

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96083 / October 14, 2022

Admin. Proc. File No. 3-21021

In the Matter of
MICAH J. ELDRED

ORDER DENYING RESPONDENT'S MOTION TO STAY PROCEEDING AND GRANTING
RESPONDENT'S REQUEST FOR AN EXTENSION OF TIME TO FILE AN ANSWER

On August 31, 2022, the Securities and Exchange Commission ("Commission") issued an order instituting proceedings ("OIP") against Micah J. Eldred ("Respondent") pursuant to Sections 15(b)(6) and 17A(c)(4) of the Securities Exchange Act of 1934.¹ The OIP alleged that Respondent had been a registered broker-dealer and transfer agent, and that a federal district court had enjoined Respondent from future violations of the antifraud provisions of the federal securities laws.² The OIP instituted proceedings to determine whether the allegations were true and whether any remedial action is appropriate in the public interest.

On September 21, 2022, the Commission received Respondent's motion to either extend the time to file an answer or stay the proceeding pending the outcome of his appeal of the injunctive action to the United States Court of Appeals for the Eleventh Circuit.³ On September 26, 2022, the Division filed an opposition to Respondent's motion. We now deny Respondent's motion to stay the proceeding and grant Respondent's request for an extension of time to file an answer.

¹ *Micah J. Eldred*, Exchange Act Release No. 95649, 2022 WL 4011048 (Aug. 31, 2022).

² *Id.* at *1; *SEC v. Spartan Sec. Grp., Ltd.*, Case No. 8:19-cv-00448-VMC-CPT, 2022 WL 3224008 (M.D. Fla. Aug. 10, 2022).

³ According to his motion, Respondent was served with the OIP on September 6, 2022. Although Respondent is aware of the proceeding and stated in his motion that he was served with the OIP on this date, it appears that the Division of Enforcement has not made any filings as to whether the OIP was served upon Respondent. To assist the Office of the Secretary in maintaining a record of service that establishes that the OIP has been properly served, the Division is ordered to file a declaration concerning service of the OIP by October 28, 2022. *See* Rule of Practice 141(a)(3), 17 C.F.R. § 201.141(a)(3).

Respondent requests a stay of the proceeding under Rule of Practice 401, but we instead consider the request under Rule of Practice 161. Rule 401(c) authorizes a motion for a stay of a Commission order “by any person aggrieved thereby who would be entitled to review in a federal court of appeals.”⁴ But the Commission has not yet entered a reviewable final order.⁵

Rule 161 authorizes us to order adjournments and postponements for “good cause shown.”⁶ The movant must make “a strong showing that the denial of the request or motion would substantially prejudice their case.”⁷ Respondent has failed to make such a showing.

Respondent seeks to stay the proceeding pending his appeal to the Eleventh Circuit. Respondent argues that “the direct appeal will determine the validity of any judgments in this proceeding” and that “[i]f successful . . . the district court’s judgment will be vacated entirely.” But we have repeatedly held that “the pendency of an appeal of a civil or criminal proceeding does not justify any delay in related ‘follow-on’ administrative proceedings.”⁸

Respondent also does not explain why denying a stay would prejudice his case.⁹ Indeed, Respondent has failed to show any prejudice because, if the Eleventh Circuit reverses the district court’s judgment, Respondent “may seek to vacate any action based upon that judgment.”¹⁰ Because Respondent has not made the strong showing of substantial prejudice required under Rule 161,¹¹ we deny Respondent’s request to stay, postpone, or adjourn the proceeding.

⁴ 17 C.F.R. § 201.401(c).

⁵ See *Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *6 n.42 (Mar. 1, 2017) (“Consistent with our practice, we treat this request [to stay a follow-on proceeding pending an appeal of the underlying suit] as a motion for a postponement or adjournment under Commission Rule of Practice 161, but not for a stay under Rule 401.”).

⁶ 17 C.F.R. § 201.161(a).

⁷ *Id.* § 201.161(b)(1). The Commission’s order that “all reasonable requests for extensions of time will not be disfavored” with respect to the filing and service of papers, *In re Pending Administrative Proceedings*, Securities Act Release No. 10767, 2020 WL 1322001 (Mar. 18, 2020), “does not apply to [a] request to adjourn or postpone the proceeding itself pending an appeal of the underlying suit.” *Donald J. Fowler*, Exchange Act Release No. 89226, 2020 WL 3791560, at *1 n.10 (July 6, 2020).

⁸ *Thomas D. Melvin, CPA*, Exchange Act Release No. 75844, 2015 WL 5172974, at *7 n.52 (Sept. 4, 2015) (citing cases).

⁹ *Cf. Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *41 (May 29, 2015) (rejecting argument that a bar was unnecessary since respondent had “left the industry” because “[a]bsent a bar, nothing would prevent [respondent] from reentering the industry”).

¹⁰ *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *3 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

¹¹ See 17 C.F.R. § 201.161(b)(1).

In the alternative, Respondent requests an extension of time to file his answer to the OIP. Respondent asserts that he is “unable to retain counsel prior to the due date” and needs additional time to “retain appropriate counsel.” The Division opposes Respondent’s “request for an open-ended extension of time” to file his answer, stating that “Respondent has at all times been represented by counsel in the District Court action and the pending appeal.” But the Division does not dispute that Respondent is not currently represented by counsel in this administrative proceeding. Under the circumstances, we have determined that it is appropriate to grant a limited extension of time for Respondent to file an answer for good cause shown.¹²

Accordingly, it is ORDERED that Respondent’s motion to stay, postpone, or adjourn the proceeding is denied; and it is further ORDERED that the time for Respondent to file an answer to the OIP is extended to November 14, 2022.

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.¹³

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

Vanessa A. Countryman
Secretary

¹² *Id.*; *In re Pending Administrative Proceedings*, Securities Act Release No. 10767, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf> (providing that, pending further order of the Commission, reasonable requests for extensions of time will not be disfavored as stated in Rule 161). We remind Respondent that “we expect even unrepresented parties to comply with our rules, to file all required papers, and to comply with all orders: ‘Parties, including those appearing *pro se*, are obligated to familiarize themselves with the Rules of Practice.’” *BDO China Dahua CPA Co., Ltd.*, Exchange Act Release No. 72134, 2014 WL 1871077, at *3 (May 9, 2014) (quoting Adopting Release, *Rules of Practice*, Exchange Act Release No. 35833, 1995 WL 368865, at *36 (June 9, 1995)).

¹³ *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.