

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 50729 / November 23, 2004

Admin. Proc. File No. 3-11675

<p>In the Matter of</p> <p>DANIEL S. LEZAK P.O. Box 7202 Incline Village, Nevada 89452</p>
--

ORDER DENYING MOTION TO LIFT TEMPORARY SUSPENSION AND DIRECTING
HEARING

On September 24, 2004, we instituted proceedings against Daniel S. Lezak pursuant to Rule 102(e)(3) of this Commission's Rules of Practice and temporarily suspended him from appearing or practicing before this Commission. ^{1/} Lezak has filed a petition, pursuant to Rule 102(e)(3)(ii), seeking to lift his temporary suspension.

On September 1, 2004, the District Court entered a permanent injunction against Lezak in an action brought by this Commission. The order permanently enjoined Lezak from violating,

^{1/} Rule 102(e)(3) of the Commission's Rules of Practice (17 C.F.R. § 201.102(e)(3)) provides in pertinent part that:

(I) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any . . . accountant . . . who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 2/ and Exchange Act Rule 10b-5, Exchange Act Section 13(b)(5) 3/ and Exchange Act Rules 13b2-1 and 13b2-2, 4/ Exchange Act Section 13(a) 5/ and Exchange Act Rules 12b-20 and 13a-1, 6/ and Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B). 7/

The Court also made a number of findings of fact. Lezak was president of Madera International, Inc. (“Madera”) for several months in 1994 as well as chairman, chief executive officer and chief financial officer of Madera from early 1994 through mid 1996. 8/ Thereafter, Lezak served as an advisor and consultant, providing accounting services to Madera until December 1999. 9/ The Court found that during 1994, 1995 and 1996, Lezak knowingly signed and caused to be filed with this Commission falsified financial statements, which, among other things, misrepresented ownership interests in, and values of, various timberland properties. 10/ The Court further held that Lezak knowingly failed to implement a system of internal accounting controls at Madera to prevent the misuse of its funds. It also determined that Lezak violated Exchange Act Rules 13b2-1 and 13b2-2 by signing a management representation letter in connection with a March 31, 1995 audit of Madera’s financial statements in which he asserted that, to the best of his knowledge and belief, the company had satisfactory title to all owned assets including all assets shown on the financial statements. 11/ Based on the evidence before it and Lezak’s deposition testimony, the Court concluded that this Commission’s motion for

2/ 15 U.S.C. § 78j(b).

3/ 15 U.S.C. § 78m(b)(5).

4/ 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2.

5/ 15 U.S.C. § 78m(a).

6/ 17 C.F.R. §§ 240.12b-20 and 240.13a-1.

7/ 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B). SEC v. Madera International, Inc., Ramiro M. Fernandez-Moris and Daniel S. Lezak, Civil Action No. 01-1985 (JR), *appeal pending*, memorandum opinion (D. D.C. Sept. 1, 2004) (“Mem. Op.”).

8/ Mem. Op. at 3.

9/ Id.

10/ Id. at 8-14, 20. The financial statements were included in Madera’s periodic reports for the quarters ended June 30, 1994, September 30, 1994, December 31, 1994, June 30, 1995 and September 30, 1995 and for the years ended March 31, 1994 and March 31, 1995.

11/ Id. at 27-28.

partial summary judgment against Lezak was appropriate.

Lezak now requests “that the temporary suspension be lifted and that this matter be dropped as an unnecessary and wasteful procedure.” 12/ Lezak argues that, although he obtained a license as a certified public accountant (“CPA”) in the State of California in the early 1960's, he has not practiced as a CPA since then. He further asserts that he has never practiced (and does not intend to practice in the future) before this Commission. He also contends that he was not a controlling member of the board of directors and appears to suggest that he did not have responsibility for Madera’s filings with the Commission. Lezak also requests that we hold this matter in abeyance, pending his appeal of the District Court’s decision.

In opposition to Lezak’s petition, the Division of Enforcement argues that “the temporary suspension is in the public interest, the factual and equitable issues Lezak raises in his petition should be addressed at a hearing, and Lezak points to no irreparable injury he will suffer if the temporary suspension remains in effect until a hearing can be held and gives no reason to think he is likely to prevail at such a hearing.” 13/ The Division asserts that Lezak has, in fact, appeared and practiced before the Commission and that, even if he had not, disciplinary action under Rule 102(e)(3) does not require one to have appeared or practiced before the Commission. The Division further argues that the fact that Lezak was not an active CPA is irrelevant and cites six settled cases in which the Commission has suspended accountants who were unlicensed at the time of the misconduct yet found to have been within the scope of Rule 102(e) of this Commission’s Rules of Practice. 14/

The Division argues that a stay of the suspension pending a hearing is inappropriate. It states that Lezak identifies no immediate need to have the suspension lifted, has not shown a likelihood of succeeding on the merits of his petition and fails to address the district court’s incontestable finding that he is likely to engage in future securities violations. 15/ The Division also challenges the contention that Lezak’s pending appeal of the district court injunction supports holding this action in “abeyance.” 16/

12/ Respondent’s Response to Order Instituting Public Administrative Proceedings (“Respondent’s Response”) at 2 .

13/ Opposition to Respondent’s Response (“Opposition”) at 1-2.

14/ Opposition at 7-8.

15/ Opposition at 8-9.

16/ Opposition at 9-10. We have previously held that an appeal of a district court opinion does not alter the effect of an injunction. See Michael T. Studer, Securities Exchange Act Rel. No. 50543 (Oct. 14, 2004), ___ SEC Docket ___ (the pendency of an appeal does not
(continued...))

Rule 102(e)(3) permits the Commission to suspend any accountant or other professional or expert who has been permanently enjoined from violating or aiding and abetting the violation of the Federal securities laws or found to have violated or aided and abetted the violation of the Federal securities laws. While Lezak suggests that others were responsible for Madera filings, the Court found that he submitted the financial statements, provided accounting services (which Lezak himself admits) and was Madera's chief financial officer between 1994 and 1996. The findings of the Court, which Lezak is precluded from contesting in this proceeding, as well as the injunction issued against him justify the continuance of his suspension until it can be determined what, if any, action may be appropriate to protect this Commission's processes. ^{17/} As provided in Rule 102(e)(3)(iii), we will set the matter down for a public hearing.

Accordingly, IT IS ORDERED that the petition of Daniel S. Lezak to lift our order of temporary suspension be, and it hereby is, denied; and it is further

ORDERED that this proceeding be set down for public hearings before an administrative law judge in accordance with Rule 110 of our Rules of Practice. As specified in Rule 102(e)(3)(iii), the hearings in this matter shall be expedited in accordance with Rule 500. Therefore, it is ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this Order.

By the Commission.

Jonathan G. Katz
Secretary

^{16/} (...continued)
affect the finality and preclusive effect in this proceeding of the court's determinations); Joseph P. Galluzzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002) (the pendency of an appeal does not preclude the Commission from acting to protect the public interest). See also Elliott v. SEC, 36 F.3d 86, 87 (11th Cir. 1994) (fact of conviction must be challenged directly on appeal, not in Commission administrative proceeding arising from conviction). Should the decision be reversed on appeal, Lezak may apply for relief.

^{17/} See Rule 102(e)(3)(iv) (providing that the petitioner may not contest any finding made against him or her). We do not believe that Lezak is prejudiced by the continuance of his suspension since he asserts "no intent of ever" practicing before the Commission. Respondent's Response at 2.