

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

ADMINISTRATIVE PROCEEDING
File Nos. 3-17547

In the Matter of

William J. Sears;

Respondents.

NOTICE TO *PRO SE* RESPONDENT

The Division of Enforcement has moved for summary disposition under Rule of Practice 250. This means that the Division has asked the administrative law judge to decide this proceeding based on written evidentiary materials submitted in support of its motion. **Be aware that if the Division’s motion for summary disposition is granted, the proceeding may be decided against you without a hearing, and sanctions may be imposed.**

To oppose the Division’s motion, your filing must include sufficient evidence contradicting the material facts asserted by the Division. You may not oppose summary disposition simply by relying on bare allegations or denials.* Rather, you must submit evidence—such as declarations, your own affidavit and/or the affidavits of others, prior testimony, documentary evidence, or facts that can be officially noticed under Rule of

* See *James S. Tagliaferri*, Securities Exchange Act of 1934 Release No. 80047, 2017 WL 632134, at *7 (Feb. 15, 2017) (“The party opposing summary disposition may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing.” (internal quotation marks omitted)).

Practice 323— countering the facts asserted by the Division and raising specific facts that support your contention that this matter requires a hearing.

Failure to respond to the Division’s motion may be grounds for a default under Rule of Practice 155.

By Order dated May 27, 2020, Respondent has until July 17, 2020, to file an opposition to the Motion for Summary Disposition. This deadline was imposed with the understanding that the Division would produce its investigative file to Sears by June 15, 2020. To the extent that production is delayed or other delays arise that are beyond Sears’ control, Sears may request an extension of time to oppose the Division’s Motion.

Securities and Exchange Commission Rules of Practice 155, 250, and 323 are enclosed with this Notice.

Dated: June 4, 2020

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on this 4th day of June, 2020, in the manner indicated below:

Securities and Exchange Commission
Vanessa A. Countryman, Secretary
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(By Email: apfilings@sec.gov)

Hon. Judge James E. Grimes
100 F Street, N.E.
Mail Stop 2557
Washington, D.C. 20549
(By Email)

William J. Sears



Florence, CO 81226
(By USPS)

s/ Nicole L. Nesvig
Nicole L. Nesvig
Senior Litigation Paralegal

Rules of Practice
and
**Rules on Fair Fund and
Disgorgement Plans**



U.S. Securities and Exchange Commission

September 2019

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the hearing officer, if a motion is properly made to the Commission concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Commission. No oral argument shall be heard on any motion unless the Commission or the hearing officer otherwise directs.

(b) *Opposing and reply briefs.* Briefs in opposition to a motion shall be filed within five days after service of the motion. Reply briefs shall be filed within three days after service of the opposition.

(c) *Length limitation.* No motion (together with the brief in support of the motion), brief in opposition to the motion, or reply brief shall exceed 7,000 words, exclusive of any table of contents or table of authorities. The word limit shall not apply to any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, or relevant exhibits. Requests for leave to file motions and briefs in excess of 7,000 words are disfavored. A motion or brief, together with any accompanying brief, that does not exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 7,000 words. Any motion or brief that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the document complies with the length limitation set forth in this paragraph and stating the number of words in the document. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

Rule 155. Default; motion to set aside default.

(a) A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the commission or the hearing officer pursuant to Rule 180(b).

(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

Rule 160. Time computation.

(a) *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday (as defined in Rule 104), in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this rule. If on the day a filing is to be made, weather or other conditions have caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a Federal legal holiday.

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response unless an order of the Commission or the hearing officer specifies a date certain for filing. In the event that an order of the Commission or the hearing officer specifies a date certain for filing, no time shall be added for service by mail.

Rule 161. Extensions of time, postponements and adjournments.

(a) *Availability.* Except as otherwise provided by law, the Commission, at any time, or the hearing officer, at any time prior to the filing of his or her initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, may, for good cause shown, extend or shorten

(i) Such provisions of the Rules of Practice or other requirements of law as may be construed to prevent any member of the Commission's staff from participating in the preparation of, or advising the Commission as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(ii) Any right to claim bias or prejudice by the Commission based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(6) If the Commission rejects the offer of settlement, the person making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (c)(5) of this rule with respect to any discussions concerning the rejected offer of settlement.

