

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21270

<p>In the Matter of</p> <p>Justin W. Keener,</p> <p>Respondent.</p>
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**DIVISION OF ENFORCEMENT’S RESPONSE IN OPPOSITION TO RESPONDENT’S
MOTION TO STAY THE ORDER INSTITUTING PROCEEDINGS**

On January 27, 2023, Respondent Justin W. Keener (“Respondent”) filed a motion to stay this proceeding (the “Motion”) while he appeals the District Court’s final judgment against him to the Eleventh Circuit. The Commission should deny the Motion because: (1) the Commission routinely and consistently denies similar motions, and (2) Respondent provides no rationale in law or fact that would otherwise satisfy his heavy burden to merit a stay.

LEGAL STANDARD AND ARGUMENT

Rule of Practice 161 authorizes the Commission to order adjournments and postponements for “good cause shown.” The requesting party must make “a strong showing that the denial of the request or motion would substantially prejudice their case.” *Id.* Here, the Motion contends that “as a matter of judicial economy, it would be a waste of the Commission’s limited resources to proceed with this follow-on administrative action,” noting that this is particularly true because “the appeal is in its infancy” and Respondent “is already enjoined from resuming his prior activities.” (Mot. at 2.) The Motion concludes that without a stay Respondent would be significantly prejudiced “when the merits of the injunction underlying the Order are under appeal.” *Id.*

The Motion fails to identify any valid basis for a stay of these proceedings. The mere fact that he has appealed the District Court’s Judgment is not a valid basis. Notably, Respondent has not explained how he would be prejudiced in the absence of a stay. Moreover, the Commission has consistently and repeatedly held that “the pendency of an appeal of a civil or criminal proceeding does not justify any delay in related ‘follow-on’ administrative proceedings.” *Donald J. Fowler*, Exchange Act Release No. 89226, 2020 WL 3791560, at *2 (July 6, 2020) (quoting *Thomas D. Melvin*, Exchange Act Release No. 75844, 2015 WL 5172974, at *7 n.52 (Sept. 4, 2015)).¹ The stay Respondent requests “could delay significantly the outcome of these proceedings,” and as the Commission has held, concerns about the “inefficient use of resources” do not “override the strong public interest in the prompt enforcement of the federal securities laws.” *Free*, 2012 WL 266986, at *2. Respondent’s motion ignores this body of case law and does not cite any authority in support of his stay request.

Next, Respondent argues that 5 U.S.C. § 522(a)(5), a provision of the Freedom of Information Act (“FOIA”), supports his conclusion that it would be arbitrary and capricious to continue these proceedings. (Mot. at 2.) This argument is misplaced and without merit. He reasons that follow-on administrative proceedings should not be instituted until the Commission determines that FOIA disclosure obligations are triggered. *Id.* He contends that “[t]he SEC cannot reasonably maintain that the federal-court litigation against Mr. Keener is final enough to institute the follow-on

¹ See also *Paul Free*, Exchange Act Release No. 66260, 2012 WL 266986, at *2 (Jan. 26, 2012) (“As we have previously stated, the pendency of an appeal generally is an insufficient basis upon which to prolong a Commission proceeding.”); *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *3 (Sept. 26, 2007) (“It is well established that the existence of an appeal of the District Court’s decision does not affect the injunction’s status as a basis for administrative action.”); *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 WL 1941502, at *3 n.21 (Aug. 23, 2002) (“[T]he pendency of an appeal does not preclude us from acting to protect the public interest.”).

administrative proceedings in its Order, yet simultaneously maintain that the matter is sufficiently non-final for purposes of compliance with Section 552(a)(5).” *Id.* Respondent offers no support for this spurious conclusion, and his argument only obfuscates the unavoidable fact that he cannot meet his burden to justify a stay.

Finally, Respondent revisits the judicial economy argument, asserting that “[t]he early stage of the administrative proceeding also weighs in favor of granting a stay.” (Mot. at 3.) This argument is also without merit. He contends, without support, that the “administrative proceedings have not even begun.” *Id.* He also notes that there have been no previous postponements or adjournments and that it would be “in the interests of economy and justice” to stay the proceedings “in this initial phase.” *Id.* As discussed above, Commission precedent forecloses such an argument.

For these reasons, the Commission should deny the motion for a stay.

Dated: February 3, 2023

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CERTIFICATE OF SERVICE

I certify that a true copy of the Notice of Appearance was served on the following, this 3rd day of February 2023, in the manner indicated below:

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