

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86029 / June 4, 2019

Admin. Proc. File No. 3-18943

In the Matter of

MARK J. MOSKOWITZ

ORDER TO SHOW CAUSE

The Securities and Exchange Commission (“Commission”) issued an Order Instituting Proceedings (“OIP”) on December 20, 2018, pursuant to Section 203(f) of the Investment Advisers Act of 1940, against respondent Mark J. Moskowitz.¹

On April 30, 2019, the Division of Enforcement filed a motion for entry of default and sanctions against Moskowitz. The Division states that service of the OIP was made on Moskowitz via United States Postal Service Certified Mail on December 27, 2018. The Division requests that the Commission find Moskowitz in default for not filing an answer and bar him from the securities industry based on the record and the allegations in the OIP.

The Division attached to its motion an email from Moskowitz acknowledging receipt of the OIP, stating that he was incarcerated, and requesting that, because of anticipated difficulties defending himself while in prison and his pro se status, the Division “hold off on proceedings” until his anticipated release. The record does not contain any subsequent communications between the parties. Moskowitz did not file a motion seeking relief from the Commission.

As stated in the OIP, Moskowitz’s answer was required to be filed within 20 days of service of the OIP.² As of the date of this order, Moskowitz has not filed an answer or a brief in opposition to the Division’s motion despite the due dates for those filings having passed.³ The prehearing conference and the hearing are thus continued indefinitely.

¹ *Mark J. Moskowitz*, Advisers Act Release No. 5081, 2018 WL 6696603 (Dec. 20, 2018).

² Rules of Practice 151(a), 160(b), 220(b), 17 C.F.R. §§ 201.151(a), .160(b), .220(b).

³ Rules of Practice 155(b), 160, 17 C.F.R. §§ 201.155(b), .160.

Accordingly, Moskowitz is ORDERED to SHOW CAUSE by July 19, 2019, why the Commission should not find him in default due to his failure to file an answer, to respond to the Division's motion, or to otherwise defend this proceeding. Moskowitz shall deliver any response, including any answer, to the proper prison authorities no later than the due date for forwarding to the Commission's Office of the Secretary.⁴

When a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding a public hearing.⁵ The OIP informed Moskowitz that a failure to file an answer could result in him being deemed in default and the proceedings determined against him.⁶ The failure to timely oppose a dispositive motion is also a basis for a finding of default.⁷ Like failing to timely file an answer, failing to timely oppose a dispositive motion may result in the determination of particular claims, or the proceeding as a whole, adversely to the non-moving party and may be deemed a forfeiture of arguments that could have been raised at that time.⁸

Moskowitz's submission shall address the reasons for his failure to timely file an answer or response to the Division's motion, as well as the substance of the Division's request for sanctions (including why the Commission should not bar him from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization pursuant to Advisers Act Section 203(f)). If Moskowitz responds to this order to show cause, the Division may file a reply within 21 days after its service.

The parties are reminded that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format.

⁴ See *Houston v. Lack*, 487 U.S. 266, 266 (1988) (under federal prison mailbox rule, "pro se prisoners' notice of appeal are 'filed' at moment of delivery to prison authorities for forwarding to district court"); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (noting that this "mailbox rule [applies] to other filings by pro se prisoners").

⁵ Rules of Practice 155, 180, 220, 17 C.F.R. §§ 201.155, .180, .220.

⁶ *Moskowitz*, 2018 WL 6696603, at *3.

⁷ See, e.g., *Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

⁸ See, e.g., *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2-3 (Mar. 30, 2017); *Apollo Publ'n Corp.*, Securities Act Release No. 8678, 2006 WL 985307, at *1 n.6 (Apr. 13, 2006); *McBarron Capital LLC*, Exchange Act Release No. 81789, 2017 WL 4350655, at *3-5 (Sept. 29, 2017).

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Acting Secretary