

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
November 28, 2016

SECURITIES ACT OF 1933
Release No. 10260 / November 28, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 79413 / November 28, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16509

In the Matter of

EDWARD M. DASPIN, a/k/a “EDWARD (ED) MICHAEL”

ORDER
GRANTING
PETITION
FOR REVIEW
AND SCHEDULING
BRIEFS

On September 21, 2016, Edward M. Daspin, proceeding pro se, filed a “Motion to Set Aside Default” after an administrative law judge found him to be in default and issued an initial decision.¹ The law judge, who deemed the allegations in the order instituting proceedings to be true as a result of the default, found that Daspin violated Sections 5(a) and (c) and 17(a) of the Securities Act of 1933, Sections 10(b), 15(a), and 20(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5. He barred Daspin from the securities industry and imposed a cease-and-desist order, disgorgement plus prejudgment interest, and a civil money penalty.

Daspin’s motion requests that the Commission “correct a manifest error and set aside the default judgment.” We construe Daspin’s motion as a petition for review of the initial decision and grant the petition pursuant to Rule of Practice 411.² Although Daspin should have filed a

¹ *Edward M. Daspin*, Initial Decision Release No. 1051 (Aug. 23, 2016), 114 SEC Docket 17, 2016 WL 4437545. The law judge found that Daspin defaulted in a March 8, 2016 order. *Edward M. Daspin*, Administrative Proceedings Rulings Release No. 3683, 113 SEC Docket 13, 2016 SEC LEXIS 886 (Mar. 8, 2016). After issuing the default order, the law judge directed the parties to file briefs regarding the need for remedial sanctions.

² 17 C.F.R. § 201.411. Pursuant to Rule of Practice 411(d), 17 C.F.R. § 201.411(d), the Commission will determine what sanctions, if any, are appropriate in this matter. The Rules of Practice are available at <https://www.sec.gov/about/rulesofpractice.shtml>. Although those rules recently have been amended, this appeal is principally governed by the previous (March 2006) version of the Rules of Practice because it was filed before September 27, 2016, the effective

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petition for review under Rule of Practice 410 rather than a motion to correct a manifest error (which would be directed to the law judge under Rule of Practice 111), Daspin is pro se and his filings establish that he seeks Commission review of the law judge's determinations.³

Accordingly, IT IS ORDERED, pursuant to Rule of Practice 450(a),⁴ that Daspin file a brief in support of the petition for review by December 28, 2016. The Division of Enforcement shall file a brief in opposition by January 27, 2017, and Daspin shall file any reply brief by February 10, 2017. No other briefs may be filed without leave of the Commission.⁵ Briefs shall be confined to the particular matters at issue⁶—namely, the parties should address the standards for challenging a default under Rule of Practice 155(b) as well as what sanctions, if any, are appropriate in this matter. Each exception to the findings or conclusions being reviewed shall be stated succinctly.⁷

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date of the amendments. *But see* Amendments to the Commission's Rules of Practice, Exchange Act Release No. 78319, 114 SEC Docket 11, at Section II.Q.3 (July 13, 2016), available at <https://www.sec.gov/rules/final/2016/34-78319.pdf> (explaining that new Rules 154 and 161 apply to all proceedings pending as of the amendments' effective date).

³ Daspin's petition is timely. Rule 410(b) provides that a petition for review shall be filed either within such time after service of the initial decision as prescribed by the law judge or within 21 days from the date of the law judge's order resolving a motion to correct an initial decision. 17 C.F.R. § 201.410(b). Rule 111 provides that a motion to correct shall be filed within ten days of the initial decision, 17 C.F.R. § 201.111(h), and Daspin filed a motion to "dissolve or vacate" the default on September 1, 2016, within ten days of the August 23, 2016 initial decision. Daspin's filings establish that his motion to "dissolve or vacate" was in substance a motion to correct under Rule 111, and the law judge did not rule on this motion until September 21, 2016, the same day Daspin filed his petition. Thus, Daspin filed his petition within 21 days of the law judge's order resolving his motion to correct.

A respondent who fails to file a timely petition for review of an initial decision after a default may still file a motion "within a reasonable time" under Rule 155(b) to set aside the default. 17 C.F.R. § 201.155(b); *see also David Mura*, Exchange Act Release No. 72080, 108 SEC Docket 16, 2014 WL 1744129, at *3 (May 2, 2014) (applying the Rule 155(b) standards for setting aside a default to a challenge to the entry of default raised through a petition for review of an initial decision), available at <https://www.sec.gov/litigation/opinions/2014/34-72080.pdf>.

⁴ 17 C.F.R. § 201.450(a).

⁵ *Id.*

⁶ 17 C.F.R. § 201.450(b).

⁷ *Id.*

Pursuant to Rule of Practice 450(c), opening and oppositions briefs shall not exceed 14,000 words and reply briefs shall not exceed 7,000 words.⁸ Pursuant to Rule of Practice 180(c),⁹ failure to file a brief in support of this review proceeding may result in dismissal of the petition. Any arguments challenging the default or other aspects of the initial decision should be made in the opening brief because arguments not made in the opening brief are waived.¹⁰

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

⁸ 17 C.F.R. § 201.450(c); *see also* Rules 150 – 153, 17 C.F.R. § 201.150 – 153 (governing form and service) and Rules 450(b)-(d), 17 C.F.R. § 201.450(b)-(d) (governing content and length limitations).

⁹ 17 C.F.R. § 201.180(c).

¹⁰ *Anthony Fields*, Advisers Act Release No. 4028, 110 SEC Docket 18, 2015 WL 728005, at *19 n.115 (Feb. 20, 2015).