OPEN ONLY IN THE PRESENCE OF THE INMATE

**Mr. Sachin Kumar Uppal
Register No. [REDACTED]**

**[REDACTED]
Morgantown, WV [REDACTED]**

Re: *In the Matter of Sachin K. Uppal (C-08176)*

Dear Mr. Uppal:

Pursuant to SEC Rule of Practice § 201.230, documents related to this matter are available for inspection and copying at the Securities and Exchange Commission's Chicago Regional Office in Chicago, Illinois. Please note, however, that pursuant to SEC Rule of Practice § 201.230(f), a respondent in an SEC proceeding is responsible for bearing the cost of copying.

If you wish to make arrangements for such inspection and copying, please call me at (312) 353-7217.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerrold H. Kohn".

**Jerrold H. Kohn
Senior Counsel
Division of Enforcement**

Enclosure:

EXHIBIT 2

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-16706

In the Matter of

SACHIN K. UPPAL,

Respondent.

DECLARATION OF FRED CAROMANO

Fred Caromano, pursuant to 28 U.S.C. § 1746, declares:

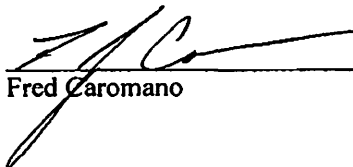
1. My name is Fred Caromano. I am over 18 years of age and not a party to this action. I am fully competent to make this declaration and I have personal knowledge of the facts stated herein. To my knowledge, all of the facts stated in this declaration are true and correct.

2. I am employed by the Federal Bureau of Prisons as a case manager at the Federal Correctional Institution, [REDACTED] Morgantown, West Virginia ("FCI Morgantown"). I am assigned as the case manager for Sachin K. Uppal, an inmate at FCI Morgantown.

3. On August 4, 2015, I personally handed the following papers, copies of which are attached to this Declaration, to inmate Sachin K. Uppal at FCI Morgantown:

- a. Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisors Act of 1940 and Notice of Hearing;
- b. Order Scheduling Hearing and Designating Presiding Judge; and
- c. Letter from J. Kohn to S. Uppal, dated July 30, 2015, concerning the availability of discovery.

I declare under penalty of perjury that the foregoing is true and correct.



Fred Caromano

August 10, 2015

EXHIBIT 3

Jerrold Kohn

From: UPPAL SACHIN KUMAR [REDACTED]
Sent Date: Monday, August 17, 2015 8:49 PM
To: kohnj@sec.gov
Subject: Sachin K. Uppal Matter

Mr. Kohn,

I'm writing this email to formally request an extension to my response—which is due to the Judge and your team on the 24th of August.

The issue is the following: I have not yet received my case file; and, I would like to answer the issues raised in a proper manner. I'd like to request an extension of 3-4 weeks. This would be ample time because it would allow me to prepare the responses and answer your queries. I do not have an attorney and would be answering the queries in a pro se manner.

Please let me know if I would need to write to Judge Grimes or is something that you could convey to him?

With Regards,

Sachin Uppal
8/17/2015
FCI Morgantown

EXHIBIT 4

Jerrold Kohn

From: kohnj@sec.gov
Sent Date: Friday, August 21, 2015 9:31 AM
To: SACHIN KUMAR UPPAL [REDACTED]
Subject: RE: Sachin K. Uppal Matter

Mr. Uppal,

You need to file a motion with the judge and send a copy to me.

SACHIN KUMAR UPPAL on 8/17/2015 8:49:25 PM wrote
Mr. Kohn,

I'm writing this email to formally request an extension to my response--which is due to the Judge and your team on the 24th of August.

The issue is the following: I have not yet received my case file; and, I would like to answer the issues raised in a proper manner. I'd like to request an extension of 3-4 weeks. This would be ample time because it would allow me to prepare the responses and answer your queries. I do not have an attorney and would be answering the queries in a pro se manner.

Please let me know if I would need to write to Judge Grimes or is something that you could convey to him?

With Regards,

Sachin Uppal
8/17/2015
FCI Morgantown

EXHIBIT 5

Jerrold Kohn

From: UPPAL SACHIN KUMAR (██████████)
Sent Date: Friday, August 21, 2015 12:36 PM
To: kohnj@sec.gov
Subject: RE: RE: Sachin K. Uppal Matter

Mr. Kohn, thanks for the reply. I filed a motion and you and the Judge will be getting a copy.

