

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9985 / December 10, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 76614 / December 10, 2015

Admin. Proc. File No. 3-16178

In the Matter of

JOSEPH C. RUGGIERI

ORDER DENYING MOTION
FOR SUMMARY
AFFIRMANCE, GRANTING
PETITIONS FOR REVIEW, AND
SCHEDULING BRIEFS

On September 14, 2015, an administrative law judge issued an Initial Decision dismissing administrative proceedings against Joseph C. Ruggieri, a former trader at Wells Fargo Securities, LLC (“Wells Fargo”).¹ The Division of Enforcement filed a petition for review of that decision. Ruggieri filed a cross-petition for review and a motion for summary affirmance of the Initial Decision. For the reasons below, we deny Ruggieri's motion for summary affirmance, grant the Division's petition and Ruggieri's cross-petition for review, and schedule the filing of briefs.

I. Background

We instituted these proceedings on September 29, 2014, alleging that Ruggieri and Gregory T. Bolan, Jr., a colleague of Ruggieri's and research analyst at Wells Fargo, participated in an insider trading scheme in violation of the federal antifraud provisions.² After conducting a twelve-day hearing, the law judge issued a fifty-page initial decision dismissing the proceedings. The law judge found that, although the Division established that Ruggieri traded on tips he

¹ *Joseph C. Ruggieri*, Initial Decision Release No. 877, 2015 WL 5316569 (Sept. 14, 2015).

² *Gregory T. Bolan, Jr.*, Exchange Act Release No. 73244, 2014 WL 4803778 (Sept. 29, 2014) (alleging violations of Securities Act Section 17(a), 15 U.S.C. § 77q(a); Securities Exchange Act Section 10(b), 15 U.S.C. § 78j(b); and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5). The Commission accepted an offer of settlement with Bolan on May 28, 2015. See *Gregory T. Bolan, Jr.*, Exchange Act Release No. 75066, 2015 WL 3413279 (May 28, 2015) (making findings and imposing remedial sanctions and a cease-and-desist order).

received from Bolan, the Division did not satisfy its burden of establishing that Bolan tipped Ruggieri for a personal benefit within the meaning of *Dirks v. SEC*, 463 U.S. 646 (1983), and *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014).³

On October 5, 2015, the Division filed a petition for review of the Initial Decision, asserting that the law judge erred in finding that Bolan did not tip Ruggieri for a personal benefit. The Division argues that the law judge's decision misapplied *Newman* and *Dirks* and drew "impermissible inferences" from the facts, "including that Bolan—risking his career—repeatedly tipped Ruggieri to valuable inside information without any expectation of receiving a benefit in return." Ruggieri filed a cross-petition for review on October 14, 2015, seeking review of the law judge's finding that Ruggieri was tipped about inside information and traded based on those tips. Ruggieri seeks review of those findings only if we grant the Division's petition for review.

On October 26, 2015, Ruggieri filed the present motion for summary affirmance, which the Division opposed.

II. Analysis

Under Commission Rule of Practice 411(e)(2), we "will decline to grant summary affirmance upon a reasonable showing that . . . the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review."⁴ We have previously observed that "[s]ummary affirmance is rare, given that generally we have an interest in articulating our views on important matters of public interest and the parties have a right to full consideration of those matters."⁵

Ruggieri argues that summary affirmance is appropriate because the Initial Decision rests on "a straightforward application of the facts to the well-settled insider trading law" and that, as a result, "there is no need for the Commission to consider additional oral or written argument." The Division disagrees, arguing that the conclusions in *Newman* "are unquestionably important to the developing law on personal benefit," and that, "the Commission should review the Initial Decision because no administrative law judge has applied or interpreted *Newman* before."

Based on our preliminary review of the record and the parties' submissions, we do not view summary affirmance as appropriate. This appeal raises issues as to which we have an interest in articulating our views and important matters of public interest, including insider trading law and the personal benefit requirement. We conclude that our consideration of the record and the parties' arguments would benefit from going through the normal appellate process rather than the abbreviated process involved with a summary affirmance. We accordingly deny

³ *Ruggieri*, 2015 WL 5316569, at *1.

⁴ 17 C.F.R. § 201.411(e)(2).

⁵ *Theodore W. Urban*, Order Denying Motion for Summary Affirmance, Securities Exchange Act Release No. 63456, 2010 SEC LEXIS 4054, at *6 (Dec. 7, 2010)

Ruggieri's motion.⁶ Our denial of Ruggieri's motion should not be construed as suggesting any view about the merits of the case. We further grant the Division's petition and Ruggieri's cross-petition for review and schedule the filing of briefs.

* * * *

Accordingly, IT IS ORDERED that the motion for summary affirmance filed by Joseph C. Ruggieri is hereby denied; and it is further

ORDERED, pursuant to Rule of Practice 411,⁷ that the Division of Enforcement's petition for review and Ruggieri's cross-petition for review are hereby granted; and it is further

ORDERED, pursuant to Rule of Practice 450(a),⁸ that briefs be filed as follows:

Division's opening brief: The Division shall file a brief, not to exceed 14,000 words, by January 11, 2016.

Respondent's principal and response brief: Respondent shall file a brief, not to exceed 16,000 words, by February 10, 2016. This brief must address the issues presented by respondent's cross-petition for review and respond to the Division's opening brief.

Division's response and reply brief: The Division shall file a brief, not to exceed 9,000 words, by March 11, 2016.

Respondent's reply brief: Respondent may file a reply brief, not to exceed 7,000 words, by March 25, 2016. This brief must be limited to the issues presented by respondent's cross-petition for review.

⁶ See, e.g., *The Robare Group, Ltd.*, Exchange Act Release No. 75686, 2015 WL 4749145, at *2 (Aug. 12, 2015) (denying respondents' motion for summary affirmance and granting petition for review because of "the potentially important matters of public interest this case presents"); *David F. Bandimere*, Exchange Act Release No. 71333, 2014 WL 198175, at *3 (Jan. 16, 2014) (denying motion for summary affirmance and granting petition for review where "the submission of briefs, with discussion of relevant parts of the record and analysis of the issues, w[ould] aid . . . in reaching a decision in this case").

⁷ 17 C.F.R. § 201.411.

⁸ *Id.* § 201.450(a).

As provided by Rule of Practice 450(a), no briefs except those specified in this schedule may be filed without leave of the Commission.⁹ Pursuant to Rule of Practice 180(c), failure to file a brief in support of the petition or cross-petition for review may result in dismissal of this review proceeding as to that party.¹⁰

By the Commission.

Brent J. Fields
Secretary

⁹ Attention is called to Rules of Practice 150 through 153, 17 C.F.R. §§ 201.150–153, with respect to form and service, and Rules of Practice 450(b) and (c), 17 C.F.R. § 201.450(b), 201.450(c), with respect to content and length limitations (except as modified in this order). The number of words includes any pleadings that are incorporated by reference.

¹⁰ 17 C.F.R. § 201.411(a).