UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10654 / June 28, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 86230 / June 28, 2019

Admin. Proc. File No. 3-16509

In the Matter of

EDWARD M. DASPIN, A/K/A "EDWARD (ED) MICHAEL"

ORDER DENYING INTERLOCUTORY MOTIONS

Edward M. Daspin, a respondent in an administrative proceeding, has filed several interlocutory motions with the Commission. For the reasons discussed below, we deny the motions.

Background

On April 23, 2015, the Commission issued an order instituting proceedings ("OIP") against Edward M. Daspin, a/k/a "Edward (Ed) Michael," pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934.[1] The administrative law judge assigned to this matter found Daspin to be in default on March 8, 2016.[2] On August 23, 2016, the law judge issued an initial decision that deemed the allegations in the OIP to be true based on Daspin's default.[3] The law judge found, as a result, that Daspin violated antifraud and registration provisions of the federal securities laws.[4] The law judge imposed an

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

2 *Edward M. Daspin*, Admin. Proc. Ruling Release No. 3683, 2016 SEC LEXIS 886 (Mar. 8, 2016)

3 *Edward M. Daspin*, Initial Decision Release No. 1051, 2016 WL 4437545, at *2 (Aug. 23, 2016).

4 *Id*. at *10–17.

industry and penny stock bar; a cease-and-desist order; and an order to pay approximately $1,900,000 in disgorgement, plus prejudgment interest, and a $915,000 civil penalty.[5]

Following Daspin's appeal of that decision, and our subsequent issuance of an order ratifying the appointments of all of our administrative law judges (including the law judge assigned to this case), the proceeding was remanded for the law judge to conduct a de novo reconsideration and reexamination of the record to determine "whether to ratify or revise in any respect all prior actions taken."[6] On February 20, 2018, after reconsideration of the record, the law judge determined largely to ratify all of the prior actions taken including the initial decision.[7] On May 7, 2018, the Commission ordered the parties to submit briefs "addressing any matters that they deem pertinent in light of the ALJ's ratification order."[8]

Following the May 7 briefing order, the United States Supreme Court issued its decision in *Lucia v. SEC*.[9] *Lucia* held that the Commission's administrative law judges were appointed in a manner that violated the Appointments Clause of Article II of the Constitution, and it remanded the proceeding at issue for the Commission to provide the respondent with a new hearing before a hearing officer who was properly appointed and had not participated in the matter previously.[10] Subsequently, having ratified the appointment of its administrative law judges, the Commission once again remanded this proceeding (and other similarly situated proceedings) to provide Daspin with a "new hearing before an ALJ who did not previously participate in the matter."[11]

Following the second remand in 2018, Daspin submitted numerous, often repetitive filings to both the newly assigned administrative law judge and the Commission. On December 26, 2018, the law judge denied many of the claims that Daspin also submitted to the Commission and did not certify any of them for interlocutory review by the Commission under Rule of

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5 *Id.* at *17–26.

6 *In re Pending Admin. Proceedings*, Exchange Act Release No. 82178, 2017 WL 5969234, at *1–2 (Nov. 30, 2017).

7 The law judge declined to adopt one prior order and modified two others. *Edward M. Daspin*, Admin. Proc. Ruling Release No. 5619, 2018 SEC LEXIS 520, at *67–69 (declining to adopt *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2810, 2015 SEC LEXIS 2387 (June 15, 2015) and modifying and adopting Order, *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3041, 2015 SEC LEXIS 3348 (Aug. 14, 2015) and Order, *Edward M. Daspin*, Admin. Proc. Rulings Release No. 4184, 2016 SEC LEXIS 3554 (Sept. 21, 2016)).

8 *Edward M. Daspin*, Exchange Act Release No. 83183, 2018 SEC LEXIS 1071, at *3–4 (May 7, 2018).

9 138 S. Ct. 2044 (2018).

10 *Id.* at 2055 ("To cure the constitutional error, another ALJ (or the Commission itself) must hold the new hearing to which Lucia is entitled.").

11 *In re Pending Admin. Proceedings*, Exchange Act Release No. 83907, 2018 WL 4003609, at *1 (Aug. 22, 2018).

