

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-15141



In the Matter of

**MOHAMMED RIAD AND
KEVIN TIMOTHY SWANSON**

Respondents.

DIVISION OF ENFORCEMENT'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO STAY

Respondents seek a stay of the Commission's June 13, 2016 Order Imposing Remedial Sanctions, Exchange Act Rel. No. 78049, pending judicial review of the Commission's Order. For the following reasons, the Commission should deny Respondents' motion.

As the parties seeking a stay pending appeal, Respondents carry "the burden of establishing that a stay is justified." *Raymond J. Lucia Companies, Inc.*, Exchange Act Rel. No. 76241, at 1 (Oct. 22, 2015). The Commission considers a stay request in light of four factors:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."

Id. (quotations and citations omitted). Moreover, because "the first two factors are the most critical, an applicant's failure to demonstrate the requisite likelihood of success or irreparable harm ordinarily will be dispositive of the stay inquiry." *Id.* at 1-2 (citations omitted). As the Respondents do not meet any of those factors, their stay request should be denied.

In terms of the first factor, Respondents do not even argue they are likely to prevail on appeal. Instead, Respondents claim that they “may” succeed on appeal. (Resp. Br. at 2). Further, while Respondents identify four issues that they intend to raise on appeal, they offer no arguments that the Commission’s rulings on these points were in error. Respondents’ failure to argue, let alone demonstrate, their likelihood to succeed on appeal itself justifies the denial of their motion.

Second, Respondents fail to establish any irreparable harm which will result from the denial of their motion for a stay. Respondents’ argument that they will be harmed by the Commission’s imposition of securities industry bars is not persuasive, because they make no claim to be working in the securities industry at present. Nor do they offer any evidence to support their suggestion that absent a stay they would lose the benefits of a successful appeal. The Commission “has repeatedly held that the fact that an applicant may suffer financial detriment does not rise to the level of irreparable injury warranting issuance of a stay.” *Richard L. Sacks*, Exchange Act Release No. 57028, at 4 (Dec. 21, 2007) (quotation marks omitted); *see also Lucia* at 2 (“financial detriment does not amount to irreparable harm”). And Respondents make no claim that they lack the ability to pay the sanctions ordered, or that immediate payment of disgorgement and penalties would cause them irreparable harm.¹

Finally, Respondents cannot show that no other party would be likely to suffer substantial harm, or that the public interest would be served, if the stay were granted. Indeed, the Commission’s rationale for barring Respondents from the securities industry is premised on the

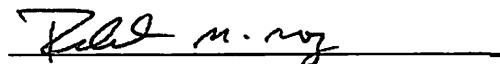
¹ The fact that Respondents do not assert an inability to pay the financial relief ordered by the Commission distinguishes them from the respondents in *Lucia*, who were afforded a stay *solely as to the requirement to pay civil penalties*. See Exchange Act Rel. No. 76241, at 2.

finding that Respondents “pose a continuing substantial danger to the investing public” and have not “supplied assurances against future violations.” Exchange Act Rel. No. 78049, at 58-59.

“[T]he imposition of a stay pending judicial review of an action by an administrative agency is an *extraordinary* remedy.” *Robert L. Sacks*, Exchange Act Release No. 57028, at 3 (Dec. 21, 2007) (emphasis added). Because Respondents have failed to carry their burden of demonstrating that a stay is warranted -- and, indeed, cannot satisfy *any* of the four factors -- their request for that extraordinary relief should be denied.

Dated: July 1, 2016.

Respectfully submitted:



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CERTIFICATE OF SERVICE

Robert M. Moye, an attorney, certifies that on July 1, 2016, he caused the Division of Enforcement's Response In Opposition to Respondents' Motion to Stay to be served by email delivery and UPS delivery upon:

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