

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 84627 / November 19, 2018

Admin. Proc. File No. 3-18790

In the Matter of  
KAREN BRUTON

ORDER DENYING PETITION TO LIFT TEMPORARY SUSPENSION AND DIRECTING HEARING

On September 19, 2018, we temporarily suspended Karen Bruton from appearing or practicing before the Commission.<sup>1</sup> Bruton, who holds an inactive certified public accountant (“CPA”) license in North Carolina,<sup>2</sup> was permanently enjoined on September 13, 2018 from violating antifraud provisions of the federal securities laws. Commission Rule of Practice 102(e)(3)(i)(A) authorizes us to temporarily suspend an accountant subject to such an injunction from appearing or practicing before the Commission.<sup>3</sup>

On October 18, 2018, Bruton filed a petition to lift her temporary suspension and set the matter down for a hearing under Commission Rule of Practice 102(e)(3)(ii).<sup>4</sup> For the reasons set forth below, we deny the request to lift the temporary suspension but set the matter down for a hearing in accordance with Commission Rule of Practice 102(e)(3)(iii).<sup>5</sup>

<sup>1</sup> *Karen Bruton, CPA*, Exchange Act Release No. 84198, 2018 WL 4488869 (Sept. 19, 2018).

<sup>2</sup> Bruton states that her license became inactive in June 2008. We take official notice from the North Carolina Board of CPA Examiners’ website that her license “expir[ed]” then and is in inactive status as of the date of this order. *See* Rule of Practice 323, 17 C.F.R. § 201.323.

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

<sup>4</sup> *Id.* § 201.102(e)(3)(ii).

<sup>5</sup> *Id.* § 201.102(e)(3)(iii) (providing that, upon receipt of a timely petition to lift a temporary suspension, “the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both, and after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently”).

## Background

On May 31, 2016, the Commission filed a civil complaint against Bruton and her investment advisory firm Hope Advisors LLC.<sup>6</sup> The Commission alleged that Bruton and Hope perpetrated a scheme to receive unearned fees from a fund they managed.<sup>7</sup> The Commission charged Bruton and Hope with violating Section 17(a)(1)-(3) of the Securities Act of 1933,<sup>8</sup> Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder,<sup>9</sup> and Section 206(1), (2), and (4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder;<sup>10</sup> Bruton was also charged with aiding and abetting Hope's violations.

On September 13, 2018, Bruton consented to entry by the district court of a final judgment against her.<sup>11</sup> The judgment ordered Bruton to pay disgorgement and civil monetary penalties. It also permanently enjoined her from future violations of Advisers Act Sections 206(1), (2) and (4) and Rule 206(4)-8 thereunder.

On September 19, 2018, following entry of the injunction, we issued the order temporarily suspending Bruton from appearing or practicing before the Commission in accordance with Rule 102(e)(3). We ordered that the temporary suspension become permanent unless Bruton filed a petition to lift it within 30 days after service of the order imposing the temporary suspension, and we provided that if Bruton filed such a petition we would "either lift the temporary suspension, or set the matter down for hearing at a time and place to be designated by the Commission, or both."<sup>12</sup> On October 18, 2018, Bruton filed this timely petition requesting that we lift the temporary suspension and set the matter down for a hearing.

## Analysis

In *McCurdy v. SEC*, we stated that we may impose sanctions under Rule 102(e) "for a remedial purpose, but not for punishment."<sup>13</sup> Bruton, citing *Kokesh v. SEC*,<sup>14</sup> argues that the temporary suspension is a punishment. In *Kokesh*, the Supreme Court stated, in determining that disgorgement was a "penalty" for purposes of the statute of limitations in 28 U.S.C. § 2462, that

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<sup>6</sup> *SEC v. Hope Advisors, LLC, et al.*, No. 1:16-cv-1752-LMM (N.D. Ga. May 31, 2016), ECF No. 1.

<sup>7</sup> *SEC v. Hope Advisors, LLC, et al.*, No. 1:16-cv-1752-LMM (N.D. Ga. Aug. 30, 2017), ECF No. 71 (second amended complaint).

<sup>8</sup> 15 U.S.C. § 77q(a)(1), (a)(2), (a)(3).

<sup>9</sup> *Id.* § 78j(b); 17 C.F.R. § 240.10b-5.

<sup>10</sup> 15 U.S.C. § 80b-6(1), (2), (4); 17 C.F.R. § 206(4)-8.

<sup>11</sup> *SEC v. Hope Advisors, LLC, et al.*, No. 1:16-cv-1752-LMM (N.D. Ga. Sept. 13, 2018), ECF No. 132 (final judgment as to Bruton).

<sup>12</sup> *Bruton*, 2018 WL 4488869, at \*2-3.

<sup>13</sup> *McCurdy v. SEC*, 396 F.3d 1258, 1264 (D.C. Cir. 2005).

