

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10468 / March 8, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 82836 / March 8, 2018

Admin. Proc. File No. 3-16509

In the Matter of

EDWARD M. DASPIN, A/K/A “EDWARD (ED)
MICHAEL”

ORDER DENYING MOTION FOR RECONSIDERTION

Edward M. Daspin moves for reconsideration of the Commission’s November 30, 2017 order ratifying the agency’s prior appointment of its administrative law judges and remanding all matters pending before the Commission in which an administrative law judge had issued an initial decision (including this proceeding) to the law judge who issued the initial decision.¹ The order directed such presiding law judges to reconsider the record and determine, based on that reconsideration, whether to ratify or revise in any respect all prior actions taken by the administrative law judge in the proceeding. After granting the parties leave to submit new evidence,² the presiding law judge in this case revised portions of two of his orders and otherwise ratified all actions he had taken in the proceeding and most actions taken by his predecessor.³

¹ *In re Pending Admin. Proceedings*, Exchange Act Release No. 82178, 2017 WL 5969234, at *1–2 (Nov. 30, 2017) (ratifying the Commission’s prior appointment of its administrative law judges “[t]o put to rest any claim that administrative proceedings pending before, or presided over by, Commission administrative law judges violate the Appointments Clause” of the U.S. Constitution, Art. II, § 2, cl. 2.).

² *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 5307, 2017 SEC LEXIS 3917, at *1–2 (Dec. 7, 2017).

³ *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 5619, 2018 SEC LEXIS 520, at *2 (Feb. 20, 2018).

Daspin seeks reconsideration only of the order's directive that his case be remanded to the presiding law judge. We analyze Daspin's motion under Rule of Practice 470⁴ and find no basis to reconsider the order with respect to this matter or otherwise interfere with the law judge's consideration of the matter on remand.⁵

Reconsideration is an "extraordinary" remedy,⁶ and it is granted only in exceptional cases.⁷ It is "designed to correct manifest errors of law or fact or permit the presentation of newly discovered evidence."⁸ We will accept additional evidence "only if the movant could not have known about or adduced that evidence before entry of the order for which reconsideration is sought."⁹ Daspin identifies no manifest errors of law or fact justifying reconsideration. Nor does he identify any new evidence that would cause us to reconsider the decision to remand his case to the presiding law judge for him to determine whether to ratify or revise his prior actions.

Instead, Daspin argues that his case should not be remanded because his appeal was not "focused on the appointments clause" issue and therefore "should not be grouped with the other appellants." The record establishes that Daspin has raised the appointments clause issue in this proceeding. In any case, the Commission determined in the November 30 order to remand all matters pending before the Commission in which an administrative law judge had issued an initial decision regardless of whether the appointments clause issue was raised, and Daspin provides no basis for the Commission to reconsider that determination with respect to his case.

⁴ See *Johnny Clifton*, Exchange Act Release No. 70639, 2013 WL 5553865, at *1 (Oct. 9, 2013) (analyzing motion for reconsideration under Rule of Practice 470, 17 C.F.R. § 201.470).

⁵ Daspin has made multiple filings with the Commission beginning around December 14, 2017, all of which raise essentially the same arguments, in various forms, about why the matter should not be reheard by the presiding law judge. Those filings are construed as a single motion, which is hereby denied for the reasons explained herein. See Rule of Practice 103, 17 C.F.R. § 201.103 (stating that Commission procedural rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding"). We also note that, although reconsideration is available only for final Commission orders under Rule 470, we exercise our discretion to consider Daspin's motion in light of the unique facts and circumstances and procedural posture of this matter. See Rule of Practice 103(a), 17 C.F.R. § 201.103(a).

⁶ *Clifton*, 2013 WL 5553865, at *1.

⁷ *Eric J. Brown*, Exchange Act Release No. 66752, 2012 WL 1143573, at *1 (Apr. 5, 2012) (citing *Feeley & Willcox Asset Mgmt. Corp.*, Exchange Act Release No. 48607, 2003 WL 22316308, at *1 (Oct. 9, 2003)).

