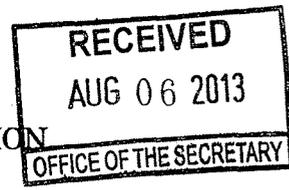


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



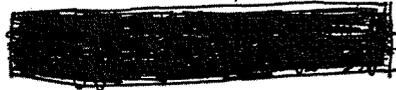
ADMINISTRATIVE PROCEEDING

FILE NO. 3-15317

In the Matter of
FRANK BLUESTEIN,
Respondent.

RESPONDENT'S OPPOSITION TO DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION

Frank Bluestein, Pro Se



Dated: August 2, 2013

I. INTRODUCTION

Respondent FRANK BLUESTEIN files the instant Opposition to Motion for Summary Disposition based on two factual and legal grounds which each constitute “genuine issues with regard to material facts” and independently are sufficient to preclude summary disposition as requested by the Commission. Respondent also files the attached Declaration in Opposition to Motion for Summary Disposition identified as Exhibit “A”.

The first genuine and material factual dispute pertains to the Commission’s attempts to modify the terms of the proposed injunction agreed to by the parties. Rather than adhere to the terms of the actual agreement – whose terms are evidenced by the transcript of the settlement proceedings attached to the Commission’s Motion hereunder - the Commission for the first time in this matter raised the prospect and demanded the imposition of a new and significant penalty in the form of a proposed “Collateral Bar”. The imposition of this penalty, which did not even exist at the time of the agreement between the parties is unwarranted at best and requires both a factual assessment and legal determination and is in no manner appropriate for summary disposition.

The second issue precluding the Commission’s demand for summary disposition involves the filing of a Fed. R. Civ. P. (“FRCP”) 60(b)(1) and (b)(6) Motion to Set Aside the Judgment entered against Respondent. This Motion – which will be filed within thirty days of the date herein with the United States District Court for the Eastern District of Michigan – is based on the lack of notice or participation by Respondent in the financial aspects of this matter, attempts by the Commission to expand the scope of the injunction agreed to by the parties and the refusal of Respondent’s counsel to meaningfully participate in the Court proceedings involving the agreement.

II. FACTUAL BACKGROUND

1. Scope of October 24, 2012 Agreement

On October 24, 2012 the parties held a settlement conference and related hearing during which a narrow scope of issues were resolved but the bulk of the case remained unresolved and subject to later proceedings. Although Respondent agreed to the entry of a permanent injunction from violations of the federal securities laws and working in the securities industry as a result of the settlement conference, the new and significant penalty of a “Collateral Bar” was never discussed at the proceeding or at any time between the parties. In fact, the actual law underlying the Commission’s proposed penalty was not even in existence at the time of the injunction and thus could never have been contemplated by the parties.

Further calling into question the true scope of the injunction, the parties agreed in the hearing following the settlement conference that all financial matters would be addressed at a later date:

THE COURT: Certainly the other aspect of this case which involves financial -- the financial aspect, the monetary aspect at this point in time is going to be left open, but what we are settling today is merely the injunctive part. Do you understand that?

MR. BLUESTEIN: Yes, I do.

(Leiman Decl. Ex. B. 7; 2 2-25, 8: 1-2)

Despite this, there were never any subsequent proceedings addressing the appropriate amount of remuneration (if any) but the Commission proceeded nonetheless to obtain a judgment on its own for more than \$4.1 million dollars without Respondent's involvement.

Remarkably, although respondent agreed solely to a permanent injunction on limited securities grounds, the subsequent judgment that was rendered also included a multi-million penalty without a full and fair proceeding and the Commission now seeks to broaden the original agreement by adding penalties that didn't even exist at the time of the agreement. The possible imposition of these penalties also raises significant constitutional ex post facto law and First Amendment freedom of association issues as well.

Additionally complicating the Commission's attempts to expand the scope of the injunction is the fact that Respondent's counsel refused to participate in the October 24, 2012 hearing and was in fact permitted to withdraw from the case as part of the exact same hearing. When asked to speak on behalf of Respondent, counsel responded:

MR FOSTER: Yes, Your Honor, and I also believe, although I prefer that Mr. Bluestein speak for himself.—

(Leiman Decl. Ex. B 5:5-6)

Later in the same hearing, counsel's refusal to assist his client was further explained:

COURT: One other thing for the record. Mr. Foster, I know that you have a motion for - - to withdraw as counsel that I took under advisement pending these proceedings. What I'm going to do is grant that motion.

(Leiman Decl. Ex. B at 11:6-9)

As a result, Respondent was never made aware of the risk or possible future existence of the “Collateral Bar” penalty or the possibility that what was agreed to could be unilaterally modified in the future without Respondent’s involvement.

With or without adequate legal representation, agreeing to a set of conditions and then subsequently adding new punitive measures from a law that didn’t exist at the time of the agreement is unconscionable under any circumstances. When combined with a multi-million dollar judgment that was also beyond the scope of the agreement and did not permit Respondent’s involvement, the validity of the entire agreement is in question. Most importantly for this proceeding, the significance of these issues and ultimate determination of their significance hereto are not appropriate for summary disposition.

2. Respondent’s FRCP 60 (b) Motion For Relief From Judgment

As noted earlier, Respondent is filing a FRCP 60 (b)(1) and (b)(6) Motion for Relief From the Judgment underlying this matter. Because the Motion is being filed in good faith and is supported by existing legal precedent under (b)(1) and extraordinary circumstances under (b)(6), the filing of said Motion must also prevent the resolution by summary disposition herein. *See, e.g. Community Dental v. Tani, 282 F.3d 1164 (9th Cir. 2002) and Lijesberg v. Health Services, 486 U.S. 847 (1988).*

There are three grounds supporting Respondent’s Motion for Relief From the Judgment – the improper resolution of financial issues without proper notice or involvement by Respondent, the unilateral modifications to the proposed injunctive relief and the complete abandonment of the legal relationship between Respondent and counsel at the time of the agreement between the parties. As evidenced by the changing scope of the injunctive relief

sought by the Commission and resulting financial sanctions without a hearing, the deterioration of that relationship was extremely prejudicial to Respondent.

