

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Rel. No. 69358 / April 10, 2013

Admin. Proc. File No. 3-15212

In the Matter of
VIRGINIA K. SOURLIS, ESQ.

ORDER DENYING MOTION TO LIFT
TEMPORARY SUSPENSION AND
DIRECTING HEARING

On February 19, 2013, we issued an order instituting proceedings ("OIP") against Virginia K. Sourlis, Esq., pursuant to Commission Rule of Practice 102(e)(3)(i)(B).¹ The OIP temporarily suspended Sourlis, an attorney licensed in New Jersey, from appearing or practicing before the Commission.² Sourlis has now filed a petition, pursuant to Rule 102(e)(3)(ii),³ requesting that her temporary suspension be lifted. For the reasons set forth below, we have determined to deny Sourlis's petition and set the matter down for a hearing.

On May 5, 2011, the Commission filed an amended complaint against Sourlis and others in the United States District Court for the Southern District of New York alleging, among other claims, that, on January 11, 2006, Sourlis issued a false legal opinion letter that facilitated the illegal public offering of millions of shares of Greenstone Holdings, Inc. stock. The amended complaint further alleged that Sourlis thus aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.⁴

On November 20, 2012, the Court found that Sourlis aided and abetted violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder by issuing her false opinion letter. On that date, the court issued an order that granted the Commission summary judgment on liability

¹ 17 CFR § 201.102(e)(3)(i)(B) (authorizing the Commission to temporarily suspend from appearing or practicing before it an attorney who has been "[f]ound 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").

² *Virginia K. Sourlis, Esq.*, Securities Exchange Act Release No. 68952, 2013 WL 603689 (Feb. 19, 2013).

³ 17 CFR § 201.102(e)(3)(ii).

⁴ 15 U.S.C. § 78j(b); 17 CFR § 240.10b-5.

on the Commission's claim that Sourlis aided and abetted violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder.⁵

In issuing the OIP, we found it "appropriate and in the public interest" that Sourlis be temporarily suspended from appearing or practicing before the Commission based on the findings of the Southern District of New York, in an action brought by the Commission, that Sourlis aided and abetted violations of certain antifraud provisions of the federal securities laws. We stated that the temporary suspension would become permanent unless Sourlis filed a petition seeking to lift it within thirty days of service of the OIP, pursuant to Rule 102(e)(3)(ii). We further advised that, pursuant to Rule 102(e)(3)(iii), upon receipt of such a petition, we would either lift the temporary suspension, set the matter down for a hearing, or both.

In her petition, Sourlis challenges the temporary suspension on a number of grounds, including the following: (1) the Commission failed to issue timely the order imposing the temporary suspension; (2) the temporary suspension is based on stale, seven-year old facts and is therefore barred by the statute of limitations set forth in 28 U.S.C. § 2462, due process, and fundamental fairness; (3) the underlying court order is not a final judgment or order and thus renders the temporary suspension premature and unenforceable; (4) a Rule 102(e) suspension is a "penalty" within the meaning of *Johnson v. SEC*;⁶ (5) the Commission does not have the authority to impose the suspension because it is a collateral sanction; and (6) future violations are unlikely and scienter was lacking in the underlying violation, making a suspension unwarranted.⁷

The Office of the General Counsel ("OGC") has opposed Sourlis's petition. OGC argues, among other things, that: (1) the Commission timely issued the temporary suspension because such issuance occurred within ninety days of the effectiveness of the underlying district court order; (2) the temporary suspension is not barred because the Rule 102(e)(3) cause of action accrued on November 20, 2012 when the district court entered its order; (3) Rule 102(e)(3) does not require the Commission to wait until an entered order has become final or until final judgment is entered to issue an order of temporary suspension; (4) the temporary suspension serves the remedial purpose of protecting the public interest and the Commission's processes from an adjudicated violator of the securities laws pending an administrative hearing to determine the appropriate sanction; (5) the temporary suspension prohibits Sourlis from appearing and practicing before the Commission as an attorney and does not otherwise affect Sourlis's ability to practice law or to participate in any other securities profession regulated by the Commission; and (6) Sourlis cannot relitigate the district court's findings in this Rule 102(e)(3) proceeding.⁸

⁵ *SEC v. Greenstone Holdings, Inc., et al.*, 10 civ. 1302 (MGC) (S.D.N.Y. Nov. 20, 2012).

