

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98333 / September 8, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6403 / September 8, 2023

Admin. Proc. File No. 3-20839

In the Matter of

JUSTIN WALLACE HERMAN

ORDER DISCHARGING ORDERS TO SHOW CAUSE AND DIRECTING SUBMISSION
AND DIRECTING DIVISION OF ENFORCEMENT TO FILE STATUS REPORT
CONCERNING SERVICE

The Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) on May 5, 2022, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, against respondent Justin Wallace Herman.¹ On February 27, 2023, the Division of Enforcement filed a status report informing the Commission that it served the OIP on Herman through his attorney on October 22, 2022. Herman did not file an answer to the OIP.

On March 2, 2023, the Commission issued an order requiring Herman to show cause why he should not be deemed to be in default and why this proceeding should not be decided against him due to his failure to file an answer or otherwise defend the proceeding.² When Herman did not respond to the order to show cause, the Commission issued an order on August 23, 2023, directing the Division of Enforcement to file a motion for default and other relief by September 20, 2023.³ But it appears the OIP may not have been properly served on Herman. No attorney has made an appearance for Herman in this proceeding, and the Division has provided no legal or evidentiary basis for concluding that the attorney to whom the OIP was sent is “authorized by

¹ *Justin Wallace Herman*, Exchange Act Release No. 94833, 2022 WL 1306666 (May 5, 2022).

² *Justin Wallace Herman*, Exchange Act Release No. 97022, 2023 WL 2351448 (Mar. 2, 2023).

³ *Justin Wallace Herman*, Exchange Act Release No. 98205, 2023 WL 5448001 (Aug. 23, 2023).

appointment or by law to receive such notice.”⁴ Nor has the Division described efforts, if any, to serve the OIP directly on Herman.

Accordingly, it is ORDERED that the order to show cause and the order directing a submission by the Division of Enforcement are discharged. It is also ORDERED that the Division of Enforcement file a status report concerning service of the OIP by October 6, 2023, and every 28 days thereafter until service is accomplished.

⁴ 17 C.F.R. § 201.141(a)(2)(i); *see also* *Ira S. Viener, CPA, Accounting and Auditing Enforcement Act* Release No. 4365, 2022 WL 17039046, at *1 (Nov. 16, 2022) (“Rule 141(a)(2)(i) does not permit service on an individual’s former counsel.”); *cf.* *United States v. Ziegler Bolt & Parts Co.*, 111 F. 3d 878, 881 (Fed. Cir. 1997) (“[T]he record must show that the attorney exercised authority beyond the attorney-client relationship, including the power to accept service.”); *Island Jay, Inc. v. MyLocker.com, L.L.C.*, No. 19-11501, 2023 WL 2733377, at *5 n.4 (E.D. Mich. Mar. 31, 2023) (“An attorney’s acceptance of service in unrelated matters and an attorney’s participation in a matter prior to the filing of a complaint in that matter may not be sufficient, without more, to establish an attorney’s authorization to accept or waive service for that particular case.”).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁵ We also remind the parties that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.⁶

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

Vanessa A. Countryman
Secretary

⁵ *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.

⁶ *See* Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission . . . 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.”).