

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-1091

September Term, 2007

Filed On: March 26, 2008

Calvin David Fox,
Petitioner

v.

Securities and Exchange Commission,
Respondent

ON PETITION FOR REVIEW OF ORDERS OF THE SECURITIES AND EXCHANGE COMMISSION

BEFORE: Randolph, Tatel, and Garland, Circuit Judges

J U D G M E N T

This petition for review of orders of the Securities and Exchange Commission was considered on the briefs and appendix filed by the parties. It is

ORDERED AND ADJUDGED that the Securities and Exchange Commission order filed November 30, 2006, dismissing petitioner's appeal, and its order filed March 13, 2007, denying his motion for reconsideration, be affirmed. Petitioner failed to exhaust his administrative remedies before the New York Stock Exchange, and as a result, the Commission properly dismissed his appeal from the Exchange. See NYSE Rule 476(e) (requiring that requests for review to the Exchange Board of Directors be made with 25 days after notice of a Hearing Panel's decision). The Hearing Panel's determination was served in compliance with Exchange rules and was not constitutionally deficient, because it was reasonably calculated to apprise petitioner of his rights. See Jones v. Flowers, 547 U.S. 220, 226 (2006); NYSE Rule 476(d). Petitioner has also not shown that service of the Hearing Panel's decision by mail violated his equal protection rights, see Noble v. U.S. Parole Comm'n, 194 F.3d 152, 154 (D.C. Cir. 1999), or that the Commission's conclusion that the Hearing Panel's decision was properly served by mail was otherwise arbitrary, capricious, an abuse of discretion, or contrary to law, see PMD Produce Brokerage Corp. v. U.S. Dep't of Agriculture, 234 F.3d 48, 51 (D.C. Cir. 2000).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam