

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 79168 / October 26, 2016

Admin. Proc. File No. 3-17507

In the Matter of
JOSEPH L. PITTERA, ESQ.

CORRECTED ORDER DENYING
MOTION TO LIFT TEMPORARY
SUSPENSION AND DIRECTING
HEARING

On August 26, 2016, we issued an order instituting proceedings (“OIP”) against Joseph L. Pittera, Esq., pursuant to Commission Rule of Practice 102(e)(3)(i).¹ The OIP temporarily suspended Pittera, an attorney licensed in California, from appearing or practicing before the Commission.² Pittera has now filed a petition, pursuant to Rule 102(e)(3)(ii),³ requesting that his

¹ Rule 102(e)(3)(i), 17 C.F.R. § 201.102(e)(3)(i), provides, in relevant part, that:

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 attorney . . . 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 . . . 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 *Joseph L. Pittera, Esq.*, Securities Exchange Act Release No. 78699, 2016 SEC LEXIS 3333 (Aug. 26, 2016).

³ 17 C.F.R. § 201.102(e)(3)(ii).

temporary suspension be lifted. For the reasons set forth below, we have determined to deny Pittera's petition and set the matter down for hearing.

On January 22, 2016, the Commission filed a complaint against Pittera and others in the United States District Court for the Southern District of Florida.⁴ The complaint alleged that between February 2011 and June 2011, Pittera wrote and signed ten baseless and incorrect attorney opinion letters opining that certain shares of MusclePharm Corp. ("MSLP") stock were "free trading" and could be sold without a restrictive legend, thereby enabling the holders of these shares to sell unregistered stock on the open market when no exemption from registration was available. Based on these allegations, the complaint charged Pittera with issuing incorrect and baseless opinion letters in violation of Sections 5(a) and (5)(c) of the Securities Act of 1933.⁵ As to Pittera, the complaint sought a permanent injunction, disgorgement of unlawful proceeds plus prejudgment interest, a civil money penalty, and a penny stock bar. Pittera did not respond to the complaint.

On April 11, 2016, the clerk of the court entered default against Pittera, and on May 31, 2016, the court entered an Order Granting the SEC's Motion for Default Judgment and Permanent Injunctive Relief Against Defendant Joseph L. Pittera. The court found that by virtue of the default and failure to respond, Pittera was deemed to have admitted the allegations of the complaint. It therefore found that Pittera committed the Section 5 violations alleged. The court ordered Pittera to pay \$5,823.29 as disgorgement of profits and interest and a second-tier civil penalty of \$50,000 pursuant to Section 20(d) of the Securities Act.⁶ The court also enjoined Pittera from violating Sections 5(a) and 5(c) and permanently barred him from participating in penny stock offerings.

In issuing the OIP, we found it "appropriate and in the public interest" that Pittera be temporarily suspended from appearing or practicing before the Commission based on (1) the permanent injunction from violating Federal securities laws entered against Pittera, by reason of his own misconduct, by the Southern District of Florida, a court of competent jurisdiction, in an action brought by the Commission; and (2) the findings of the Southern District of Florida, in an action brought by the Commission, that Pittera violated the Federal securities laws. We stated that the temporary suspension would become permanent unless Pittera filed a petition seeking to lift it within thirty days after 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, or set the matter down for hearing, or both.

In his petition, Pittera states that he was misled by his client and by MSLP in writing and signing the opinion letters. He admits that he lacked sufficient knowledge of securities law to issue the opinion letters and that he relied on documents provided by MSLP. Pittera asserts that he acted "with only negligence" rather than extreme negligence or intent and that his conduct

⁴ *SEC v OTC Capital Partners, LLC*, Civil Action No. 16-20270-Civ-Scola (S.D. Fla.).

⁵ 15 U.S.C. §§ 77e(a), 77e(c).

⁶ 15 U.S.C. § 77t(d).

therefore does not establish a violation of Section 5(a) or 5(c). He further states that he has not written any similar opinion letters since June 2011. With regard to the default judgment entered against him, Pittera states that his counsel contacted Commission staff to request an extension of time to respond to the complaint without receiving any response, and that he did not anticipate that a default judgment would be entered.⁷ Finally, Pittera asserts that suspension under Rule 102(e) would be punitive because his violations were insignificant and de minimis.

Rule 102(e)(3)(iii) provides that, “[w]ithin 30 days after filing of a petition [to lift a temporary suspension] in accordance with paragraph (e)(3)(ii) of this section, 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.”⁸ We have determined to deny Pittera’s petition and set the matter down for hearing before an administrative law judge.⁹ Continuing Pittera’s temporary suspension, pending a hearing on the issues raised in his petition, serves the public interest and protects the Commission’s processes. As discussed, Pittera was found by a district court to have violated the Federal securities laws by issuing incorrect and baseless attorney opinion letters on ten occasions, and was permanently enjoined for his misconduct. The court’s action provided two statutory bases for the Commission to temporarily suspend Pittera without a preliminary hearing. It appears that Pittera remains licensed as an attorney. Although he states in a declaration that he has “changed [his] entire practice away from Securities Law,” he states that denying him the opportunity to practice securities law would create financial hardship for his family, suggesting that he may continue or resume practicing in this area. It therefore appears that Pittera remains in a position to harm the Commission’s processes if the temporary suspension is lifted and he is permitted to practice before the Commission pending the outcome of a hearing.

In our August 26 order, we found it “appropriate and in the public interest” to temporarily suspend Pittera. Pittera has not provided, nor do we find, any persuasive basis to question or revisit that determination.

Under the circumstances, we find it appropriate to continue Pittera’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 Pittera’s claims.

⁷ Pittera attached to his petition a copy of a motion to vacate the default judgment that he has filed in the Southern District of Florida.

⁸ 17 C.F.R. § 201.102(e)(3)(iii).

⁹ The Commission has denied other Rule 102(e)(3)(iii) petitions in order to serve the public interest and protect the integrity of its processes. See, e.g., *Diane D. Dalmy, Esq.*, Exchange Act Release No. 76980, 2016 SEC LEXIS 354 (Jan. 27, 2016); *R. Scott Peden, Esq.*, Exchange Act Release No. 75135, 2015 SEC LEXIS 2302 (June 9, 2015); *Robert C. Weaver, Jr., Esq.*, Exchange Act Release No. 73949, 2014 SEC LEXIS 5071 (Dec. 29, 2014); *Brian Williamson, Esq.*, Exchange Act Release No. 72435, 2014 SEC LEXIS 5096 (June 19, 2014); *Virginia K. Sourlis, Esq.*, Exchange Act Release No. 69358, 2013 SEC LEXIS 1104 (Apr. 10, 2013).

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 issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

IT IS FURTHER ORDERED that the temporary suspension of Joseph L. Pittera, Esq., entered on August 26, 2016, remain in effect pending a hearing and decision in this matter.

By the Commission.

Brent J. Fields
Secretary