

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6834 / January 23, 2025

Admin. Proc. File No. 3-22307

In the Matter of

EPIC CAPITAL WEALTH ADVISORS, LLC

ORDER DENYING MOTION FOR SUMMARY DISPOSITION AND SETTING
PROCEEDING FOR EXPEDITED HEARING BEFORE AN ADMINISTRATIVE LAW
JUDGE

On November 8, 2024, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Epic Capital Wealth Advisors, LLC, to determine whether its pending application for registration as an investment adviser should be denied under Section 203(c)(2)(B) of the Investment Advisers Act of 1940 (the “Epic Proceeding”).¹ On the same date, the Commission also issued an OIP against Epic Capital’s President, David M. Anthony, under Advisers Act Section 203(f) (the “Anthony Proceeding”).² Section 203(c)(2)(B) provides that the Epic Proceeding be resolved within a specified period; the Commission, with the consent of the parties, has extended the end of that period to April 22, 2025.³

The OIPs in both proceedings allege that the Colorado Securities Commissioner brought a civil action against Anthony contending that he had violated licensure and registration requirements, commingled money invested in various offerings, and failed to provide full and fair disclosure to investors (the “Colorado Action”). The OIPs further allege that a Colorado state court enjoined Anthony for 10 years, from, among other things, engaging in business as a securities broker-dealer, sales representative, investment adviser, or investment adviser representative in Colorado (the “Colorado Injunction”).

Under Section 203(c)(2)(B), the Commission may deny an application for registration as an investment adviser if it finds (1) that any person associated with the applicant has been

¹ *Epic Capital Wealth Advisors, LLC*, Advisers Act Release No. 6771, 2024 WL 4723204 (Nov. 8, 2024).

² *David M. Anthony*, Advisers Act Release No. 6772, 2024 WL 4723205 (Nov. 8, 2024).

³ 15 U.S.C. § 80b-3(c)(2)(B); *Epic Capital Wealth Advisors, LLC*, Advisers Act Release No. 6831 (Jan. 17, 2025) (extending the time for conclusion of this proceeding based on the parties’ agreement), <https://www.sec.gov/files/litigation/opinions/2025/ia-6831.pdf>.

enjoined from acting as an investment adviser, or from engaging in any conduct or practice in connection with that activity, and (2) that such action is in the public interest.⁴ In assessing the public interest, the Commission considers the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.⁵ This public interest inquiry is flexible, and no single factor is dispositive.⁶

The Division of Enforcement filed a motion for summary disposition asserting that these factors are satisfied, and thus that the Commission should deny Epic Capital's application for registration as an investment adviser.⁷ The Commission may resolve an administrative proceeding on a party's motion for summary disposition if "there is no genuine issue with regard to any material fact" and the moving party "is entitled to summary disposition as a matter of law."⁸ The Division argues that (1) the record in this proceeding establishes that Anthony is a person associated with Epic Capital, and the Colorado Injunction prohibits him from acting as an investment adviser in Colorado; and (2) because the record in the Colorado Action establishes that Anthony engaged in various types of misconduct—including that he did not disclose material facts to investors—denial is in the public interest.

There are genuine issues of fact material to the Division's contentions that Anthony committed misconduct and that denial of Epic's application is therefore in the public interest. In particular, the Division does not identify any state court findings entitled to preclusive effect as to Anthony's conduct,⁹ nor does it address the egregiousness of Anthony's conduct, its isolated or recurrent nature, or his degree of scienter, all of which are factors that are necessary to our

⁴ 15 U.S.C. § 80b-3(c)(2)(B) (authorizing the denial of an application for registration as an investment adviser under the standard for revocation or suspension of registration contained in Section 203(e), *id.* § 80b-3(e)).

⁵ *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

⁶ *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *4 (July 26, 2013) (citation omitted).

⁷ This Division has also filed a motion for summary disposition in the Anthony Proceeding, which we address by separate order. *See David M. Anthony*, Admin. Proc. File No. 3-22308.

⁸ Rule of Practice 250(b), 17 C.F.R. § 201.250(b); *see also ERHC Energy, Inc.*, Exchange Act Release No. 90517, 2020 WL 6891409, at *2 (Nov. 24, 2020) (discussing standard).

⁹ The injunction against Anthony was entered as part of a settlement and apparently did not require him to admit misconduct. *Cf. Warren A. Davis*, Exchange Act Release No. 101217, 2024 WL 4357534, at *2 (Sept. 30, 2024) (providing that, in a follow-on proceeding, "collateral estoppel precludes the Commission from reconsidering a district court's judgment, as well as factual and procedural issues that were actually litigated and necessary to the court's judgment") (citation omitted).

determination whether denial of Epic’s application is warranted. Although Epic Capital acknowledges that Anthony is associated with Epic Capital and that the court entered an injunction against him,¹⁰ the firm also disputes that Anthony committed the violations alleged in the Colorado Action. We therefore find that there are genuine issues of material fact regarding whether denial is in the public interest and deny the Division’s motion for summary disposition.