Practice 400(c).[12] This order now considers, collectively, those submissions (the "Pending Motions") that Daspin has directed to the Commission since the second remand in 2018.[13]

Analysis

Daspin's filings appear to essentially seek the following: (1) dismissal or "reinstitution" of the proceeding because, among other things, the OIP is allegedly based on unconvincing evidence and violates the U.S. Constitution; (2) a "stay" from using the Commission's administrative law judges because of alleged conflicts of interest and bias and because their involvement in the proceeding allegedly violates the U.S. Constitution; (3) the enforcement of a settlement that Daspin claims was entered into between him and the Division of Enforcement (which the Division denies); (4) payment by the Commission of $1 million to Daspin as replacement for legal fees that Daspin claims his insurance carrier expended earlier in the proceeding; (5) payment by the Commission of $2.8 million to Daspin for time he allegedly spent defending himself in this proceeding; (6) a transfer of this proceeding to federal court; (7) a stay of the proceeding pending the Commission's consideration of his various requests and to allow him time to prepare for these proceedings and retain counsel; and (8) a request for various documents from the Division.

We find that it would be inappropriate for us to consider Daspin's requests at this juncture. Although the Commission may intervene in an ongoing proceeding at any time either on its own initiative or at a party's urging,[14] we have made clear that our emphatic preference is that claims should be presented in a single petition for review after the entire record has been

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[12] *See Edward M. Daspin*, Admin. Proc. Ruling Release No. 6423, 2018 SEC LEXIS 3654 (Dec. 26, 2018); 17 C.F.R. § 201.400(c) (setting forth the standards for certification).

[13] It is not always clear to whom Daspin's filings are directed, their purpose, or whether they have been properly served, but the Pending Motions include those filed on August 28, 2018; September 13, 14, and 17, 2018; October 30, 2018; December 11, 2018; and February 13 and 15, 2019. Many of Daspin's submissions do not comply with our Rules of Practice, particularly the rules governing length limitations. *See, e.g.*, Rule of Practice 154(c), 17 C.F.R. § 201.154(c). We exercise our discretion to consider the Pending Motions, but note that our rules expressly authorize the rejection of any future filing that does not conform to their requirements. *See, e.g.*, Rule of Practice 180(b), 17 C.F.R. § 201.180(b) ("The Commission or the hearing officer may reject, in whole or in part, any filing that fails to comply with any requirements of these Rules of Practice or of any order issued in the proceeding in which the filing was made.").

[14] *See, e.g.*, *Michael Lee Mendenhall*, Exchange Act Release No. 74532, 2015 WL 1247374, at *1 (Mar. 19, 2015) (observing that the Commission has "plenary authority over the course of its administrative proceedings and the rulings of its law judges"); *see also* 15 U.S.C. § 78d-1(b).

developed and after issuance by the law judge of an initial decision.[15] This policy embodies the general rule disfavoring piecemeal, interlocutory appeals.[16]

Daspin's motions are "in substance a petition for interlocutory review and, as such, governed by Rule 400 of the Rules of Practice."[17] Rule 400 provides the "exclusive remedy" for interlocutory Commission review before the issuance of an initial decision.[18] The rule provides that petitions for interlocutory review are disfavored and will be granted only in extraordinary circumstances to make clear that requests for interlocutory Commission review will be granted rarely.[19] A party's disagreement with the law judge's determination does not make a ruling appropriate for interlocutory review.[20] Interlocutory review is appropriate "only in a truly unusual case, where serious and prejudicial error [is] plainly apparent upon even a cursory review of the record, and where deferring review until issuance of an initial decision" would only postpone an "inevitable later vacatur and remand."[21]

It is especially difficult for a party to satisfy its burden of showing that interlocutory review is appropriate when the law judge has not certified a ruling for interlocutory review. "The Commission generally does not grant petitions for interlocutory review where the law judge has declined to certify the ruling."[22] Although the absence of certification is not a barrier to Commission consideration, "issues that do not satisfy Rule 400(c)['s standards for

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15 *Gary L. McDuff*, Exchange Act Release No. 78066, 2016 WL 3254513, at *5 (June 14, 2016).

16 *Id.*; *see also, e.g.*, *Grosvenor v. Qwest Corp.*, 733 F.3d 990, 995 (10th Cir. 2013) (stating that "there is a long-established policy preference in the federal courts disfavoring piecemeal appeals"); *cf. Coopers & Lybrand v. Livesay*, 437 U.S. 463, 474–75 n.25 (1978) (observing that the "[r]equirement that the Trial Court certify the case as appropriate for [interlocutory] appeal serves the double purpose of providing the Appellate Court with the best informed opinion that immediate review is of value, and at once protects appellate dockets against a flood of petitions in inappropriate cases.") (quoting H.R. Rep. No. 1667, 85th Cong., 2d Sess., 5-6 (1958)).

