

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101816 / December 5, 2024

Admin. Proc. File No. 3-21974

In the Matter of DAVID H. GOLDMAN
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ORDER TO SHOW CAUSE

On June 18, 2024, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against David H. Goldman pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On September 24, 2024, the Division of Enforcement filed a status report, which establishes that service of the OIP was made on Goldman on September 18, 2024, pursuant to Commission Rule of Practice 141(a)(2)(i).²

¹ *David H. Goldman*, Exchange Act Release No. 100382, 2024 WL 3054128 (June 18, 2024).

² 17 C.F.R. § 201.141(a)(2)(i) (providing that service of an OIP on an individual may be made by “handing a copy of the order to the individual”).

The Division’s status report attaches a process server’s declaration, which states that the process server encountered a man sitting in a vehicle registered to Goldman in a driveway. After the process server asked the man whether he was Goldman, the man denied being or knowing Goldman. The man then drove into the garage and closed the door. The process server knocked on the front door but received no response, so the process server “dropped” the OIP on the doorstep and “declared loudly that he had been served.” The process server later verified that the man served matched pictures of Goldman from a video deposition and social media. Based on this description of the service of the OIP, we conclude that Goldman was effectively served with the OIP. *See Doe v. Liu Qi*, 349 F. Supp. 2d 1258, 1275 n.5 (N.D. Cal. 2004) (“Where a defendant attempts to avoid service ... by refusing to take the papers, it is sufficient if the server is in close proximity to the defendant, clearly communicates intent to serve court documents, and makes reasonable efforts to leave the papers with the defendant.”), *quoted in Charles K. Topping*, Exchange Act Release No. 97157, 2023 WL 2559846, at *1 & n.6 (Mar. 17, 2023) (deeming service proper where OIP was express mailed to prison but respondent refused to open it); 4A C. Wright & A. Miller, *Federal Practice & Procedure* § 1095 (4th ed. June 2024 Update) (explaining that under analogous federal rule, “[i]f the defendant attempts to evade service or refuses to accept delivery after being informed by the process server of the nature of the papers,

As stated in the OIP, Goldman's answer was required to be filed within 20 days of service of the OIP.³ On November 5, 2024, after Goldman failed to answer the OIP, the Division filed a motion for entry of order of default and remedial sanctions against Goldman. The Division requests that the Commission find Goldman in default for not filing an answer and bar him from the securities industry based on the record and the allegations in the OIP. A response to the Division's motion was due within five days after it was served.⁴ As of the date of this order, Goldman has not filed an answer or opposition to the Division's motion. The prehearing conference and the hearing are thus continued indefinitely.

Accordingly, Goldman is ORDERED to SHOW CAUSE by December 19, 2024, why he should not be deemed 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, or otherwise defend this proceeding. Goldman's submission shall address the reasons for his failure to timely file an answer or 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 Goldman responds 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 may 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.⁵ The OIP informed Goldman that a failure to file an answer could result in deeming him in default and determining the proceeding against him.⁶ The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁷ 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.⁸

it usually is sufficient for the process server to . . . , if a touching [of the defendant] is impossible, simply to leave them in the defendant's physical proximity," even where "the defendant does not take the papers into his or her possession").

³ *Goldman*, 2024 WL 3054128, at *2; Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

⁴ Rule of Practice 154(b), 17 C.F.R. § 201.154(b).

⁵ Rules of Practice 155, 180, 17 C.F.R. §§ 201.155, .180.

⁶ *Goldman*, 2024 WL 3054128, at *2.

⁷ See Rules of Practice 155(a)(2), 180(c), 17 C.F.R. §§ 201.155(a)(2), .180(c); *see, e.g., Behnam Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

⁸ 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.⁹ 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.¹⁰

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.

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

Vanessa A. Countryman
Secretary

⁹ See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).

¹⁰ 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.").