

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 9464 / October 8, 2013

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 70631 / October 8, 2013

Admin. Proc. File No. 3-15020

In the Matter of

JILAINE H. BAUER, ESQ.

ORDER DISMISSING PROCEEDING

On September 12, 2012, we issued an order instituting administrative proceedings ("OIP") against Jilaine H. Bauer, Esq., pursuant to Rule 102(e)(3)(i)(B) of our Rules of Practice, which authorizes Commission action when an attorney or other professional or expert 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 . . . 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."¹ The OIP imposed on Bauer a temporary suspension from appearing or practicing before the Commission, as authorized by Rule 102(e)(3)(i)(B).

The OIP was based on a judgment entered on June 15, 2012 by the United States District Court for the Eastern District of Wisconsin finding that Bauer violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.² Bauer appealed the district court's judgment to the United States Court of Appeals for the Seventh Circuit.

On April 16, 2013, an administrative law judge issued an initial decision (the "Initial Decision") in the administrative proceeding finding, based on the action in the Eastern District of Wisconsin, that Bauer "has been 'found by [a] court of competent jurisdiction in an action brought by the Commission to which . . . she is a party . . . to have violated [willfully] any provision of the

¹ 17 CFR § 201.102(e)(3)(i)(B).

² 15 U.S.C. §§ 77q(a), 78j(b); 17 CFR § 240.10b-5.

Federal securities laws or of the rules and regulations thereunder' within the meaning of [Rule 102(e)(3)(i)(B)]."³ The law judge found that the seven-month suspension Bauer had served by the time the Initial Decision was entered was an appropriate sanction on the facts of the case and therefore lifted the temporary suspension.⁴ Both Bauer and the Office of the General Counsel petitioned for Commission review of the Initial Decision.

On July 22, 2013, while this administrative appeal was pending, the Seventh Circuit reversed and remanded the district court's judgment.⁵ Bauer has filed a motion to dismiss the administrative proceeding.⁶

In seeking to have the proceeding dismissed, Bauer argues that the district court judgment was the sole basis for the proceeding, and that as a result of the Seventh Circuit's ruling, the predicate for this proceeding no longer exists. OGC initially opposed Bauer's motion as premature, because the time for filing post-judgment motions had not expired and the court's mandate had not issued, and the July 22 decision was thus not effective and could be changed. However, the mandate has now issued.⁷

³ *Jilaine H. Bauer, Esq.*, Initial Decision Rel. No. 483, 2013 SEC LEXIS 1125, at *8-9 (Apr. 16, 2013).

⁴ *Id.*, 2013 SEC LEXIS 1125, at *10.

⁵ *SEC v. Bauer*, 2013 U.S. App. LEXIS 14767 (7th Cir. July 22, 2013).

⁶ Bauer's motion asks us to vacate the initial decision. However, the initial decision has not become final. See Rule of Practice 360(3)(d)(1), 17 CFR § 201.360(3)(d)(1) (providing that "[i]f a party . . . timely files a petition for review . . . the initial decision shall not become final as to that party"). We therefore construe Bauer's petition as seeking dismissal of the administrative proceeding. See, e.g., *Richard L. Goble*, Securities Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that served as basis for OIP); *Evelyn Litwok*, Investment Advisers Act Release. No. 3438, 2012 SEC LEXIS 2328, at *3-4 (July 25, 2012) (dismissing follow-on proceeding after court of appeals, while petition for review was pending before Commission, reversed certain convictions and vacated and remanded other convictions, all of which served as basis for proceeding). *But cf. Kenneth E. Mahaffy, Jr.*, Exchange Act Rel. No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012), (vacating bar issued in follow-on administrative proceeding where court of appeals vacated criminal conviction that provided basis for proceeding after Commission had issued bar order).

Bauer included in her motion a request that we discontinue the federal action and not proceed with remand proceedings in the district court. We decline to take the requested action, which is outside the scope of this administrative proceeding.

⁷ We take official notice that neither reconsideration nor review was sought, and that the mandate has issued. See 17 CFR § 201.323 (rule of practice pertaining to official notice).

Because the Seventh Circuit reversed the district court judgment that was the predicate for this proceeding, we conclude that it is appropriate to dismiss the proceeding.⁸

Accordingly, IT IS ORDERED that this proceeding be, and it hereby is, dismissed.

By the Commission.

Elizabeth M. Murphy
Secretary

⁸ See, e.g., *Jimmy Dale Swink, Jr.*, Exchange Act Rel. No. 36042, 1995 SEC LEXIS 2033 (Aug. 1, 1995) (vacating findings and administrative bar order when appellate court reversed criminal conviction that was basis for proceeding).