

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21264

<p>In the Matter of</p> <p>PETER JOSEPH POLINSKI TRUST,</p> <p>Respondent.</p>

**THE DIVISION OF ENFORCEMENT’S MOTION TO STRIKE
RESPONDENT’S MOTION FOR SUMMARY JUDGEMENT”
OR, IN THE ALTERNATIVE, REQUEST TO CONSIDER THE
DIVISION’S RULE 250 MOTION AS ITS RESPONSE TO RESPONDENT’S MOTION**

The Division of Enforcement (“Division”), pursuant to Rule 154(a) of the Commission’s Rules of Practice (“Rules”) [17 C.F.R. § 201.154(a)], respectfully moves to strike Respondent Peter Joseph Polinski Trust’s (“Polinski Trust” or “Respondent”) “Motion for Summary Judgement” [*sic*] (“the Motion”) received via email from Respondent’s sole officer and representative, Peter Joseph Polinski (“Polinski”).¹

PROCEDURAL BACKGROUND

On December 27, 2022, the Commission issued its Order Instituting Proceedings (the “OIP”) in this matter, alleging that Respondent violated certain securities laws applicable to transfer agents. *Peter Joseph Polinski Tr.*, Exchange Act Release No. 96585, 2022 WL 17979680 (Dec. 27,

¹ A copy of Respondent’s Motion is attached as Exhibit A to the Declaration in Support of the Division’s Motion to Strike.

2022). Respondent was served with the OIP and submitted an answer. *Peter Joseph Polinski Tr.*, Exchange Act Release No. 97199, 2023 WL 2631027, at *1 (Mar. 24, 2023) (“March 24 Order”).

The parties were directed to conduct a prehearing conference pursuant to Rule 221 and, following the conference, to file a statement with the Office of the Secretary advising the Commission of any agreements reached, including as to any schedule for summary disposition briefing. *Id.*

The parties conducted a prehearing conference on April 4, 2023, at 1:00 p.m., attended by Division counsel and Polinski. Declaration in Support of Motion to Strike (“Declr.”) at ¶ 6 & Ex. A (the Motion) at ¶ 3 (acknowledging the April 4 prehearing conference). The conference was recorded with the parties’ consent. Decl. at ¶ 6.

On April 4, 2023, Division counsel emailed a proposed prehearing statement to Respondent for its review. *Id.* at ¶ 7. On April 6, 2023, Polinski responded by email to the Division’s April 4 email with: “[N]o edits looks great.” *Id.* at ¶ 8. The Division filed the parties’ prehearing statement on eFap that same day, April 6, *see* March 24 Order at *1, and emailed a copy of the date-stamped filing to Polinski. Decl. at ¶ 9.

On April 10, 2023, the Commission issued a briefing order, directing the parties to “file their respective motions for summary disposition by April 17, 2023; . . . their respective oppositions by May 12, 2023; and . . . any reply briefs within ten business days from the filing of the opposition to which a reply is made.” *Peter Joseph Polinski Tr.*, Exchange Act Rel. No. 97279, 2023 WL 2885330, at *1 (Apr. 10, 2023) (“April 10 Order”).

On April 10, 2023, Division counsel emailed a copy of the April 10 Order to Respondent. Decl. at ¶ 11. Also on that day, the Division filed a Rule 250 summary disposition motion and emailed a copy of the motion to Respondent. April 10 Order at *1; Decl. at ¶ 12.

Polinski Trust did not file a summary disposition motion on or before April 17, 2023, as the April 10 Order required, Decl. at ¶ 13, nor did Polinski Trust file any opposition to the Division's April 10 summary disposition motion. *Id.*

On May 18, 2023, Division counsel received an email from Polinski, attaching the Motion, a document in .pdf format entitled "Motion for Summary Judgement [*sic*]." *Id.* at ¶ 14.

ARGUMENT

I. The Commission should strike Respondent's Motion.

A. The Motion should be stricken as untimely.

The parties' motions for summary disposition were due by April 17, 2023. More than a month after the deadline, Respondent emailed its Motion to the undersigned. Respondent's untimely Motion should be stricken from the record.

