

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74532 / March 19, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4051 / March 19, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16104

In the Matter of
MICHAEL LEE MENDENHALL

ORDER VACATING INITIAL
DECISION AND REMANDING FOR
FURTHER PROCEEDINGS

We instituted this administrative proceeding against respondent Michael Lee Mendenhall in September 2014 based on his conviction for securities fraud and theft in Colorado state court. To promote the orderly resolution of this proceeding, and for the other reasons that follow, we have determined *sua sponte* to vacate the law judge's initial decision and to remand for further proceedings before the law judge.

By way of procedural background, the Division of Enforcement ("Division") filed a motion for summary disposition on December 12, 2014. Mendenhall timely requested a 120-day extension of time to respond to the Division's motion. On January 22, 2015, the law judge granted relief in part and extended the deadline for Mendenhall's response to February 13.¹ On February 18, the law judge issued an initial decision barring Mendenhall from the securities industry. The decision stated that "Mendenhall did not file an opposition" to the Division's motion for summary disposition.²

Unbeknownst to the law judge, her January 22 order had not been mailed to Mendenhall at his current address. This oversight was not discovered until Mendenhall wrote to the law judge inquiring as to the status of his extension request. On February 23, the law judge characterized Mendenhall's letter as a "motion to correct a manifest error of fact" in the initial

¹ *Michael Lee Mendenhall*, Admin. Proc. Rulings Release No. 2244 (A.L.J. Jan. 22, 2015).

² *Michael Lee Mendenhall*, Initial Decision Release No. 743, 2015 WL 673419 (A.L.J. Feb. 18, 2015).

decision pursuant to Rule of Practice 111(h).³ She permitted Mendenhall to "file a supplemental pleading concerning the [initial decision] and the Division's motion for summary disposition."⁴

Once an initial decision is issued, our Rules of Practice "largely divest the law judge of authority over the proceeding."⁵ As a result, the law judge did not err (and, indeed, properly acted within the bounds of her authority) when she construed Mendenhall's letter as a motion to correct a manifest error of fact. The Commission is not similarly constrained, however. It retains plenary authority over the course of its administrative proceedings and the rulings of its law judges—both before and after the issuance of the initial decision and irrespective of whether any party has sought relief.⁶

Under the unusual circumstances of this case, we believe that Mendenhall should be afforded an opportunity to present facts and legal arguments in response to the Division's motion for summary disposition. We find that the interests of justice would be served, and the disposition of this matter expedited, by vacating the February 18 initial decision and directing that the law judge set a briefing schedule for the Division's motion for summary disposition. In considering that motion, the law judge should employ the standard ordinarily applicable to motions for summary disposition under Rule of Practice 250 and may make such rulings as she deems appropriate.⁷ We stress that the standard for a motion to correct a manifest error under Rule of Practice 111(h)—which requires the movant to show that there was a "patent misstatement of fact" in the initial decision—has no relevance when, as here, the initial decision has been vacated and the matter remanded for resolution on an open record.⁸

³ 17 C.F.R. § 201.111(h).

⁴ *Michael Lee Mendenhall*, Admin. Proc. Rulings Release No. 2344 (A.L.J. Feb. 23, 2015).

⁵ *Alchemy Ventures, Inc.*, Securities Exchange Act Release No. 70708, 2013 WL 6173809, at *3 (Oct. 17, 2013).

⁶ *See, e.g.*, 5 U.S.C. § 557(b); Rule of Practice 400(a), 17 C.F.R. § 201.400(a) (providing that the Commission may, "at any time, on its own motion, direct that any matter be submitted to it for review"); Rule of Practice 411(c), *id.* § 201.411(c) (providing that the Commission may, "on its own initiative, order review of any initial decision[]"); Rule of Practice 411(d), *id.* § 201.411(d) (providing that the Commission may, "at any time prior to the issuance of [a final Commission] decision, raise and determine any . . . matters that it deems material").

⁷ 17 C.F.R. § 201.250. We express no view as to the merits of the Division's motion for summary disposition.

⁸ *Id.* § 201.111(h).

Accordingly, on our own motion, it is ORDERED that the initial decision is vacated and that the matter is remanded for further proceedings as set forth herein. It is further ORDERED that the law judge shall issue an initial decision within 210 days from the date of this order.

By the Commission.

Brent J. Fields
Secretary