

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6484 / November 17, 2023

Admin. Proc. File No. 3-20134

In the Matter of
PAUL HORTON SMITH, SR.

RENEWED ORDER TO SHOW CAUSE

On October 22, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Paul Horton Smith, Sr. (“Respondent”), pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ On January 5, 2023, the Division of Enforcement filed a supplemental status report that appended a process server’s affidavit, which establishes that service of the OIP was made on Respondent on December 6, 2022, pursuant to Commission Rule of Practice 141(a)(2)(i).² To date, Respondent has not filed an answer to the OIP.

On January 12, 2023, the Commission ordered that Respondent show cause by January 26, 2023, why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to answer or to otherwise defend this proceeding.³ On January 30, 2023, the Office of the Secretary received a letter, dated January 26, 2023, from Respondent via facsimile. Respondent represented that he “was unaware of any failure on [his] part to respond” and that he had been “advised by counsel not to testify in outside matters until [a] pending [federal criminal] matter has concluded.” Respondent also requested that this “proceeding be postponed until such time as [he is] able to respond in detail.”

On April 17, 2023, we issued an order denying Respondent’s motion to stay this proceeding and again directing Respondent to show cause.⁴ In doing so, we provided Respondent “one last opportunity to respond to the allegations in the OIP and otherwise defend

¹ *Paul Horton Smith, Sr.*, Advisers Act Release No. 5618, 2020 WL 6262345 (Oct. 22, 2020).

² 17 C.F.R. § 201.141(a)(2)(i).

³ *Paul Horton Smith, Sr.*, Advisers Act Release No. 6215, 2023 WL 173352 (Jan. 12, 2023).

⁴ *Paul Horton Smith, Sr.*, Advisers Act Release No. 6287, 2023 WL 2986240 (Apr. 17, 2023).

himself in this proceeding.”⁵ It appears that this second order to show cause may not have been served properly on Respondent. Under the circumstances, we find it appropriate to renew our second order to show cause and extend the deadlines by which Respondent must file a response to the order.⁶ The prehearing conference and the hearing remain continued indefinitely.

We further note that, on June 16, 2023, the Division filed a motion for default and imposition of remedial sanctions against Respondent. The Division requests that the Commission find Respondent in default for not filing an answer and bar him from the securities industry. Although it appears that the Division properly served this motion on Respondent, he did not file an opposition.⁷ Respondent must also address this failure to respond to the Division’s motion for default and remedial sanctions when responding to this renewed order to show cause.

Accordingly, Respondent is ORDERED to SHOW CAUSE by December 1, 2023, why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer, respond to the Division’s motion for default and remedial sanctions, or otherwise defend this proceeding. Respondent’s submission shall address the reasons for his failure to timely file an answer or a response to the Division’s motion, include a proposed answer to be accepted in the event that the Commission does not enter a default against him, and address the substance of the Division’s request for sanctions. If Respondent files a response to this order to show cause, the Division may file a reply within 14 days after its service.

When a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding a public hearing.⁸ The OIP informed Respondent that a failure to file an answer could result in deeming him in default and determining the proceedings against him.⁹ The

⁵ *Id.* at *2.

⁶ Two other orders, issued on February 28, 2023, and June 16, 2023, also may not have been served properly on Respondent. *See Paul Horton Smith, Sr.*, Advisers Act Release No. 6252, 2023 WL 2299556 (Feb. 28, 2023) (directing Respondent to serve his January 26, 2023, letter on the Division and to file a certificate of service with the Commission); *Paul Horton Smith, Sr.*, Advisers Act Release No. 6338, 2023 WL 4267501 (June 29, 2023) (extending deadlines for Division to file and Respondent to oppose motion for default and remedial sanctions). Under the circumstances, we find it unnecessary to renew these other two orders.

⁷ Also on June 16, 2023, the Division filed a motion for leave to file its motion for default and sanctions. *See Smith*, 2023 WL 4267501, at *1-2 (describing this motion). Although it appears the Division properly served Respondent with the motion, he did not respond to it.

⁸ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁹ *Smith*, 2020 WL 6262345, at *2 (“If Respondent fails to file the directed Answer, . . . [he] may be deemed in default and the proceedings may be determined against him . . .”).

failure to timely oppose a dispositive motion is also a basis for a finding of default.¹⁰ Like failing to timely file an answer, failing to timely oppose a dispositive motion may result in the determination of particular claims, or the proceeding as a whole, adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.¹¹

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

¹⁰ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); *see also*, *e.g.*, *Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

¹¹ *See, e.g.*, *McBarron Cap. LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sep. 29, 2017); *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017), *abrogated in part on other grounds by Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.¹² 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.¹³

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

Vanessa A. Countryman
Secretary

¹² *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.

¹³ 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.”).