<sup>14</sup> 137 S. Ct. 1635 (2017).

a “civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment.”<sup>15</sup> Citing then-Judge Kavanaugh’s concurring opinion in *Saad v. SEC*,<sup>16</sup> Bruton argues that “the Supreme Court’s reasoning in *Kokesh* was not limited to the specific statute at issue” in that case. Bruton argues that one of the purposes of a temporary suspension is to deter others from disregarding their professional responsibilities. Accordingly, she contends that the temporary suspension “is an unlawful punishment that should be immediately lifted.”

We need not resolve here the ramifications of *Kokesh* for the imposition of sanctions other than disgorgement in contexts other than the application of 28 U.S.C. § 2462. Bruton is mistaken about the purpose of a temporary suspension under Rule 102(e)(3). A temporary suspension under Rule 102(e)(3) serves solely a remedial purpose.

“[B]oth the Commission and the investing public rely heavily on accountants to assure corporate compliance with federal securities laws and disclosure of accurate and reliable financial information.”<sup>17</sup> “[O]ur purpose in promulgating [Rule 102(e)] was] to ensure that the Commission’s ‘processes continue to be protected, and that the investing public continues to have confidence in the integrity of the financial reporting process.’”<sup>18</sup> The “overall purpose” of Rule 102(e)(3) “is to prevent situations in which the investing public places its trust in, or reliance upon, attorneys, accountants, engineers, and other professionals or experts who have demonstrated an unwillingness or inability to comply with the requirements of the federal securities laws, while assuring that such professionals and experts will have a fair opportunity to show why the interests of the investing public will not materially be jeopardized if they are permitted to continue to appear and practice before the Commission.”<sup>19</sup>

Temporarily suspending an accountant who has been enjoined from violating the federal securities laws is not designed to deter others from committing misconduct. Rather, a temporary suspension protects the public and the Commission’s processes from an accountant who has been

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<sup>15</sup> *Id.* at 1645.

<sup>16</sup> 873 F.3d 297, 305 (D.C. Cir. 2017).

<sup>17</sup> *Amendment to Rule 102(e) of the Commission’s Rules of Practice*, Securities Act Release No. 7593, 63 Fed. Reg. 57,164, 57,164 (Oct. 26, 1998).

<sup>18</sup> *Gregory M. Dearlove*, Exchange Act Release No. 57244, 2008 WL 281105, at \*30 (Jan. 31, 2008) (quoting *Amendment to Rule 102(e) of the Commission’s Rules of Practice*, 63 Fed. Reg. at 57,164), *petition denied*, 573 F.3d 801 (D.C. Cir. 2009).

<sup>19</sup> *Suspension or Disbarment From Appearance or Practice Before the Commission*, Exchange Act Release No. 9164, 1971 WL 126066, at \*2 (May 10, 1971).

enjoined from violating the federal securities laws pending a hearing to determine what, if any, sanction is appropriate.<sup>20</sup> This is a remedial measure.<sup>21</sup>

Bruton cites our decision in *Michael C. Pattison, CPA*,<sup>22</sup> to support her argument that the temporary suspension is imposed to deter others and is therefore a punishment. But in *Pattison*, we stated that “permanently disqualifying Pattison from appearing or practicing before the Commission is remedial because it will prevent Pattison and deter others from disregarding their professional responsibilities and protect the investing public by encouraging reliable corporate disclosure and accountability through accurate recordkeeping and diligent compliance with internal accounting controls.”<sup>23</sup> *Pattison* does not address the purpose of a temporary suspension. Rather, *Pattison* involved the appropriate final sanction to be imposed on an accountant following a hearing. Consideration of the impact of *Kokesh* on the propriety of permanently disqualifying an accountant from appearing or practicing before the Commission is not yet appropriate. During the hearing, Bruton and the Division of Enforcement may address any arguments based on *Kokesh* or *Pattison* that they believe are relevant to any final sanction that may be imposed.

Bruton also claims that the temporary suspension should “be immediately lifted for the additional and independent reason that the Commission has failed to articulate any remedial purpose” that the temporary suspension serves. As discussed above, the temporary suspension serves the remedial purpose of protecting the public and the Commission’s processes pending a hearing. Bruton objects that our order imposing the temporary suspension justified it based solely on the injunction and that an injunction requiring Bruton to obey the law “does not place her in a different position than any other person who is currently practicing before the Commission”; accordingly, Bruton argues that it would be “illogical” for the temporary suspension to remain in place “solely because Ms. Bruton—like everyone else—is prohibited from violating Sections 206(1), (2), and (4) of the Investment Advisers Act of 1940.” But under Rule 102(e)(3) a person is presumed to have been enjoined by reason of the misconduct alleged in the complaint where she has consented to entry of an injunction without making any admission.<sup>24</sup> The Commission’s complaint alleged that Bruton committed fraud. That Bruton is presumed to have been enjoined as a result of fraud distinguishes her from other accountants appearing or practicing before the Commission. Our September 19, 2018 order found that it was “appropriate and in the public interest” to temporarily suspend Bruton, and we reiterate here that the temporary suspension is necessary to protect the public and the Commission’s processes pending a hearing to determine what, if any, sanction should be imposed.

