

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-20828

In the Matter of

GREGORY LEMELSON,

Respondent.

**DIVISION OF ENFORCEMENT’S OPPOSITION TO RESPONDENT’S
MOTION TO THE COMMISSIONERS TO STAY PROCEEDING**

The Division of Enforcement (“Division”) opposes Respondent’s March 26, 2025, “Motion to the Commissioners to Stay Proceeding” (the “Stay Motion”) until his application for interlocutory review is resolved and/or until resolution of his collateral attack on the Constitutionality of administrative proceedings pending in the United States District Court for the District of Columbia (the “DDC Action”).¹

Respondent seeks a stay to avoid complying with a document subpoena that was significantly narrowed by the ALJ from eighteen requested categories of documents to just four. [Order on Subpoena Request, Admin. Proc. Release No. 6921 at 3-4 (Jan. 2, 2025) (“Release No. 6921”).] This was a routine discovery dispute as to which Respondent largely prevailed.

Respondent’s prior efforts to stay this proceeding and/or stay compliance with the narrowed subpoena were rejected by both the Commission and the ALJ and no different result should obtain here. On September 20, 2024, Respondent moved the Commission to stay this matter pending resolution of the DDC Action. That motion was denied by the Commission on

¹ Respondent further requests that the Commission act on his Stay Motion by March 28, 2025, but fails to identify any exigency other than the “ALJ’s refusal to issue a stay[.]” [Stay Motion at 1.]

October 23, 2024. [Order Denying Gregory Lemelson’s Motion for Stay of Proceedings, Denying the Division of Enforcement’s Motion for Summary Disposition, and Convening Public Hearing, Admin. Proc. Release No. 6755 at 1-2 (Sept. 20, 2024) (“Release No. 6755”).] The ALJ likewise reached the same conclusion. [Release No. 6921 at 4.] Nothing has changed and Respondent offers no reason why the outcome should be any different now.

Even if the Commission was to revisit prior denials of Respondent’s various motions to stay, the Stay Motion is inadequate. Respondent cites Rules 161 and 400 of the SEC Rules of Practice (17 C.F.R. §§ 201.161 & 201.400) as grounds for staying this proceeding. Neither helps Respondent’s cause. As the Commission recognized in denying Respondent’s prior request for a stay, postponements under Rule 161 are “strongly disfavor[ed]” unless the movant makes “a strong showing that the denial of the request or motion would substantially prejudice [his] case.” [Release No. 6755 at 1-2.] As to prejudice, Respondent has repeatedly offered a naked claim that the document subpoena at issue is “burdensome” without explaining why. [*E.g.*, Stay Motion at 3.] The Commission and the ALJ held that this was inadequate to establish prejudice. [Release No. 6755 at 2; Order Denying Stay Request, Admin. Proc. Release No. 6929 at 2 n.2 (March 18, 2025) (“Release No. 6929”).] Respondent offers nothing new justifying relief under Rule 161.

As for Rule 400, interlocutory review is not warranted here² and there is therefore no reason to stay this proceeding pending the Commission’s ruling on Respondent’s application for interlocutory review. [Respondent’s Emergency Petition for Commission Interlocutory Review (Feb. 26, 2025).] Rule of Practice 400 makes clear that interlocutory review is granted only under “extraordinary circumstances”, and the issue presented in the application—whether

² The Division incorporates by reference its February 12, 2025, Opposition to Respondent’s Application to Certify Subpoena Order for Interlocutory Review.

Respondent must comply with the Division’s narrowed document subpoena—is not one appropriate for interlocutory consideration.³ See *Gary L. McDuff*, Exchange Act Release No. 78066, 2016 WL 3254513, at *5 (June 14, 2016) (“The Commission will ... not grant petitions for interlocutory review of ‘pre-trial discovery orders,’ and ‘complaints about production of documents’ will not ordinarily ‘warrant ... interference with the orderly hearing process.’” (quoting *John Thomas Capital*, Exchange Act Release No. 71021, 2013 WL 6384275, at *3 (Dec. 6, 2013))). Accordingly, a stay is inappropriate [Release No. 6929 at 1-2] and would serve no purpose other than to delay the hearing currently set to begin on July 7, 2025.

Respondent’s Stay Motion should be denied.

Dated: March 27, 2025

Respectfully submitted,

/s/ Alfred A. Day

Marc J. Jones

Alfred A. Day

Senior Trial Counsel

DIVISION OF ENFORCEMENT

Boston Regional Office

33 Arch Street

Boston, MA 02110

(617) 573-8900

jonesmarc@sec.gov

daya@sec.gov

³ For these and other reasons, the ALJ appropriately denied Respondent’s request to certify the subpoena order for interlocutory review. [Order Denying Certification for Interlocutory Review, Admin. Proc. Release No. 6927 (Feb. 20, 2025).]

CERTIFICATE OF SERVICE

I, Alfred A. Day, hereby certify that on March 27, 2025, the Division's Opposition to Respondent's Motion to Stay was served via electronic mail pursuant to Rule 150(c) on the following counsel of record for Respondent:

Douglas S. Brooks
Libby Hoopes Brooks, P.C.
399 Boylston Street
Boston, MA 02116
Tel. (617) 338-9300
dbrooks@lhblaw.com