Under FRCP 60(b), a court may relieve a party...from final judgment...for the following reasons:

- (1) Mistake, Inadvertence, surprise or excusable neglect;
- (6) Any reason that justifies relief.

As indicated by the transcript referenced earlier, the United States District Court specifically ruled that any and all financial matters were reserved for a later proceeding. However, despite multiple attachments and exhibits accompanying the Commission's Motion herein, there is no indication that the later proceedings ever occurred nor an adequate explanation as to why no court hearing was required or conducted. Further, although the Commission managed to send notice of the entry of final judgment to Respondent's correct address, there were no exhibits demonstrating attempts to schedule the final hearing or address the monetary relief at any time.

Closely related to the absence of the above proceeding are the Commission's efforts to expand the scope of the agreed injunctive relief to include a law and punishment that did not exist at the time of the agreement. Under both FRCP (b)(1) and (b)(6) and with or without an effective counsel relationship, changing the actual terms of the agreement and proposed judgment to include significant new personal and monetary conditions was not what Respondent agreed to nor should he be held accountable for such unwarranted modifications. *See, e.g., U.S. v. Baus, 834 F.2d 1114 (1987) (failure of settlement agreement grounds for 60(b) relief).*

In addition to the modifications to Respondent's agreement, issues pertaining to the complete absence of legal representation at the settlement conference also form an integral part of Respondent's Motion for Relief From Judgment. As previously noted in the transcript of the court proceeding, counsel refused to represent Respondent in open court forcing Bluestein to speak for himself and was permitted to withdraw as part of the court's ruling in this matter. Abandoned at that critical juncture, Respondent was simply not capable of grasping the full intentions contemplated by the Commission's actions noted herein.

Although client's are often held responsible for mistakes by its own counsel, exceptions are made under governing case law involving the wholesale abandonment or complete deterioration of the attorney client relationship as involved in this matter. *See, e.g., Community Dental at 1168-1170 (Rule 60(b) encompasses errors or actions beyond the moving party's control); Jacobs v. Elec. Data Sys., 240 F.R.D. 595, 600 (M.D. Ala. 2007)* ("the kinds of attorney misconduct justifying relief under Rule 60(b)(6) indicate a complete failure of an attorney to provide any meaningful representation at all – in essence a collapse of the attorney client relationship altogether.")

III. Legal Standards Governing Motions for Summary Disposition

Because summary disposition is one of the most drastic remedies available to the Court, the governing legal standards mandate that such extraordinary relief must be denied if there "exists a genuine issue with regard to any material fact." *Rule 250 b Commission's Rules of Practice*. In the instant matter, there are several genuine and material factual issues preventing the use of summary disposition hereunder. Similarly, the issue before the Court is not whether Respondent will prevail in the three general areas addressed in

this Opposition – whether the “Collateral Bar” rule is justified, the resolution of financial issues without a hearing or the effectiveness of counsel – but the simple issue of whether a genuine factual dispute exists. *See, e.g., Feeney v. AT&E, Inc.* 472 F.3d 560 (8th Cir. 2006).

Accordingly, summary disposition is not appropriate for this matter and Respondent respectfully requests that the Court deny the Commission’s Motion and order appropriate relief to allow this case to proceed.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via facsimile to Tim Leiman, counsel for Commission at (312) 353-7398 this 2nd of August, 2013.


FRANK BLUESTEIN, Pro Se


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

FILE NO. 3-15317

In the Matter of FRANK BLUESTEIN, Respondent.

DECLARATION OF FRANK BLUESTEIN IN SUPPORT OF OPPOSITION TO DIVISION
OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

I, FRANK BLUESTEIN, pursuant to 28 U.S.C. §1746, declare:

1. I am the Respondent in the above matter and submit this Declaration in support of Respondent's Opposition to Summary Disposition.
2. I have personal and first hand knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, could and would competently testify thereto.
3. On October 24, 2012 I attended a settlement conference and related hearing in this case in which I agreed to an injunction preventing my employment in the securities industry and from violation of certain specified securities law.
4. Because I could not reach resolution of the financial matters involved in this case, the Court specifically ruled that financial issues were not part of the agreement and would be resolved at a later date.

5. However, I did not receive any notice of hearing or formal proceedings to address the financial matters until the end of May 2013. At that time I received a copy of the final judgment against me for \$4.1 million dollars despite not participating in any hearing or proceeding on any financial issues.

6. Further, the prospect of a "Collateral Bar" or any additional administrative penalty or additional sanction against me was not addressed at the October 24, 2012 conference.

7. In addition to the foregoing, I was essentially without counsel and clearly without adequate representation at the October 24, 2012 conference. My attorney refused to participate in the settlement conference, forced me to speak for myself at the hearing and was granted the right to withdraw from my case during the same hearing.

8. As a result, had I known that the narrow agreement the parties reached would expand to include a multi-million dollar judgment without my involvement and a new penalty attempting to restrict contact with my own family I never would have entered into any agreement with the Commission.

9. Finally, I am presently preparing a FRCR 60(b) Motion For Relief From Judgment which will be filed within thirty (30) days of the date herein.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Frank Bluestein", written over a horizontal line.

FRANK BLUESTEIN