We conclude that an evidentiary hearing before an Administrative Law Judge is warranted to develop and resolve the disputed factual issues and that it would serve the interests of justice and not result in prejudice to any party to specify further procedures in this matter.¹¹ The dates specified below are consistent with the Commission’s final resolution of this proceeding by April 22, 2025. Section 203(c)(2)(B) provides, however, that the Commission may extend the time for concluding this proceeding to a date to which the applicant consents. The Administrative Law Judge assigned to this proceeding may extend the time for concluding this proceeding upon such consent and modify the timeline provided below accordingly.

Accordingly, IT IS ORDERED that the Division of Enforcement’s Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that a public hearing for purposes of taking evidence on the questions set forth in Section III of the OIP in this proceeding shall be convened before an Administrative Law Judge as provided by Rule of Practice 110.¹² The Chief Administrative Law Judge shall designate, by rotation to the extent practicable, an Administrative Law Judge to be the presiding hearing officer.¹³ The presiding hearing officer shall specify the time and place of the hearing by further order and shall exercise the full powers conferred by the Commission’s Rules of Practice and the Administrative Procedure Act.¹⁴

All motions, objections, or applications shall be directed to and decided by the presiding hearing officer.¹⁵ This includes, without limitation, filings under Rules of Practice 210, 221, 222, 230, 231, 232, 233, and 250.¹⁶ Any proposals for procedural schedules shall be directed to and decided by the presiding hearing officer, who shall set an expedited schedule for the hearing

¹⁰ After it was entered, Anthony unsuccessfully attempted to vacate the injunction because it did not ensure that he could work as an investment adviser outside Colorado, as he contended the parties had agreed before settling the Colorado Action. Given our disposition of the Division’s motion, we do not address Epic Capital’s attempt to collaterally attack the injunction on this basis or its related arguments that Anthony was not “enjoined.”

¹¹ See Rule of Practice 100(c), 17 C.F.R. § 201.100(c). To the extent conflicting, the procedures in this order supersede those specified in the OIP.

¹² 17 C.F.R. § 201.110.

¹³ *Id.* § 200.30-10(a)(2).

¹⁴ See, e.g., 5 U.S.C. § 556; Rule of Practice 111, 17 C.F.R. § 201.111.

¹⁵ See 17 C.F.R. § 201.151(b)-(c) (explaining how to file and how to direct filings when a matter is assigned to a hearing officer).

¹⁶ *Id.* §§ 201.210, .221, .222, .230, .231, .232, .233, .250.

and matters relevant to the initial decision that is consistent with the schedule provided herein, subject to any extensions authorized by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i) for the purposes of applying Rules of Practice 233 and 250.¹⁷

IT IS FURTHER ORDERED that, the presiding hearing officer shall issue an initial decision in this proceeding by February 28, 2025,¹⁸ and that any petition for review by the Commission of that initial decision under Rule of Practice 410 shall be filed by March 3, 2025.¹⁹ Upon receiving any petition for review of the initial decision to be issued by the presiding hearing officer, the Commission shall set an expedited briefing schedule for the appeal.

IT IS FURTHER ORDERED that the initial decision be issued on the basis of the record before the presiding hearing officer, as defined by Rule of Practice 350,²⁰ and that the record index shall be prepared and certified in accordance with Rule of Practice 351.²¹

The parties' attention is directed to the e-filing requirements in the Rules of Practice.²² The parties should also comply with the presiding hearing officer's instructions regarding the provision of electronic courtesy copies. We also remind the parties that any document filed with

¹⁷ *Id.* §§ 201.233, .250, .360(a)(2)(i).

¹⁸ *Id.* § 201.360(a)(1).

¹⁹ *Id.* § 201.410.

²⁰ *Id.* § 201.350.

²¹ *Id.* § 201.351.

²² 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).

the Commission or the presiding hearing officer must also be served upon all participants in the proceeding and be accompanied by a certificate of service.²³ Filing a document through the Commission's electronic filing system does not serve it on opposing counsel.²⁴

By the Commission.

Vanessa A. Countryman
Secretary

²³ 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 or a hearing officer 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."); <https://www.sec.gov/files/alj/certificate-service-example.pdf> (sample certificate of service).

²⁴ See *Bradley C. Reifler*, Advisers Act Release No. 6304, 2023 WL 3274687, at *1 & n.3 (May 5, 2023) (noting that "[f]iling documents electronically using eFAP will not constitute service on Commission staff, such as the Division of Enforcement, or other participants in an administrative proceeding" (citation omitted)).