17 *Charles L. Hill, Jr.*, Exchange Act Release No. 79459, 2016 WL 7032731, at *1 (Dec. 2, 2016); *see also Lynn Tilton*, Exchange Act Release No. 32236, 2016 WL 4447011, at *1 n.1 (Aug. 24, 2016) (construing pre-hearing "petition directly to the Commission" as a petition for interlocutory review); *Kevin Hall*, Exchange Act Release No. 55987, 2007 WL 1892136, at *2 (June 29, 2007) (applying Rule 400 to a motion for interlocutory review "no matter how styled").

18 Rule of Practice 400(a), 17 C.F.R. § 201.400(a); *Kevin Hall*, 2007 WL 1892136, at *1.

19 *Warren Lammert*, Exchange Act Release No. 56233, 2007 WL 2296106, at *3 (Aug. 9, 2007).

20 *McDuff*, 2016 WL 3254513, at *5.

21 *Tilton*, 2016 WL 4447011, at *3 (internal quotation marks and citation omitted).

22 *McDuff*, 2016 WL 3254513, at *5; *accord Eric David Wagner*, Exchange Act Release No. 66678, 2012 WL 1037682, at *2 (Mar. 29, 2012).

certification] will almost never be appropriate" for interlocutory review.[23] Similarly, "a petition for interlocutory review in a case where there has not been any consideration by the law judge of the relevant issues, *e.g.* where certification has not been sought, is also likely inappropriate for interlocutory consideration."[24] Daspin did not seek certification for interlocutory review of any issues, and the law judge did not certify any of his rulings for interlocutory review.

Here, Daspin has not met his burden of showing the necessary extraordinary circumstances that would justify interrupting the normal administrative process. Daspin's various underlying claims are wholly unsupported. He provides no factual or legal basis for any of them. Nor can we find any support for them given the limited record currently before us.

Moreover, the limited record before us shows that the Commission's ordinary review process will provide Daspin an adequate forum to present and develop his arguments. The denial of interlocutory review now in no way precludes him from renewing those arguments based on the full record developed before the law judge to the extent he later petitions the Commission for review of the initial decision.[25] As part of any such later review, we could provide appropriate relief by ordering the taking of additional evidence, vacating the initial decision, or discontinuing the proceeding altogether. The Supreme Court has also recognized that the "expense and disruption of defending" against an "adjudicatory proceeding[]" does not constitute irreparable harm, even when a party takes issue with the institution or lawfulness of the proceedings.[26] Indeed, if the law judge issued an initial decision that was favorable to Daspin on the merits, his constitutional and procedural claims might be moot as a practical matter.[27]

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23 *McDuff*, 2016 WL 3254513, at *5.

24 *Id.* at *6.

25 *See, e.g.*, *id.* at *6; *cf. Marine Mammal Conservancy, Inc. v. USDA*, 134 F.3d 409, 413 (D.C. Cir. 1998) ("An agency, like a court, may alter or modify its position in response to persuasive arguments . . . ."); *Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1078–79 (9th Cir. 1988) (holding that the law of the case doctrine does not apply to denials of interlocutory review).

26 *FTC v. Standard Oil Co.*, 449 U.S. 232, 244 (1980).

27 *See Deaver v. Seymour*, 822 F.2d 66, 71 (D.C. Cir. 1987) (stating that the fact that the respondent's challenge has constitutional implications "does not support his argument for accelerated and unorthodox . . . review" but rather substantially weakens it."); *see also Standard Oil*, 449 U.S. at 244 n.11 ("[T]he possibility that [the petitioner's] challenge may be mooted in adjudication warrants the requirement that [it] pursue adjudication, not shortcut it."). *See generally Charles L. Hill, Jr.*, Exchange Act Release No. 80953, 2017 WL 10927129 (June 16, 2017) (declaring final initial decision dismissing proceeding against respondent where Commission had previously denied petition for interlocutory review); *Gary L. McDuff*, Exchange Act Release No. 80110, 2017 WL 10646506 (Feb. 24, 2017) (same).

We thus find that Daspin's claims are unsupported and premature and therefore do not present the extraordinary circumstances warranting interlocutory consideration under our rules.

Accordingly, it is ORDERED that the Pending Motions are denied.

By the Commission.

Vanessa A. Countryman
Secretary