

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 71761 / March 20, 2014

ACCOUNTING AND AUDITING ENFORCEMENT  
Release No. 3543 / March 20, 2014

ADMINISTRATIVE PROCEEDING  
File No. 3-15659

In the Matter of

THOMAS D. MELVIN, CPA

ORDER DENYING PETITION  
TO LIFT TEMPORARY SUSPENSION  
AND DIRECTING HEARING

On December 20, 2013, we issued an order instituting proceedings against Thomas D. Melvin pursuant to Commission Rule of Practice 102(e)(3)<sup>1</sup> that temporarily suspended him from appearing or practicing before the Commission based on his having been enjoined from violations of antifraud provisions of the securities laws.<sup>2</sup> Melvin petitions now that we lift that suspension.<sup>3</sup> As discussed below, we deny Melvin's request to lift the temporary suspension and set the matter down for a hearing before an administrative law judge.

---

<sup>1</sup> Rule of Practice 102(e)(3)(i), 17 C.F.R. § 201.102(e)(3)(i), provides, in part, that

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder . . . .

<sup>2</sup> *Thomas D. Melvin*, Exchange Act Release No. 71161, 2013 WL 6705182 (Dec. 20, 2013).

<sup>3</sup> Because it contains an explicit request to lift the temporary suspension, we deem the document styled "Entry of Appearance and Request for Hearing" a petition to lift the temporary suspension pursuant to Rule 102(e)(3)(ii).

The Order Instituting Proceedings in this matter alleges that Melvin is a certified public accountant and a partner in the accounting firm of Melvin, Rooks and Howell in Griffin, Georgia.<sup>4</sup> On August 14, 2013, the U.S. District Court for the Northern District of Georgia entered a final judgment against Melvin, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.<sup>5</sup> The Commission's complaint, which forms the basis for the district court's injunction, alleges that Melvin and others were engaged in a fraudulent insider trading scheme. According to the complaint, Melvin misappropriated confidential information from one of his clients about an upcoming merger involving a company of which the client was director.<sup>6</sup> With this information, the complaint alleges, Melvin tipped four friends and business associates about the merger in violation of his fiduciary duties to his client, and the tippees then purchased shares of the target company and realized large profits.<sup>7</sup>

In instituting these disciplinary proceedings, we found it "appropriate and in the public interest" that Melvin be temporarily suspended from appearing or practicing before the Commission based on the district court's final judgment. We stated that the temporary suspension would become permanent unless Melvin filed a petition challenging it within thirty days of service of the order, pursuant to Rule 102(e)(3)(ii). We further advised that, pursuant to Rule 102(e)(3)(iii), upon receipt of such a petition, we would either lift the temporary suspension, set the matter down for hearing, or both.

In his petition, Melvin requests that the temporary suspension be lifted, arguing that (i) the suspension order was "untimely under the Commission's Rules of Practice," and (ii) the Commission, "in conjunction with the negotiation of a settlement in corresponding civil enforcement proceedings," entered into a "binding agreement" with Melvin that he "would not be suspended in excess of the three years."

In its opposition to Melvin's petition, the Division of Enforcement contends that the December 20, 2013 suspension order was timely because it was issued within 90 days of the expiration of Melvin's time to appeal the district court's judgment.<sup>8</sup> The Division further

---

<sup>4</sup> *Melvin*, 2013 WL 6705182, at \*1.

<sup>5</sup> *SEC v. Thomas D. Melvin, Jr.*, No. 1:12-cv-2984 (N.D. Ga. Aug. 14, 2013).

<sup>6</sup> Complaint for Injunctive Relief at 2-3, *SEC v. Thomas D. Melvin, Jr.*, No. 1:12-cv-2984 (N.D. Ga. Aug. 28, 2012), available at <http://www.sec.gov/litigation/complaints/2012/comp22468.pdf>.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Rule 102(e)(3), 17 C.F.R. § 201.102(e)(3), provides, "No order of temporary suspension shall be entered by the Commission . . . more than 90 days after the date on which the final judgment or order entered in a judicial or administrative proceeding became effective, whether upon completion of review or appeal or because further review or appeal procedures are no longer available."

contends that it made no such agreement with Melvin regarding the length of his suspension, and that such an agreement is inconsistent with the terms of the consent Melvin executed in conjunction with the settlement of the underlying case.

Rule 102(e)(3)(i)(a) permits the Commission to suspend any accountant or other professional or expert who has been "[p]ermanently enjoined . . . from violating . . . any provision of the Federal securities laws or of the rules and regulations thereunder."<sup>9</sup> At this stage, it appears that the injunction issued against Melvin, based on alleged securities fraud violations, "justif[ies] the continuance of his suspension until it can be determined what, if any, action may be appropriate to protect the Commission's processes."<sup>10</sup> We therefore believe it is in the public interest to deny Melvin's request to lift the suspension.<sup>11</sup> We will set the matter down for a hearing before an administrative law judge, as provided in Rule 102(e)(3)(iii).<sup>12</sup> We express no opinion as to the merits of Melvin's claims.

Accordingly, IT IS ORDERED that the petition of Thomas D. Melvin to lift the temporary suspension entered on December 20, 2013, is denied and the suspension will remain in effect pending a hearing and decision in this matter; it is further

ORDERED that this proceeding be set down for public hearing before an administrative law judge in accordance with Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500; and it is further

ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this order.

By the Commission.

Jill M. Peterson  
Assistant Secretary

---

<sup>9</sup> 17 C.F.R. § 201.102(e)(3)(i)(a).

<sup>10</sup> *Williams D. Shovers*, Exchange Act Release No. 59874, 2009 WL 1271170, at \*2 (May 6, 2009).

<sup>11</sup> *Cf. Virginia K. Sourlis*, Exchange Act Release No. 69358, 2013 WL 1453371, at \*2 (Apr. 10, 2013) (denying request by an attorney to lift a Rule 102(e)(3) temporary suspension because "[c]ontinuing [petitioner's] temporary suspension pending a hearing on the issues raised in [the] petition serves the public interest and protects the Commission's processes"); *Stewart A. Merkin*, Exchange Act Release No. 68981, 2013 WL 661621, at \* 2 (Feb. 25, 2013) (same).

<sup>12</sup> 17 C.F.R. § 201.102(e)(3)(iii).