⁶ 87 F.3d 484 (D.C. Cir. 1996).

⁷ Sourlis also asserts that the Commission acted improperly while negotiating a settlement of the district court action but does not explain the relevance of such assertion to our determination here.

⁸ See 17 CFR § 201.102(e)(3)(iv) (stating that, in any hearing held on a petition filed in accordance with Rule 102(e)(3)(ii), the petitioner may not contest any findings made against him or fact admitted by him in the underlying

Rule 102(e)(3)(iii) provides that, "[w]ithin 30 days after the filing of a petition [to lift a temporary suspension] in accordance with paragraph (e)(3)(ii) of this rule, the Commission *shall* either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both."⁹ We have determined to deny Sourlis's petition and set the matter down for a hearing before an administrative law judge.¹⁰ Continuing Sourlis's temporary suspension pending a hearing on the issues raised in her petition serves the public interest and protects the Commission's processes. As discussed, a district court found that Sourlis aided and abetted violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder by issuing a false opinion letter. That finding provided a statutory basis for the Commission to temporarily suspend Sourlis without a preliminary hearing. Sourlis remains licensed as an attorney and has not expressed any intent to stop working in the field of securities law. She thus remains in a position to harm the Commission's processes if the temporary suspension is lifted and she is permitted to appear and practice before the Commission pending the outcome of a hearing.

Under the circumstances, we find it appropriate to continue Sourlis's suspension pending the holding of a public hearing and decision by an administrative law judge. As provided in Rule 102(e)(3)(iii), we will set the matter down for a public hearing. We express no opinion as to the merits of Sourlis's claims.

Accordingly, IT IS ORDERED that this proceeding be set down for a public hearing before an administrative law judge in accordance with Commission Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500; it is further

ORDERED that the administrative law judge shall file an initial decision no later than 210 days from the date of service of this Order; and it is further

(...continued)

proceeding); *Jilaine H. Bauer, Esq.*, Exchange Act Release No. 68214, 2012 WL 5493356, at *2 & n.12 (Nov. 13, 2012) (citing *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *4 n.20 (Jan 16, 2007)).

⁹ 17 CFR § 201.102(e)(3)(iii) (emphasis added).

¹⁰ The Commission has denied similar petitions in the recent past. *See, e.g., Stewart A. Merkin, Esq.*, Exchange Act Release No. 68981, 2013 WL 661621 (Feb. 25, 2013); *Jilaine H. Bauer, Esq.*, 2012 WL 5493356; *Mitchell Segal, Esq.*, Exchange Act Release No. 67930, 2012 WL 4458283 (Sept. 26, 2012); *Ran H. Furman*, Exchange Act Release No. 65680, 2011 WL 5231425 (Nov. 3, 2011); *Michael C. Pattison, CPA*, Exchange Act Release No. 64598, 2011 WL 2169094 (June 3, 2011); *Carl W. Jasper, CPA*, Exchange Act Release No. 64077, 2011 WL 881508 (Mar. 11, 2011); *William D. Shovers*, Exchange Act Release No. 59874, 2009 WL 1271170 (May 6, 2009); *Chris G. Gunderson, Esq.*, Exchange Act Release No. 56396, 2007 WL 2668485 (Sept. 12, 2007); *Ulysses "Thomas" Ware*, Exchange Act Release No. 51222, 2005 WL 399675 (Feb. 17, 2005); *Daniel S. Lezak*, Exchange Act Release No. 50729, 2004 WL 2721400 (Nov. 23, 2004); *Herbert M. Campbell, II*, Exchange Act Release No. 43422, 2000 WL 1482918 (Oct. 6, 2000).

ORDERED that the temporary suspension of Virginia K. Sourlis, Esq., entered on February 19, 2013, remain in effect pending a hearing and decision in this matter.

By the Commission.

Elizabeth M. Murphy
Secretary