(7) Final acceptance of any offer of settlement will occur only upon the issuance of findings and an order by the Commission.

Rule 250. Dispositive motions.

(a) *Motion for a ruling on the pleadings.* No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. The hearing officer shall promptly grant or deny the motion.

(b) *Motion for summary disposition in 30- and 75-day proceedings.* In any proceeding under the 30- or 75-day timeframe designated pursuant to Rule 360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 230, any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law. The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the

motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

(c) *Motion for summary disposition in 120-day proceedings.* In any proceeding under the 120-day timeframe designated pursuant to Rule 360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 230, a party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, deposition transcripts, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law. A motion for summary disposition shall be made only with leave of the hearing officer. Leave shall be granted only for good cause shown and if consideration of the motion will not delay the scheduled start of the hearing. The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

(d) *Motion for a ruling as a matter of law following completion of case in chief.* Following the interested division's presentation of its case in chief, any party may make a motion, asserting that the movant is entitled to a ruling as a matter of law on one or more claims or defenses.

(e) *Length limitation for dispositive motions.* Dispositive motions, together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, deposition transcripts or other attachments), shall not exceed 9,800 words. Requests for leave to file motions and accompanying documents in excess of 9,800 words are disfavored. A double-spaced motion that does not, together with any accompanying memorandum of points and authorities, exceed 35 pages in length, inclusive of pleadings incorporated by reference (but excluding any declarations, affidavits, deposition transcripts or attachments) in the dispositive motion, is presumptively considered to contain no more than 9,800 words. Any motion that exceeds this page limit must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the word limit set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

(f) *Opposition and reply length limitations and response time.* A non-moving party may file an opposition to a dispositive motion and the moving party may thereafter file a reply.

(1) *Length limitations.* Any opposition must comply with the length limitations applicable to the movant's motion as set forth in paragraph (e) of this rule. Any reply must comply with the length limitations set forth in Rule 154(c).

(2) *Response time.*

(i) For motions under paragraphs (a), (b), and (d) of this rule, the response times set forth in Rule 154(b) apply to any opposition and reply briefs.

(ii) For motions under paragraph (c) of this rule, any opposition must be filed within 21 days after service of such a motion, and any reply must be filed within seven days after service of any opposition.

RULES REGARDING HEARINGS

Rule 300. Hearings.

Hearings for the purpose of taking evidence shall be held only upon order of the Commission. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

Rule 301. Hearings to be public.

All hearings, except hearings on applications for confidential treatment filed pursuant to Rule 190, hearings held to consider a motion for a protective order pursuant to Rule 322, and hearings on *ex parte* application for a temporary cease-and-desist order, shall be public unless otherwise ordered by the Commission on its own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

Rule 302. Record of hearings.

(a) *Recordation.* Unless ordered otherwise by the hearing officer or the Commission, all hearings shall be recorded and a written transcript thereof shall be prepared.

(d) *Confidentiality of documents pending decision.* Pending a determination of a motion under this rule, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the Commission or the hearing officer. Any order issued in connection with a motion under this rule shall be public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall be nonpublic.

Rule 323. Evidence: Official notice.

Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

Rule 324. Evidence: Stipulations.

The parties may, by stipulation, at any stage of the proceeding agree upon any pertinent facts in the proceeding. A stipulation may be received in evidence and, when received, shall be binding on the parties to the stipulation.

Rule 325. Evidence: Presentation under oath or affirmation.

A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

Rule 326. Evidence: Presentation, rebuttal and cross-examination.

In any proceeding in which a hearing is required to be conducted on the record after opportunity for hearing in accord with 5 U.S.C. 556(a), a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Commission or the hearing officer, may be required for a full and true disclosure of the facts. The scope and form of evidence, rebuttal evidence, if any, and cross-examination, if any, in any other proceeding shall be determined by the Commission or the hearing officer in each proceeding.