

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 55227 / February 2, 2007

Admin. Proc. File No. 3-12245

In the Matter of the Application of

RAGHAVAN SATHIANATHAN

c/o S.T. Allen & Co.
336 Bloomfield Avenue
Montclair, NJ 07042

For Review of Action Taken by

NASD

ORDER DISMISSING PETITION TO REVIEW DENIAL OF "MOTION TO
ACCEPT 'AS IS' THE SECOND AMENDED BRIEF IN SUPPORT OF MOTION
TO RECONSIDER" ISSUED PURSUANT TO DELEGATED AUTHORITY

Raghavan Sathianathan, formerly associated with Salomon Smith Barney Inc. and Morgan Stanley DW Inc., NASD member firms, petitions for Commission review of an order denying his "Motion to Accept 'As Is' the Second Amended Brief in Support of Motion to Reconsider" issued pursuant to delegated authority. We decline to review the denial of Sathianathan's motion.

On November 8, 2006, the Commission issued an opinion finding that Sathianathan made unsuitable recommendations to two customers in violation of NASD Conduct Rules 2310 and 2110, and exercised discretion in the account of one of those customers without the customer's written authorization in violation of NASD Conduct Rules 2510(b) and 2110 (the "November 8, 2006 Opinion"). ^{1/} We further found that the sanctions imposed by NASD, barring Sathianathan from associating with any member firm in any capacity, were not excessive or oppressive.

On November 20, 2006, Sathianathan filed an illegible facsimile copy of a "Notice of Motion and Motion to Reconsider" the November 8, 2006 Opinion. On November 22, 2006,

^{1/} Raghavan Sathianathan, Securities Exchange Act Rel. No. 54722 (Nov. 8, 2006), __ SEC Docket ____.

after the ten-day period for filing such motions had expired, Sathianathan filed a "Notice of Motion and Motion to Reconsider (Amended Version)." Along with the motion, Sathianathan filed a certification referencing the Commission's 14,000-word limit for opening briefs 2/ and stating that his brief contained fewer than 14,000 words. In a letter dated November 29, 2006, the Secretary's Office informed Sathianathan that, because his submission was a motion to reconsider and not an opening brief, it was governed by the length limitations contained in Commission Rule of Practice 154(c). 3/ The Secretary directed Sathianathan to file a certification stating the number of words in the motion to reconsider, which pursuant to Rule 154(c) cannot exceed 7,000, or to submit a modified motion to reconsider conforming to the length limitations in Rule 154 by December 4, 2006. The Secretary informed Sathianathan that no further extensions would be granted.

On December 4, 2006, Sathianathan filed a document entitled "Notice of Motion and Motion to Accept 'As Is' the Second Amended Brief in Support of Motion to Reconsider" and a "Second Amended Brief" which was fifty-four pages long (the "Motion to Accept As Is"). Sathianathan also filed a certification as to the number of words in the document that stated that it contained: "(1) less than 5,100 words in Part A (which is the whistleblower portion of this brief); and (2) less than 5,500 words in Part B (which is the portion of this brief which addresses factual errors made in the SEC's opinion)." The certification also stated that the brief accompanying the Motion to Accept As Is had been divided into two parts, each under the 7,000-word limit, so that the Commission "can consider only one of the two parts, if that is the SEC's preference." The certification did not specify which of the two parts the Commission should consider. On December 20, 2006, the Secretary's Office, acting pursuant to delegated authority, denied Sathianathan's Motion to Accept As Is and informed him that, because the ten-day time limit to file a motion for reconsideration had expired, no further filings would be accepted (the "December 20, 2006 Order").

On December 29, 2006, Sathianathan filed a "Motion to Reconsider December 20, 2006 Order," along with a brief and an affidavit. Sathianathan did not expressly invoke the Commission Rules of Practice governing the appeal of actions made pursuant to delegated authority, and his petition was not made within the required five-day period for such appeals. 4/ Nevertheless, as a matter of our discretion, we will consider his motion as a petition for the Commission to review the December 20, 2006 Order issued by the Secretary's Office pursuant to delegated authority. 5/

2/ See Commission Rule of Practice 450(c), 17 C.F.R. § 201.450(c).

3/ 17 C.F.R. § 201.154(c).

4/ See Commission Rules of Practice 430 and 431, 17 C.F.R. §§ 201.430 and 201.431.

5/ On January 31, 2007, Sathianathan filed a "Request For Expedited Ruling on the Pending Motion to Reconsider December 20, 2006 Order." That motion is denied as moot.

