

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6869 / April 1, 2025

Admin. Proc. File No. 3-20828

In the Matter of
GREGORY LEMELSON

ORDER DENYING RESPONDENT'S PETITION FOR INTERLOCUTORY REVIEW AND
MOTION TO STAY

On April 20, 2022, the Securities and Exchange Commission issued an order instituting proceedings ("OIP") against Gregory Lemelson under Section 203(f) of the Investment Advisers Act of 1940 to determine whether the OIP's allegations were true and whether remedial action was appropriate in the public interest.¹ The Division of Enforcement filed a motion for summary disposition, and Lemelson filed a motion to stay the proceeding pending a civil action he filed against the Commission in federal district court alleging that the proceeding is unconstitutional. We denied both parties' motions and ordered a hearing before an administrative law judge ("ALJ").²

Lemelson now seeks the Commission's interlocutory review of certain decisions made by the ALJ. The Division opposes Lemelson's motion. Because Lemelson's challenge effectively amounts to a discovery dispute, and all his arguments can be addressed by the Commission in its review of any ALJ initial decision, we deny his petition.

I. The ALJ denied Lemelson's request to quash a subpoena and to stay these proceedings.

Lemelson's petition stems from subpoena requests that the Division submitted to the ALJ. After the ALJ *sua sponte* denied one of the Division's requests, which was for a subpoena to take Lemelson's deposition,³ Lemelson filed a motion to quash a second subpoena request for

¹ *Gregory Lemelson*, Advisers Act Release No. 6000, 2022 WL 1184458 (Apr. 20, 2022).

² *Gregory Lemelson*, Advisers Act Release No. 6755, 2024 WL 4555152 (Oct. 23, 2024).

³ *Gregory Lemelson*, Administrative Proceedings Rulings Release No. 6913 (Jan. 2, 2025), <https://www.sec.gov/files/alj/aljorders/2025/ap-6913.pdf>.

Lemelson to produce 18 categories of documents. Lemelson also requested that the ALJ stay discovery pending a ruling in his related federal district court action, which, among other things, seeks to enjoin this proceeding. On January 30, 2025, the ALJ granted in part and denied in part Lemelson's motion to quash, approving four "limited categories of document requests." The ALJ also denied Lemelson's stay request, citing the Commission's previous denial of Lemelson's stay request.⁴

Lemelson subsequently asked the ALJ to certify for interlocutory review the ALJ's decision not to quash the subpoena ordering Lemelson to produce documents. In doing so, Lemelson argued that the subpoenaed documents were irrelevant, that the consequences of failing to comply with the subpoena were unclear, and that this Commission proceeding was unconstitutional and violated recent Presidential executive orders.⁵ The ALJ denied Lemelson's certification request.⁶

Lemelson now files this petition for interlocutory review, incorporating the same arguments that he made before the ALJ.

II. Lemelson's petition does not meet the standards for granting interlocutory review.

Our Rule of Practice 400(a) provides that petitions to the Commission for interlocutory review "are disfavored" and that the Commission ordinarily will grant such a petition "only in extraordinary circumstances."⁷ The Commission's "emphatic preference . . . is that claims should be presented in a single petition for review after the entire record has been developed and after issuance by the law judge of an initial decision."⁸ Interlocutory review is thus appropriate "only in a truly unusual case, where serious and prejudicial error [is] plainly apparent upon even a cursory review of the record, and where deferring review until issuance of an initial decision

⁴ *Gregory Lemelson*, Administrative Proceedings Rulings Release No. 6921 (Jan. 30, 2025), <https://www.sec.gov/files/alj/aljorders/2025/ap-6921.pdf>.

⁵ Among other things, Lemelson argues that this proceeding violates "the constitutional separation of powers and related limits on executive agency power, due process of law, and Respondent's jury-trial rights and other individual constitutional civil liberties." He also argues that this proceeding violates certain executive orders, including ones that "direct agencies to ensure that their enforcement investigations and adjudications are conducted in strict fairness and with maximum respect for individual liberties, due process, and the rule of law."

⁶ *Gregory Lemelson*, Administrative Proceedings Rulings Release No. 6927 (Feb. 20, 2025), <https://www.sec.gov/files/alj/aljorders/2025/ap-6927.pdf>.

⁷ 17 C.F.R. § 201.400(a); *see also* *Gary L. McDuff*, Exchange Act Release No. 78066, 2016 WL 3254513, at *3-6 (June 14, 2016) (discussing standard for interlocutory review).

⁸ *Charles L. Hill, Jr.*, Exchange Act Release No. 79459, 2016 WL 7032731, at *1 (Dec. 2, 2016) (cleaned up).

might well postpone an inevitable later vacatur and remand.”⁹ Lemelson has not met those standards here.

Lemelson’s challenges to the subpoena order for documents, as such, amount to a dispute over the scope of discovery. We have long held, in various contexts, that a party’s complaints about production of documents will not ordinarily warrant interference with the orderly hearing process.¹⁰ That is again the case here. Even if we were to set aside the ALJ’s subpoena order, that would not resolve this proceeding; further proceedings would still be necessary. And the subpoena order could come before the Commission not only in any eventual appeal of an initial decision, but perhaps even sooner, in the event Lemelson refuses to comply with the order, and the Commission considers whether to seek judicial enforcement of the subpoena under Exchange Act Section 21(c).¹¹

Lemelson’s petition also advances broader challenges to this proceeding, but those, too, do not establish a need for immediate Commission review. A party is not entitled to pre-hearing review merely because he raises a constitutional claim.¹² And here, the ALJ has not yet been substantively briefed—or made a ruling on—Lemelson’s broader challenges, except in the limited context of determining whether to certify the subpoena order for interlocutory review. We therefore find it premature to review those claims now. Lemelson may continue to raise them before the ALJ, and the Commission would be able to address those claims in its review of any ALJ initial decision.

Accordingly, it is ORDERED that Lemelson’s petition for interlocutory review is denied.

⁹ *McDuff*, 2016 WL 3254513, at *5 (cleaned up).

¹⁰ *See, e.g., Michael Sassano*, Exchange Act Release No. 56874, 2007 WL 4699012, at *3 (Nov. 30, 2007) (denying interlocutory review as to issuance of subpoena); *Benjamin G. Sprecher*, Exchange Act Release No. 36574, 1995 WL 735903, at *2 (Dec. 12, 1995) (denying interlocutory review of an order declining to issue subpoenas).

¹¹ 15 U.S.C. § 78u(c).

¹² *See, e.g., YAPP USA Automotive Sys., Inc. v. NLRB*, No. 24-1754, 2024 WL 4489598, at *2-3 (6th Cir. Oct. 13, 2024); *Leachco, Inc. v. CPSC*, 103 F.4th 748, 753-57 (10th Cir. 2024), *cert. denied*, No. 24-156, 2025 WL 76435 (U.S. Jan. 13, 2025); *Deaver v. Seymour*, 822 F.2d 66, 71 (D.C. Cir. 1987), *stay denied sub nom. Deaver v. United States*, 483 U.S. 1301, 1302-03 (1987) (Rehnquist, C.J., in chambers).

On March 26, 2025, Lemelson filed an additional motion for the Commission to stay this proceeding pending his district court action. For the same reasons set out above, it is further ORDERED that this motion is also denied.

By the Commission.

Vanessa A. Countryman
Secretary