

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97192 / March 23, 2023

Admin. Proc. File No. 3-21270

In the Matter of
JUSTIN W. KEENER

ORDER DENYING RESPONDENT’S MOTION TO STAY PROCEEDING

On January 10, 2023, the Securities and Exchange Commission (“Commission”) issued an order instituting proceedings (“OIP”) against Justin W. Keener (“Respondent”) pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ The OIP alleged that Respondent engaged in the regular business of buying and selling securities, while failing to register as a dealer, and that a federal district court had enjoined Respondent from future violations of Exchange Act Section 15(a).² The OIP instituted proceedings to determine whether the allegations were true and whether any remedial action is appropriate in the public interest.

On January 27, 2023, Respondent moved to stay the proceeding pending the outcome of his appeal of the injunctive action to the United States Court of Appeals for the Eleventh Circuit. On February 3, 2023, the Division of Enforcement filed an opposition to Respondent’s motion. We now deny Respondent’s motion.

Respondent requests a stay of the proceeding under Rule of Practice 161. That rule authorizes us to order adjournments and postponements for “good cause shown.”³ The movant

¹ *Justin W. Keener*, Exchange Act Release No. 96627, 2023 WL 155182 (Jan. 10, 2023).

² *Id.* at *1; *SEC v. Keener*, Case No. 20-cv-21254, 2022 WL 1789748 (S.D. Fla. Dec. 20, 2022).

³ 17 C.F.R. § 201.161(a).

must make “a strong showing that the denial of the request or motion would substantially prejudice their case.”⁴ Respondent has failed to make such a showing.

Respondent seeks to stay the proceeding pending his appeal to the Eleventh Circuit. Respondent argues that, “[a]s a matter of judicial economy, it would be a waste of the Commission’s limited resources to proceed with this follow-on administrative action, particularly when the appeal is in its infancy,” the administrative proceeding is in an “early stage,” and Respondent has already been enjoined by the district court “from resuming his prior activities unless he registers as a broker or dealer.” 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.”⁵ Moreover, the injunction imposed on Respondent is a basis for this proceeding rather than a reason to stay it.⁶ And, even if Respondent intends to remain out of the industry, that intention does not “meet the standard of a strong showing that the denial of his motion would substantially prejudice him.”⁷

Respondent argues that a stay is warranted because the Commission acted in an “arbitrary and capricious” manner by deciding that the federal-court litigation was “final enough to institute the follow-on administrative proceedings,” but that the federal-court litigation was not final enough for the Commission to comply with its obligations under the Freedom of Information

⁴ *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).

⁵ *Thomas D. Melvin, CPA*, Exchange Act Release No. 75844, 2015 WL 5172974, at *7 n.52 (Sept. 4, 2015) (citing cases).

⁶ *See Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at * (Sept. 26, 2007) (finding no error in denial of stay pending appeal because “the existence of an appeal of the District Court’s decision does not affect the injunction’s status as a basis for administrative action,” and “[i]f an appellate court reverses the District Court’s judgment, [the respondent] may seek to vacate any action based upon that judgment”); *Ran H. Furman*, Exchange Act Release No. 65680, 2011 WL 5231425, at *2 (Nov. 3, 2011) (“Although Furman is entitled to appeal the underlying case against him, the possibility of an appeal to the court of appeals ‘does not alter the effect’ of the jury’s finding of securities law violations or the court’s imposition of an injunction here.”) (internal quotation marks and citation omitted).

⁷ *See Fowler*, 2020 WL 3791560, at *2 (rejecting argument that a stay of the follow-on proceeding would cause no prejudice to the Commission or the public interest because respondent did not intend to work in the securities industry absent a successful appeal of his injunction); *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”).

Act. That statute requires the Commission to make publicly available “a record of the final votes of each [Commissioner] in every agency proceeding”;⁸ and the Commission’s website posting such votes states that “[v]otes that precede the final resolution of a matter will generally be posted when the matter is final.”⁹ Respondent contends that the Commission has not posted the votes that authorized institution of the federal-court action. But this argument is now moot as the Commission made the final votes publicly available on its website after the Respondent filed its stay motion.¹⁰

Respondent does not otherwise explain why denying a stay would prejudice his case. 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.”¹¹ Because Respondent has not made the strong showing of substantial prejudice required under Rule 161,¹² we deny Respondent’s request to stay, postpone, or adjourn the proceeding.

Accordingly, IT IS ORDERED that Respondent’s motion to stay, postpone, or adjourn the proceeding is denied.

We note that, on February 27, 2023, the parties submitted a joint statement following a prehearing conference held on February 16, 2023. According to the joint statement, the Division “anticipated filing a motion for summary disposition in the relatively near future.”¹³ We remind the parties that a motion for summary disposition may be made under Rule of Practice 250(b) only after documents have been made available to the respondent for inspection and copying pursuant to Rule of Practice 230.¹⁴

⁸ 5 U.S.C. § 552(a)(5).

⁹ *SEC Commission Votes*, <https://www.sec.gov/about/commission-votes> (last visited Mar. 22, 2023).

¹⁰ *See SEC Commission Votes for District Court Actions: 2022*, <https://www.sec.gov/about/commission-votes/annual/commission-votes-inj-2022.xml> (last visited Mar. 22, 2023).

¹¹ *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).

¹² *See* 17 C.F.R. § 201.161(b)(1).

¹³ *See* 17 C.F.R. § 201.250(b) (providing that summary disposition is appropriate if “there is no genuine issue with regard to any material fact and . . . the movant is entitled to summary disposition as a matter of law”).

¹⁴ *Id.*; 17 C.F.R. § 201.230.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹⁵

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

Vanessa A. Countryman
Secretary

¹⁵ *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 redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.