With Regards,
Sachin Uppal
-----Kohn, Jerrold on 8/21/2015 11:36 AM wrote:

>

Mr. Uppal,

You need to file a motion with the judge and send a copy to me.

SACHIN KUMAR UPPAL on 8/17/2015 8:49:25 PM wrote
Mr. Kohn,

I'm writing this email to formally request an extension to my response--which is due to the Judge and your team on the 24th of August.

The issue is the following: I have not yet received my case file; and, I would like to answer the issues raised in a proper manner. I'd like to request an extension of 3-4 weeks. This would be ample time because it would allow me to prepare the responses and answer your queries. I do not have an attorney and would be answering the queries in a pro se manner.

Please let me know if I would need to write to Judge Grimes or is something that you could convey to him?

With Regards,

Sachin Uppal
8/17/2015
FCI Morgantown

EXHIBIT 6



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
CHICAGO REGIONAL OFFICE
SUITE 900
175 WEST JACKSON BLVD.
CHICAGO, ILLINOIS 60604

Jerrold H. Kohn
Senior Counsel
Division of Enforcement

Telephone: (312) 353-7217
Facsimile: (312) 353-7398
E-mail: kohnj@sec.gov.

September 4, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LEGAL MAIL – OPEN ONLY IN THE PRESENCE OF THE INMATE

Mr. Sachin Kumar Uppal
Register No. [REDACTED]
FCI Morgantown

[REDACTED]
Morgantown, WV [REDACTED]

Re: *In the Matter of Sachin K. Uppal (C-08176)*

Dear Mr. Uppal:

In accordance with Rule 230(a) of the Commission's Rules of Practice we are producing to you the documents in our investigative file subject to Rule 230(a). Therefore, enclosed are documents bates-labeled SEC-UPPAL-001 – SEC-UPPAL-215.

Please be further advised that we have withheld certain materials from production under Rule 230(b) of the Commission's Rules of Practice including, but not limited to, privileged documents and attorney work-product.

Sincerely,

A handwritten signature in black ink that reads "Jerrold H. Kohn".

Jerrold H. Kohn
Senior Counsel
Division of Enforcement

Enclosure: Investigative Files

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16708

In the Matter of

SACHIN K. UPPAL,

Respondent.

CERTIFICATE OF SERVICE

I, Jerrold H. Kohn, certify that true and correct copies of the Response to Respondent Sachin K. Uppal's Motion for Extension of Time to File an Answer were served on the parties listed below:

Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E. – Mail Stop 1090
Washington, DC 20549
(Original and three copies via UPS
overnight)

Honorable James Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E. – Mail Stop 2557
Washington, DC 20549
(Via email and UPS Overnight)

Mr. Sachin Kumar Uppal
Register No. [REDACTED]
FCI Morgantown
[REDACTED]
Morgantown, WV [REDACTED]
(Via certified mail)

Respectfully Submitted,



Jerrold H. Kohn
One of the Attorneys for the
Division of Enforcement
175 W. Jackson Blvd., Suite 900
Chicago, IL 60604
(312) 353-7217
kohnj@sec.gov

Dated: September 9, 2015



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

CHICAGO REGIONAL OFFICE
SUITE 900
175 WEST JACKSON BLVD.
CHICAGO, ILLINOIS 60604

Jerrold H. Kohn
Senior Counsel
Division of Enforcement

Telephone: (312) 353-7217
Facsimile: (312) 353-7398
E-mail: kohnj@sec.gov.

September 9, 2015

VIA UPS OVERNIGHT DELIVERY

The Honorable Brent J. Fields
Secretary
Securities and Exchange Commission
100 F. Street, N.E. - Mail Stop 8626
Washington D.C. 20549



Re: In the Matter of Sachin K. Uppal (Admin. Proc. File No. 3-16708)

Dear Mr. Fields:

Enclosed please find the original and three copies of the Division of Enforcement's Response to Respondent Sachin K. Uppal's Motion for Extension of Time to File an Answer, exhibits, and the related Certificate of Service in the above-referenced matter.

Respectfully submitted,

Jerrold H. Kohn
Senior Counsel
Division of Enforcement

Enclosures

cc: Sachin K. Uppal
(via certified mail w/enclosures)

Hon. James E. Grimes
(via UPS and email w/enclosures)