Respondent agreed to the briefing date in advance and knew the Commission had imposed the deadline. Specifically, Polinski participated in the prehearing conference, during which proposed filing deadlines were discussed and subsequently submitted to the Commission with both parties' approvals. Additionally, Division counsel provided Respondent with an electronic copy of the Commission's April 10 Order, which clearly sets forth the deadline for filing summary disposition motions. Moreover, Respondent provides no reason for its untimely filing.

Pursuant to Rule 180(b) [17 C.F.R. § 201.180(b)], the Commission "may reject, in whole or in part, any filing that fails to comply with any requirements of [the] Rules of Practice or of any

order issued in the proceeding in which the filing was made.” The authority to reject a filing is discretionary:

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 or herself or be represented by counsel who has not previously practiced before the Commission may be a factor in considering how to address a deficient filing, but should not, standing alone, be determinative. Deficiencies that are technical, de minimis, or non-prejudicial, however, may not warrant any action pursuant to this rule.

SEC Rules of Practice, 60 Fed. Reg. 32738-01, 1995 WL 370829, at *32754 (June 23, 1995) (comment to Rule 180(b)).

Here, Respondent failed to comply with the deadline in the Commission’s April 10 Order after having agreed to the deadline and provided with a copy of the order. Yet, with no explanation or good cause shown, Respondent failed to file a summary disposition motion by April 17 and instead filed its Motion more than one month later. Under these facts, Respondent’s Motion should be stricken from the record for failure to comply with the April 10 Order. *See, e.g., In re Christopher M. Gibson*, Exchange Act Rel. No. 32633, 2017 WL 1953456 (May 11, 2017) (respondent’s opening brief stricken for failure to comply with Rule 450(e)’s word limit); *In re Application of Laurie Bebo and John Buono, CPA*, Exchange Act Rel. No. 34-77163, 2016 WL 626600 (Feb. 17, 2016) (order of proof stricken from the record for violating word limits set by briefing order).

B. Respondent’s “Motion for Summary Judgement” should be stricken because it is not a Rule 250 motion for summary disposition.

Rule 250 authorizes a party to file 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 § 201.323 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.” Rules 250(b) and (c) [17 C.F.R. §§ 201.250(b) and (c)].

Respondent’s Motion fails to comport with Rule 250. Rather than seeking summary disposition, Respondent repeats its Answer, which was received by the Commission on February 21, 2023. Unlike a summary disposition motion, the Motion contains no argument that (a) there is no genuine issue with regard to any material fact or (b) that Respondent is entitled to summary disposition as a matter of law.

Indeed, Respondent received a copy of the Commission’s April 10 Order, which notified the Respondent of the rules applicable to summary disposition motions. April 10 Order at *1 n.5. Respondent ignored the Order and, instead, filed another answer simply captioned as a “Motion for Summary Judgement [*sic*].” Respondent’s Motion should therefore be stricken for failing to adhere to the requirements of Rule 250.

II. In the alternative, the Commission should consider the Division’s Rule 250 summary disposition motion as the Division’s response to Respondent’s Motion.

In the alternative, should the Commission decide not to strike Respondent’s Motion, the Division respectfully requests that the Commission treat the Division’s Rule 250 summary disposition motion, filed on April 10, 2023, as both a summary disposition motion and as the Division’s response to Respondent’s Motion. Because Respondent’s Motion essentially repeats the statements in its Answer, the Division’s summary disposition motion already addresses the statements in Respondent’s Motion.

Executed on May 30, 2023

/s/ Gregory N. Miller

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COUNSEL FOR THE DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2023, I caused the Division's Motion to Strike Respondent's "Summary Judgement Motion" to be served in the manner set forth below:

Via eFap: Office of the Secretary

Via email to: Peter Joseph Polinski Trust
c/o Peter Joseph Polinski
5735 Cavanaugh Road
Suite 614
Marcy, NY 13403



/s/ Gregory N. Miller

Gregory N. Miller

Counsel for the Division of Enforcement