⁸ *Daniel Imperato*, Exchange Act Release No. 74886, 2015 WL 2088435, at *1 (May 6, 2015) (quoting *Steven Altman, Esq.*, Exchange Act Release No. 63665, 2011 WL 52087, at *1 (Jan. 6, 2011)).

⁹ *Gordon Brent Pierce*, Exchange Act Release No. 72174, 2014 WL 1998514, at *2 (May 15, 2014).

Daspin also argues that his case should not be remanded because of bias allegedly demonstrated by the presiding law judge and chief administrative law judge. But Daspin bases this claim on various disagreements with the law judges' rulings—including the chief law judge's decision to assign a new law judge to this matter and the presiding law judge's decision not to postpone the proceeding below. Disagreement with rulings "is not evidence of bias."¹⁰ "Judicial rulings alone' almost 'never constitute a valid basis for a bias [claim]."¹¹ Law judges are presumed to be unbiased,¹² and none of the rulings Daspin cites establish that the law judges' behavior, "in the context of the whole case, was 'so extreme as to display clear inability to render fair judgment'" such that the matter should not be remanded.¹³

Daspin includes other procedural and substantive arguments in his motions. According to Daspin, the law judge's order finding him in default for failing to appear at two scheduled hearings, and his subsequent initial decision, should be set aside;¹⁴ the settled orders against Daspin's two co-respondents should be set aside;¹⁵ and the Commission should dismiss the proceedings against Daspin outright or transfer the proceeding to U.S. district court. These claims do not justify reconsideration or otherwise warrant the Commission's consideration at this time. We accordingly decline to reconsider our remand order, which entitled Daspin to raise his various procedural and substantive arguments before the assigned ALJ and then, if properly preserved, before the Commission.¹⁶

¹⁰ *Moshe Marc Cohen*, Exchange Act Release No. 78797, 2016 WL 4727517, at *10 (Sept. 9, 2016).

¹¹ *Id.* (citations omitted).

¹² *See, e.g., Schweiker v. McClure*, 456 U.S. 188, 195 (1982); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

¹³ *Rollins v. Massanari*, 261 F.3d 853, 858 (9th Cir. 2001) (quoting *Liteky v. United States*, 510 U.S. 540, 551 (1994)); *see also Schweiker*, 456 U.S. at 195 (stating that the party claiming bias must establish a "conflict of interest or some other specific reason for disqualification"). Daspin's allegations of bias include accusations that the presiding law judge violated an order that the parties should submit filings under seal by disclosing Daspin's confidential medical and financial information. *See, e.g., Prehearing Order, Edward M. Daspin*, 2015 SEC LEXIS 1985, at *1 (May 20, 2015). But private personal information was redacted from the law judge's published orders, and we can find no information, nor does Daspin specifically identify any, that has been improperly disclosed.

¹⁴ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3683, 2016 SEC LEXIS 886 (Mar. 8, 2016).

¹⁵ *See Edward M. Daspin*, Securities Act Release No. 2016 WL 6441564 (Nov. 1, 2016) (settling proceeding as to Luigi Agostini); *Edward M. Daspin*, Exchange Act Release No. 76178, 2015 WL 6086849 (Oct. 16, 2015) (settling proceeding as to Lawrence Lux).

¹⁶ *Cf. Gary L. McDuff*, Exchange Act Release No. 78066, 2016 WL 3254513, at *6 (June 14, 2016) (observing that "[t]he Commission's decision not to accept a petition for interlocutory
(continued...)

Accordingly, it is ORDERED that Edward M. Daspin's motion for reconsideration is denied.

By the Commission.

Brent J. Fields
Secretary

(...continued)

review does not preclude a party from renewing his arguments before the Commission in an eventual appeal, and the Commission can provide any necessary relief in the course of its review process”).