UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6472 / October 27, 2023

Admin. Proc. File No. 3-21125

In the Matter of

JACOB C. GLICK

ORDER DENYING MOTION FOR A RULING ON THE PLEADINGS

On September 22, 2022, the Commission instituted administrative proceedings against Jacob C. Glick, pursuant to Section 203(f) of the Investment Advisers Act of 1940, to determine whether the statutory predicate for an administrative remedy was satisfied and whether remedial action is in the public interest.[1] On December 12, 2022, Glick filed a motion for a ruling on the pleadings, arguing that the five-year statute of limitations in 28 U.S.C. § 2462 bars this proceeding. The Division of Enforcement opposes Glick's motion. We deny Glick's motion for the reasons set forth below.

I. Background

The order instituting proceedings ("OIP") alleges that, beginning in September 2015, Glick was associated with Advanced Practice Advisors, LLC ("APA"), which was registered with the Commission as an investment adviser. According to the OIP, APA terminated Glick in June 2017 for "[r]eckless disregard for determining client suitability." But the OIP further alleges that Glick immediately thereafter registered his company, IGA Capital, LLC ("IGA"), as an investment adviser with the state of Arizona and did not terminate IGA's registration until May 2018. The OIP also alleges that, on August 26, 2022, a federal district court permanently enjoined Glick from violating certain antifraud and record-keeping provisions of the federal securities laws.[2]

Glick filed an answer to the OIP on November 30, 2022, and on December 12, 2022, he moved for a ruling on the pleadings under Commission Rule of Practice 250(a). Glick argues that the five-year limitations period in 28 U.S.C. § 2462 bars this proceeding because,

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[1] *Jacob C. Glick*, Advisers Act Release No. 6144, 2022 WL 4445453 (Sept. 22, 2022).

[2] *See* Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; Sections 206(1) and (2) and 204 of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2.

notwithstanding the allegations of the OIP, he left the securities industry in June 2017, which is more than five years before the Commission instituted this proceeding in September 2022.

II. Analysis

Rule of Practice 250(a) permits any party, "[n]o later than 14 days after a respondent's answer has been filed," to "move for a ruling on the pleadings on one or more claims or defenses."[3] To succeed on a motion under Rule 250(a), a movant must establish that "even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law."[4] In determining whether to grant a motion for a ruling on the pleadings under Rule 250(a), our focus is necessarily on the pleadings; matters outside them are not properly before us.[5]

Glick argues that this proceeding is untimely because more than five years passed between when he purportedly left the securities industry in June 2017 and when the Commission issued the OIP in September 2022. This argument fails for three reasons.

First, Section 2462 applies only to "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture."[6] But Section 2462 does not apply when the Commission is considering imposing remedial relief to protect the public from future risk presented by a

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[3] 17 C.F.R. § 201.250(a); *see also Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 78319 (July 13, 2016), 81 Fed. Reg. 50,212, 50,224 & n.110 (July 29, 2016) (explaining that Rule 250(a) "permits a respondent to seek a ruling as a matter of law based on the factual allegations in the OIP" and provides a procedure analogous to that applicable to motions to dismiss for failure to state a claim or for judgment on the pleadings under the Federal Rules of Civil Procedure).

[4] 17 C.F.R. § 201.250(a); *cf. de Csepel v. Republic of Hungary*, 714 F.3d 591, 603 (D.C. Cir. 2013) (per curiam) (stating that "'because statute of limitations issues often depend on contested questions of fact, dismissal is appropriate only if the complaint on its face is conclusively time-barred'") (quoting *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996)).

[5] *ERHC Energy, Inc.*, Exchange Act Release No. 90517, 2020 WL 6891409, at *2 (Nov. 24, 2020).

[6] 28 U.S.C. § 2462.

respondent.[7] To date, the Division has not sought any sanction, nor have we made any determination as to whether remedial action is warranted.[8]

Second, even if Section 2462 did apply, it would not bar the proceeding, because the Commission instituted this proceeding within five years after the district court's order imposing the underlying injunction against Glick.[9]

Finally, even if Glick were correct that Section 2462 bars a follow-on proceeding when a respondent left the securities industry more than five years before the proceeding was instituted, the allegations of the OIP still would require us to deny Glick's motion. This is because the OIP pleads that Glick remained associated with an investment adviser through May 2018, which is less than five years before this proceeding was instituted.[10] We must accept the OIP's factual allegations as true at this stage of the proceeding and draw all reasonable inferences in the

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7 *Vladislav Stephen Zubkis*, Exchange Act Release No. 52876, 2005 WL 3299148, at *4 (Dec. 2, 2005) (holding that Section 2462 did not bar follow-on proceeding because, in determining appropriate remedial sanction, the Commission focused on the respondent's current competence or the degree of risk he posed to the public); *cf. McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) (explaining that "the purpose of expulsion or suspension . . . is to protect investors, not to penalize").

8 *Glick*, 2022 WL 4445453, at *2 (instituting proceedings to determine "[w]hat, if any, remedial action is appropriate in the public interest").

9 *See Zubkis*, 2005 WL 3299148, at *4 (finding that follow-on proceeding was brought within Section 2462's limitations period because the injunction against respondent was entered within five years after the proceeding's being instituted); *accord Imperato v. SEC*, 693 F. App'x 870, 877 (11th Cir. 2017) (same); *see generally* 28 U.S.C. § 2462 (limitations period runs "from the date when the claim first accrued").

10 *Glick*, 2022 WL 4445453, at *1 (alleging that "[i]mmediately following his termination from APA" in June 2017, "Glick registered his company," IGA, "as an investment adviser with the state of Arizona," and that he terminated IGA's registration in May 2018).

Division's favor.[11] Glick cannot prevail on his motion for a ruling on the pleadings by disputing the allegations of the OIP in his brief.[12]

Accordingly, IT IS ORDERED that Glick's motion for a ruling on the pleadings is denied.

By the Commission.

Vanessa A. Countryman
Secretary

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11 Rule of Practice 250(a), 17 C.F.R. § 201.250(a).

12 *See ERHC Energy*, 2020 WL 6891409, at *2 (recognizing that focus of motion for a ruling on the pleadings is the pleadings); *Healthway Shopping Network*, Exchange Act Release No. 89374, 2020 WL 4207666, at *4 (July 22, 2020) (denying motion for a ruling on the pleadings that relied on matters outside the pleadings); *cf. Fonte v. Bd. of Managers of Cont'l Towers Condo.*, 848 F.2d 24, 25 (2d Cir. 1988) ("Factual allegations contained in legal briefs or memoranda are . . . treated as matters outside the pleading for purposes of Rule 12(b).").