

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6371 / August 8, 2023

Admin. Proc. File No. 3-20941

In the Matter of

DONALD S. LAGUARDIA, JR.

ORDER DENYING STAY AND DIRECTING PREHEARING CONFERENCE

The Securities and Exchange Commission issued an Order Instituting Proceedings (“OIP”) on August 1, 2022, pursuant to Section 203(f) of the Investment Advisers Act of 1940, against Donald S. LaGuardia, Jr. (“Respondent”).¹ The OIP directed the parties to conduct a prehearing conference within 14 days of service of Respondent’s answer to the OIP and, following the conference, to file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference.² If a prehearing conference was not held, the parties were ordered to file a statement advising the Commission of that fact and of the efforts made to meet and confer.³ Respondent filed an answer with the Commission on November 21, 2022. In addition to responding to the allegations in the OIP, the answer requests that proceedings “be stayed until [Respondent’s] criminal appeal is decided in order to protect his . . . Fifth Amendment rights.”

¹ *Donald S. LaGuardia, Jr.*, Advisers Act Release No. 6078, 2022 WL 3043217 (Aug. 1, 2022).

² *Id.* at *2.

³ *Id.*

Regarding the request for a stay,⁴ Respondent's underlying criminal conviction was affirmed by the U.S. Court of Appeals for the Second Circuit on December 15, 2022, and he did not seek certiorari.⁵ We therefore deny the stay request as moot.⁶

Turning to the matter of the prehearing conference, the parties have not, as required by the OIP, filed any statement regarding a prehearing conference. Accordingly, IT IS ORDERED that by September 5, 2023, the parties shall, if they have not already done so, conduct a prehearing conference and then file a statement with the Office of the Secretary advising the Commission of any agreements reached at that conference. If a prehearing conference was not held, both parties shall file by that date a statement, jointly or separately, advising the Commission of that fact and of the efforts made to meet and confer. Pursuant to Rule of Practice 180(c), a party's failure to comply with this order may result in the Commission's determination of the matter at issue against that party, entry of a default, dismissal of the proceeding, or the prohibition of the introduction of evidence or the exclusion of testimony regarding the matter at issue.⁷

⁴ The better practice would have been for Respondent to file a motion for a stay as a standalone document complying with Rule of Practice 154, which governs motions generally, instead of incorporating the request in another filing. *See Mark W. Heckeke*, Exchange Act Release No. 97233, 2023 WL 2732944, at *1 n.6 (Mar. 31, 2023).

⁵ *U.S. v. LaGuardia*, No. 21-2206, 2022 WL 17684596 (Dec. 15, 2022).

⁶ *See, e.g., Stephen Condon Peters*, Advisers Act Release No. 6102, 2022 WL 3919674, at *1 (Aug. 31, 2022) (denying similar request for a stay as moot). At any rate, the Commission is authorized to impose sanctions in a "follow-on proceeding" like this one on the basis of a qualifying conviction "without regard to an appeal or postconviction challenge," *Daniel Joseph Touizer*, Exchange Act Release No. 85321, 2019 WL 1225724, at *1-2 (Mar. 14, 2019), and so the "pendency of an appeal generally is an insufficient basis upon which to prolong a Commission proceeding," *Paul Free, CPA*, Exchange Act Release No. 66260, 2012 WL 266986, at *2 (Jan. 26, 2012).

⁷ 17 C.F.R. § 201.180(c).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁸

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

Vanessa A. Countryman
Secretary

⁸ *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.