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<sup>20</sup> See, e.g., *Robert C. Weaver, Jr., Esq.*, Exchange Act Release No. 73949, 2014 WL 7366048, at \*2 (Dec. 29, 2014).

<sup>21</sup> See, e.g., *Coughlan v. NTSB*, 470 F.3d 1300, 1307 (11th Cir. 2006) (finding the revocation of a pilot’s license to be remedial because pilot’s “falsifications called into question his fitness to hold [his Airline Transport Pilot] certificate and implicated matters of public air safety”).

<sup>22</sup> Exchange Act Release No. 67900, 2012 WL 4320146 (Sept. 20, 2012).

<sup>23</sup> *Id.* at \*12.

<sup>24</sup> *Suspension or Disbarment From Appearance or Practice Before the Commission*, 1971 WL 126066, at \*1.

Finally, Bruton contends that “there is no basis for the Commission to conclude” that the temporary suspension is in the public interest. According to Bruton, we should lift the temporary suspension because “she neither has the desire nor the opportunity to practice as an accountant” and thus is in no “position to harm the Commission’s processes.” She has submitted a declaration stating, among other things, that her CPA license is inactive,<sup>25</sup> she has not practiced before the Commission in more than 30 years, and she has no present intention of doing so.

Bruton has not shown that the temporary suspension is unnecessary to protect the public and the Commission’s processes. Bruton is presumed to have been enjoined as a result of fraud. The fact that a person has been enjoined “from violating the antifraud provisions has especially serious implications for the public interest.”<sup>26</sup> Bruton may reactivate her CPA license at any time,<sup>27</sup> and she is not bound by a present intention not to appear or practice before the Commission. A hearing is necessary to determine what, if any, final sanction should be imposed. We conclude that it is appropriate to protect the public interest to continue Bruton’s temporary suspension until after a hearing can be held to consider the Division’s and Bruton’s evidence along with any other “mitigating or other factors why neither censure nor temporary or permanent disqualification should be imposed.”<sup>28</sup>

Accordingly, IT IS ORDERED that the caption in this proceeding be modified as shown above; and it is further

ORDERED that Karen Bruton’s petition to lift the temporary suspension is denied, and that the temporary suspension will remain in effect pending a public hearing and decision in this matter; and it is further

ORDERED that this proceeding be set down for a hearing before the Commission in accordance with Rule 110 of the Commission’s Rules of Practice, 17 C.F.R. § 201.110; and it is further

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<sup>25</sup> Under North Carolina law, inactive status “describes a person who has requested inactive status and has been approved by the board and who does not use the title certified public accountant, nor does . . . she allow anyone to refer to . . . her as a certified public accountant, and neither . . . she nor anyone else refers to . . . her in any representation” to the public. 21 N.C. Admin. Code § 08A.0301(b)(20); *see also id.* § 08A.0308(b). Accordingly, we grant Bruton’s request that we strike “CPA” from the caption in this proceeding.

<sup>26</sup> *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at \*9 (July 25, 2003); *accord Kenneth W. Haver, CPA*, Exchange Act Release No. 54824, 2006 WL 3421789, at \*4 (Nov. 28, 2006) (quoting *Melton* in an order denying a motion to vacate a suspension imposed under Rule 102(e) that was based on an injunction against violating the antifraud provisions).

<sup>27</sup> In North Carolina, “[a] CPA on inactive status may change to active status” by paying a renewal fee, providing evidence of completion of certain continuing professional education requirements, and submitting three certificates of good moral character. *Id.* § 08J.0105(c).

<sup>28</sup> *Diane D. Dalmy, Esq.*, Exchange Act Release No. 76980, 2016 WL 334892, at \*2 (Jan. 27, 2016).

ORDERED that the Division of Enforcement and Bruton shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of this order. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference is not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Bruton fails to appear at a hearing or conference after being duly notified, she may be deemed in default and the proceedings may be determined against her as provided by Rules 155(a), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.221(f), and 201.310. If in the statement filed with the Office of the Secretary either party states an intent to file a motion for summary disposition under Rule of Practice 250, the Commission shall issue a briefing schedule on such motion(s).

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission, and that any motion for summary disposition shall be filed under Rule 250(a) or (b).

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) the completion of briefing on a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the

Commission has determined that no public hearing is necessary; or (C) the determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields  
Secretary