We determine whether to review actions taken pursuant to delegated authority under the standards set forth in Commission Rule of Practice 431(b). 6/ Under this Rule, the denial of Sathianathan's Motion to Accept As Is made pursuant to delegated authority is subject to discretionary Commission review. 7/ In determining whether to grant such review, we consider whether the applicant has shown either that "a prejudicial error was committed in the conduct of the proceeding" or that the decision embodies "a finding or conclusion of material fact that is clearly erroneous," "a conclusion of law that is erroneous," or "an exercise of discretion or decision of law or policy that is important and that the Commission should review." 8/

Sathianathan contends that the decision by the Secretary's Office was erroneous in several respects. He argues that the Secretary's November 29, 2006 letter establishes that the Commission accepted and filed his motion to reconsider and that, therefore, he should be allowed to amend his filing. He supports this argument by selectively quoting language in that letter stating that "We are in receipt of your Motion to Reconsider filed on November 22, 2006. This motion was not timely filed, . . . but was accepted in lieu of an illegible facsimile copy that was timely filed." The purpose of the November 29 letter, however, was to inform Sathianathan that his submission did not comply with the length limitations contained in the Commission's Rules of Practice and to provide him with an opportunity to submit a modified brief that conformed to those limitations. Thus, the letter establishes that the acceptance for filing of Sathianathan's motion to reconsider was conditioned on his bringing his brief into compliance with the Commission's Rules of Practice, a condition which he failed to meet.

Sathianathan attempts to distinguish between his motion for reconsideration and his brief in support of the motion and argues that, because his motion was only one page long, it meets the requirements of Commission Rule of Practice 154. This argument is contradicted by the terms of Rule 154. Rule 154(a) provides that "a motion . . . shall be accompanied by a written brief of the points and authorities relied upon." Rule 154(c) provides that "[n]o motion (together with the brief in support of the motion) . . . shall exceed 7,000 words" Rule 154 is unambiguous that the motion and the brief must be considered together for purposes of the length limitations contained in the rule and that the motion is not complete without the accompanying brief. Despite the opportunity afforded by the Secretary's Office, Sathianathan failed to make a filing that conformed with the requirements of Rule 154.

6/ 17 C.F.R. § 201.431(b).

7/ See 17 C.F.R. §§ 201.431(b)(2), 201.411(b)(2). Sathianathan has not argued that this action is subject to mandatory review, and the denial of his Motion to Accept As Is does not appear to meet any of the requirements for mandatory review set forth in Commission Rule of Practice 411(b)(1). See 17 C.F.R. §§ 201.431(b)(1), 201.411(b)(1)(i)-(iii).

8/ 17 C.F.R. § 201.411(b)(2); see also 17 C.F.R. § 201.431(b)(2) (directing the Commission to consider the factors in Rule 411(b)(2) in determining whether to exercise discretionary review of action taken pursuant to delegated authority).

Sathianathan next asserts that his Motion To Accept As Is tolls the time for making the filing at issue and he should be given further opportunity to amend the filing. He cites no authority for this proposition and nothing in the Commission's Rules of Practice provides for such tolling. Moreover, the Secretary's Office already provided Sathianathan with the opportunity to provide two amended filings beyond the ten-day period required for such filings. The Secretary explicitly informed Sathianathan of the length limitations in Rule 154, instructed him to file a brief that conformed to those requirements, and advised that no further extensions would be permitted. Instead of submitting a conforming filing, Sathianathan attempted to circumvent those requirements by dividing his motion into two portions, each of which complied with the length limitations in Rule 154, and then asking the Commission to choose one of the two parts for consideration, "if that is the SEC's preference." Sathianathan is not entitled to have this proceeding indefinitely tolled while he makes repeated non-conforming filings.

In his brief, Sathianathan notes that the Secretary's December 20, 2006 Order does not rule on his motion to reconsider the November 8, 2006 Opinion. Even though Sathianathan was afforded multiple opportunities, he has never made a filing in compliance with the Rules of Practice and, therefore, no motion to reconsider is pending before the Commission. Thus, Sathianathan has failed to establish that the fact that the December 20, 2006 Order does not rule on his motion to reconsider constitutes prejudicial error that necessitates our review.

Accordingly, IT IS ORDERED that the petition of Raghavan Sathianathan for review of the December 20, 2006 Order denying his "Motion to Accept 'As Is' the Second Amended Brief in Support of Motion to Reconsider," issued pursuant to delegated authority be, and it hereby is, dismissed.

By the Commission.

Nancy M. Morris
Secretary