

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5827 / August 19, 2021

Admin. Proc. File No. 3-20264

In the Matter of

DEAN MUSTAPHALLI

ORDER TO SHOW CAUSE

On April 19, 2021, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Dean Mustaphalli pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ On August 9, 2021, the Division of Enforcement filed a Declaration of Service, which establishes that service of the OIP was made on Mustaphalli on April 26, 2021, pursuant to Rule 141(a)(2)(i) of the Commission’s Rules of Practice.² Also on August 9, 2021, the Division filed a motion for default and sanctions against Mustaphalli.³ The

¹ *Dean Mustaphalli*, Advisers Act Release No. 5724, 2021 WL 1534734 (Apr. 19, 2021).

² 17 C.F.R. § 201.141(a)(2)(i).

³ The certificate of service attached to the Division’s motion stated that counsel “caused” the motion and accompanying Declaration of Todd D. Brody dated August 9, 2021 “to be served on” Mustaphalli “by placing the same in the United States mail or by delivery as listed below” and listing Mustaphalli’s mailing address as “Gouverneur Correctional Facility, 112 Scotch Settlement Road, P.O. Box 370, Gouverneur, NY 13642.” But the certificate did not state the date or the method of service, as required by Rule of Practice 151(d), and the Division should cure that deficiency by September 2, 2021. *See* 17 C.F.R. § 201.151(d) (stating that “[p]apers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person”); *see also* Rule of Practice 150(d)(2) (providing, among other things, that service may be made by mailing papers through the U.S. Postal Service by first class, registered, or certified mail or express mail delivery addressed to the person) and (e) (stating that “service by U.S. Postal Service express mail or service by a commercial courier or express delivery service is complete upon delivery” and that “[s]ervice by mail is complete upon mailing”), 17 C.F.R. § 201.150(d)(2), (e).

Division requests that the Commission find Mustaphalli in default for not filing an answer and bar him from the securities industry based on the record and the allegations in the OIP.

As stated in the OIP, Mustaphalli's answer was required to be filed within 20 days of service of the OIP.⁴ And a response to the Division's motion was due within eight days after it was served.⁵ As of the date of this order, Mustaphalli has not filed an answer or a response to the Division's motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Mustaphalli is ORDERED to SHOW CAUSE by October 4, 2021, why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer, to respond to the Division's motion, or to otherwise defend this proceeding. Mustaphalli's submission shall address the reasons for his failure to timely file an answer or response to the Division's motion, include a proposed answer to be accepted in the event that the Commission does not enter a default against him, and address the substance of the Division's request for sanctions. Mustaphalli shall deliver any response, including any answer, to the proper prison authorities no later than the due date, for forwarding to the Commission's Office of the Secretary.⁶ If Mustaphalli responds to this order to show cause, the Division may file a reply within 28 days after its service.

When a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding a public hearing.⁷ The OIP informed Mustaphalli that a failure to file an answer could result in his being deemed in default and the proceedings determined against him.⁸

The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁹ Like failing to timely file an answer, failing to timely oppose a dispositive motion may result in

⁴ *Mustaphalli*, 2021 WL 1534734, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

⁵ *See* Rules of Practice 154(b), 160(b), 17 C.F.R. §§ 201.154(b), .160(b).

⁶ *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that, under federal prison mailbox rule, *pro se* prisoners' notices of appeal are "filed" at moment of delivery to prison authorities for forwarding to the district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (per curiam) (noting that this "mailbox rule [applies] to other filings by *pro se* prisoners").

⁷ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁸ *Mustaphalli*, 2021 WL 1534734, at *2.

⁹ *See* Rules of Practice 155(a)(2), 180(c), 17 C.F.R. § 201.155(a)(2), .180(c); *see, e.g., Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

the determination of particular claims, or the proceeding as a whole, adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.¹⁰

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.¹¹

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

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

Vanessa A. Countryman
Secretary

¹⁰ See, e.g., *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sep. 29, 2017); *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017), *abrogated in part on other grounds by Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006).

¹¹ *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81. And the amendments provide further requirements if a person cannot reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices. *Id.* at 86,478-79.