

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 10038 / February 9, 2016

SECURITIES EXCHANGE ACT OF 1934  
Release No. 77088 / February 9, 2016

Admin. Proc. File No. 3-16509

In the Matter of

EDWARD M. DASPIN, aka “EDWARD (ED)  
MICHAEL”); and  
LUIGI AGOSTINI

ORDER DENYING STAY

The Division of Enforcement has requested that we stay these proceedings before the administrative law judge. The Division has also filed a motion for a stay with the law judge that the law judge stated he will consider on February 11, 2016. For the reasons explained below, the Division’s motion is denied.

**I. Background**

On April 23, 2015, we issued an order instituting proceedings against Edward M. Daspin, Luigi Agostini, and Lawrence R. Lux to determine, among other things, whether they committed securities antifraud violations.<sup>1</sup> Lux settled the proceedings on October 16, 2015.<sup>2</sup> On January 12, 2016, the United States Court of Appeals for the Second Circuit granted Agostini a stay of the proceedings against him “pending further order of [the] Court.”<sup>3</sup> Although the Second Circuit did not state the grounds for its order, Agostini had requested that it stay the proceedings for the same reasons that it stayed a Commission administrative proceeding in *Tilton v. SEC*, No. 15-2103 (*i.e.*, because he raises the same Appointments Clause claim as the appellants in *Tilton*

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<sup>1</sup> *Edward M. Daspin*, Exchange Act Release No. 74799, 2015 WL 1843839 (Apr. 23, 2015).

<sup>2</sup> *Edward M. Daspin*, Exchange Act Release No. 76178, 2015 WL 6086849 (Oct. 16, 2015).

<sup>3</sup> Order, *Agostini v. SEC*, No. 15-4114 (2d Cir. Jan. 12, 2016).

in requesting a preliminary injunction against the Commission).<sup>4</sup>

On January 13, 2016, in response to the Second Circuit’s stay order as to Agostini, the Division requested that the administrative law judge stay the entire proceedings, including as to Daspin. On January 14, the law judge issued an order stating that the proceedings as to Daspin would move forward with an “in-person hearing scheduled for February 11 to address certain issues unique to Daspin” such as Daspin’s absence from an earlier hearing scheduled for January 4.<sup>5</sup> The order also stated that at the conclusion of the February 11 hearing, the law judge would “entertain discussions concerning whether to stay the proceedings as to Daspin.”

The Division then filed the present motion requesting that we stay the entire proceedings, including as to Daspin, pending further order of the Second Circuit. The Division contends that such relief is warranted because of “the procedural challenges of moving forward with only a portion of the proceeding under the current circumstances.”

## II. Discussion

The law judge has stated that he will consider the Division’s stay request at the end of a hearing on February 11, 2016. There also has not been any ruling by the law judge on the Division’s motion for a stay, and the Division’s application for a stay before the Commission is an interlocutory appeal. The Division, however, did not seek the law judge’s certification of any ruling for interlocutory review.<sup>6</sup> Because the Division’s application is premature—both because there has been no ruling by the law judge and the Division has not sought certification for interlocutory review<sup>7</sup>—the motion for a stay is denied.<sup>8</sup>

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<sup>4</sup> Motion of Plaintiff-Appellant at 5, *Agostini v. SEC*, No. 15-4114 (2d Cir. Dec. 28, 2015).

<sup>5</sup> Order, *Edward M. Daspin*, Admin. Proc. File No. 3-16509 (ALJ Grimes Jan. 14, 2016); *see also* Order, *Edward M. Daspin*, Admin. Proc. File No. 3-16509 (ALJ Grimes Jan. 8, 2016). The law judge noted in an earlier order that Daspin did not appear at the January 4 hearing “because he was purportedly hospitalized for unknown reasons on January 2.” Order, *Edward M. Daspin*, Admin. Proc. File No. 3-16509 (ALJ Grimes Jan. 5, 2016). In addition to setting the February 11 hearing, the law judge ordered that Daspin “make himself available for an in-person medical evaluation by an expert provided by the Division” by February 3, 2016. Order, *Edward M. Daspin*, Admin. Proc. File No. 3-16509 (ALJ Grimes Jan. 8, 2016).

<sup>6</sup> *See, e.g., Harding Advisory LLC*, Advisers Act Release No. 3796, 2014 WL 988532, at \*3 (Mar. 14, 2014) (denying petition for interlocutory review where respondents did not request certification of the ruling from the law judge).

<sup>7</sup> The Division relies on Rule 401 for its stay application, but Rule 401 concerns stays of final Commission orders, not decisions by a law judge. *See, e.g., Joseph John Vancook*, Exchange Act Release No. 59550, 2009 WL 605322, at \*1 (Mar. 10, 2009) (finding Rule 401 to be inapplicable “because the Commission has not yet entered a final order, reviewable by an appellate court, that we could consider staying”).

(continued ...)

Accordingly, IT IS ORDERED that the request of the Division of Enforcement for a stay is denied.

By the Commission.

Brent J. Fields  
Secretary

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(... continued)

<sup>8</sup> The Division relies exclusively on Rules 400 and 401 in its motion for a stay. Even under Rule 161, which permits the Commission to grant postponements “for good cause shown,” the motion is denied because the absence of a decision ordering the Division to proceed against Daspin, while the case against Agostini is stayed, indicates that the “procedural challenges” identified by the Division are not yet present. The requisite “good cause” has, therefore, not been demonstrated.