

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 97040 / March 3, 2023

Admin. Proc. File No. 3-20816

In the Matter of  
ANITA SGARRO

ORDER DENYING RESPONDENT'S MOTION TO STAY PROCEEDING AND  
DIRECTING PREHEARING CONFERENCE AND STATUS REPORT

On April 8, 2022, the Securities and Exchange Commission issued an order instituting administrative proceedings ("OIP") against Anita Sgarro pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> Respondent was served with the OIP and filed an answer.<sup>2</sup> The prehearing conference was continued on several occasions while the parties engaged in settlement efforts.<sup>3</sup> Respondent was directed to accept or decline a pending settlement offer from the Division of Enforcement by January 9, 2023.<sup>4</sup> On January 6, 2023, Respondent filed a motion seeking a stay of this proceeding through the resolution of all post-judgment motions in her criminal case and stating that she declined the Division's settlement offer.<sup>5</sup> The Division opposed Respondent's motion. We now deny Respondent's stay motion and direct the parties to conduct a prehearing conference and file a statement advising the Commission of any agreements reached at the prehearing conference.

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<sup>1</sup> *Anita Sgarro*, Exchange Act Release No. 94660, 2022 WL 1058704 (Apr. 8, 2022).

<sup>2</sup> *Anita Sgarro*, Exchange Act Release No. 95113, 2022 WL 2191139 (June 16, 2022).

<sup>3</sup> *Anita Sgarro*, Exchange Act Release No. 95636, 2022 WL 3757568 (Aug. 30, 2022); *Anita Sgarro*, 2022 WL 2191139.

<sup>4</sup> *Anita Sgarro*, Exchange Act Release No. 96268, 2022 WL 16834143 (Nov. 8, 2022).

<sup>5</sup> We construe Respondent's February 8, 2023, filing as a supplement to her original stay motion, and the Division's February 13, 2023, filing as a supplement to its opposition.

Rule of Practice 161 authorizes us to order adjournments and postponements “for good cause shown.”<sup>6</sup> The movant must make “a strong showing that the denial of the request or motion would substantially prejudice their case.”<sup>7</sup> Respondent has not made such a showing.

Respondent seeks a stay pending resolution of various forms of post-conviction relief that she has sought in her criminal case: (1) a motion to advance new evidence; (2) a contemplated petition for a writ of habeas corpus; and (3) “another procedure” that Respondent is pursuing. None of these justifies a stay because “[t]he Commission has held repeatedly that a pending postconviction motion is not a basis to postpone an administrative proceeding.”<sup>8</sup> “[O]nce a conviction has been entered, further challenges in the criminal case do not bear on follow-on administrative proceedings unless and until those challenges are successful.”<sup>9</sup>

Additionally, Respondent’s motion to advance new evidence is no longer pending. On January 27, 2023, the district court denied that motion as moot after the Eleventh Circuit affirmed Respondent’s conviction and sentence.<sup>10</sup> Respondent asserts that the denial of her motion is not relevant because it was not a rejection on the merits and because her case was recently reassigned to a new judge. But that new judge also denied Respondent’s motion.<sup>11</sup>

Nor does Respondent explain why denial of a stay would prejudice her. If her bid for post-conviction relief is ultimately successful, and any portion of the criminal judgment against her is vacated, she “may seek to vacate any action based upon that judgment.”<sup>12</sup> In short, that Respondent is pursuing relief from her conviction while defending this proceeding does not vitiate the strong public interest in the prompt enforcement of the federal securities laws, and we

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<sup>6</sup> 17 C.F.R. § 201.161(a).

<sup>7</sup> *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).

<sup>8</sup> *Allan Michael Roth*, Exchange Act Release No. 85327, 2019 WL 1225730, at \*2 (Mar. 14, 2019) (citing cases).

<sup>9</sup> *Daniel Joseph Touizer*, Exchange Act Release No. 85321, 2019 WL 1225724, at \*1-2 (Mar. 14, 2019) (cleaned up) (collecting cases).

<sup>10</sup> *United States v. Wheeler*, 16 F.4th 805, 811, 824-25 (11th Cir. 2021), *cert. denied*, 142 S. Ct. 2794 (2022), and *cert. denied sub nom.*, *Topping v. United States*, 142 S. Ct. 2847 (2022).

<sup>11</sup> *United States v. Sizer, et al.*, No. 1:16-cr-20715, Dkt. No. 1009 (S.D. Fla. Jan. 27, 2023).

<sup>12</sup> *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).

do not believe that Respondent has articulated any countervailing prejudice substantial enough to justify a stay of proceedings.<sup>13</sup>

Respondent also states that the Division initially did not provide her with access to its investigative file in violation of Rule of Practice 230.<sup>14</sup> But the joint statement submitted by the parties on May 18, 2022, reflects their agreement that “a schedule for discovery . . . be deferred” in light of settlement discussions. It is undisputed that shortly after Respondent declined the Division’s settlement offer and moved for a stay in January 2023, the Division provided her a copy of its investigative documents. Nor has Respondent demonstrated any prejudice from the timing of the Division’s production.<sup>15</sup>

Finally, Respondent notes, without further explanation or support, that she “has been informed that she may be entitled to a newly appointed attorney.” This proceeding has been pending since April 8, 2022, and has already been stayed on multiple occasions, partly in response to Respondent’s claims that she needed time to identify and retain counsel.<sup>16</sup> As we have already stated, “we do not believe that it is appropriate to indefinitely delay the resolution of this proceeding.”<sup>17</sup>

Because Respondent has not made the strong showing of substantial prejudice required under Rule 161, we deny her request to stay this proceeding. Accordingly, it is ORDERED that the parties shall conduct a prehearing conference by March 17, 2023, and file a statement advising the Commission of any agreements reached at the prehearing conference, including as to a schedule for motions for summary disposition, by March 24, 2023. If a party fails to participate in the prehearing conference, it may be deemed to be in default and the proceeding may be determined against it.<sup>18</sup>

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<sup>13</sup> *Touizer*, 2019 WL 1225724, at \*2 (“Because [the respondent] has not made the ‘strong showing’ of ‘substantial[] prejudice’ required under Rule [of Practice] 161 to override the strong public interest in the prompt enforcement of the federal securities laws, we deny [his] request for postponement.”).

<sup>14</sup> 17 C.F.R. § 201.230.

<sup>15</sup> 17 C.F.R. § 201.230(h) (setting forth “harmless error” standard for assessing claims of non-compliance with Rule 230); *cf. Ceelox, Inc.*, Exchange Act Release No. 85352, 2019 WL 1253587, at \*2 (Mar. 18, 2019) (rejecting Respondent’s argument that the Division’s Rule 230 production was untimely).

<sup>16</sup> *Anita Sgarro*, 2022 WL 16834143; *Anita Sgarro*, 2022 WL 3757568.

<sup>17</sup> *Anita Sgarro*, 2022 WL 16834143; *see Anthony Fields, CPA*, Exchange Act Release No. 74344, 2021 WL 728005, at \*19 (Feb. 20, 2021) (“The law does not require endless postponements of . . . proceedings while respondents attempt to secure legal representation.”) (cleaned up); *see also, e.g., Holloway v. Eastbridge Workforce Sols.*, No. 18-cv-00795, 2019 WL 1059969, at \*8 (D. Ariz. Mar. 6, 2019) (denying plaintiff’s motion for an “indefinite amount of time to retain counsel” as introducing undue delay to civil action pending for almost one year).

<sup>18</sup> Rules of Practice 155(a), 221(f), 17 C.F.R. §§ 155(a), 201.221(f).

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

Vanessa A. Countryman  
Secretary