

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87139 / September 27, 2019

Admin. Proc. File No. 3-19191

In the Matter of
MICHAEL T. RAND, CPA

ORDER DENYING STAY

Michael T. Rand seeks a stay of a Commission order suspending him from appearing or practicing before the Commission. Rand requests that the Commission stay the suspension because he is collaterally attacking his criminal conviction and because he poses “negligible” risks given his current incarceration. For the reasons set forth below, Rand’s motion is denied.

I. Background

On June 4, 2019, the Commission issued an order suspending Michael T. Rand from appearing or practicing before the Commission pursuant to Commission Rule of Practice 102(e)(2).¹ Rule 102(e)(2) provides that “any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission.”² The basis for the forthwith suspension is a December 11, 2015 judgment of criminal conviction entered against Rand for conspiracy to commit securities and wire fraud, make false and misleading statements to auditors and accountants, circumvent internal accounting controls, and falsify books, records and accounts.³

¹ *Michael T. Rand, CPA*, Securities Exchange Act Release No. 86028, 2019 WL 2366760, at *1 (June 4, 2019).

² 17 C.F.R. §201.102(e)(2).

³ *Rand*, 2019 WL 2366760, at *1.

On June 20, 2019, the Commission received Rand's motion to stay the suspension. In the motion, Rand argues that a stay is warranted because he is collaterally attacking the criminal conviction and because of the "negligible risks" he poses given that he is currently incarcerated.

II. Analysis

Rule 102(e)(2) does not provide for a stay of a forthwith suspension. Rather, Rule 102(e)(5)(ii) provides that a person suspended pursuant to Rule 102(e)(2) may apply for reinstatement after "all the grounds for application of [Rule 102(e)(2)] are subsequently removed by a reversal of the conviction."⁴ Rule 102(e)(5)(ii) also provides that an "application for reinstatement on any other ground . . . may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter."⁵ Rand, however, has not filed an application for reinstatement. Indeed, he argues that he will "apply for reinstatement once all the grounds are 'removed' by a reversal of the criminal conviction." Rand seeks a stay of his suspension pending his collateral attack on the conviction, but the pendency of a challenge to a conviction is grounds for neither reinstatement nor a stay.⁶ If Rand's conviction is overturned, he can apply for reinstatement on that basis.⁷ The Commission's rules do not authorize a stay.

Accordingly, IT IS ORDERED that the motion by Michael T. Rand to stay the order of forthwith suspension is denied.

By the Commission.

Vanessa A. Countryman
Secretary

⁴ 17 C.F.R. §201.102(e)(5)(ii).

⁵ 17 C.F.R. §201.102(e)(5)(ii).

⁶ See, e.g., *Daniel Joseph Touizer*, Exchange Act Release No. 85321, 2019 WL 1225724, at *1-2 (Mar. 14, 2019) ("The pendency of an appeal is generally an insufficient basis upon which to prolong a Commission proceeding As a result, once a conviction has been entered, further challenges in the criminal case do not bear on follow-on administrative proceedings unless and until those challenges are successful."); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 WL 80228, at *3 (Feb. 9, 1998) (rejecting the respondent's argument that the "Commission should wait" to initiate a follow-on administrative proceeding until the court of appeals resolved the pending appeal of his conviction).

⁷ See, e.g., *Jimmy Dale Swink, Jr.*, Exchange Act Release No. 36042, 1995 WL 467600, at *1 (Aug. 1, 1995) (vacating bar order predicated on conviction after conviction was overturned).