

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11367

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
May 12, 2004

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

MAY 13 2004

FIRST CLASS

In the Matter of :
: ORDER
:
EDWARD BECKER :
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On March 31, 2004, the Division of Enforcement (Division) filed a Motion for Summary Disposition. In a companion pleading filed the same day, the Division also sought leave to exceed the page limit applicable to motions for summary disposition. On April 15, 2004, at my request, the Division supplemented its Motion for Summary Disposition. On April 19, 2004, I granted the Division's motion to exceed the page limit set forth in Rule 250(c) of the Rules of Practice of the Securities and Exchange Commission (Commission). On my own motion, I also granted Respondent Edward Becker (Becker) an additional two and one-half weeks to oppose the Division's Motion for Summary Disposition.

On May 4, 2004, Becker filed two motions. The certificates of service show that Becker signed these motions on April 17, 2004—two days before my Order of April 19, 2004. It is quite likely that Becker's motions and my Order crossed in the mail.

Becker's first motion objected to the Division's request to exceed the summary disposition page limit. Becker's second motion objected to the evidence the Division presented in support of summary disposition. It also requested an unspecified amount of additional time to oppose summary disposition. On May 11, 2004, the Division filed its opposition to Becker's two motions.

I will treat Becker's first motion as a request to reconsider my ruling of April 19, 2004. Becker argues that the Division has violated his due process rights by exceeding the page limit. In the alternative, Becker urges me to sanction the Division by dismissing the Order Instituting Proceedings (OIP). I find no basis for reconsideration, and accordingly deny Becker's motion. See Rules 103(a), 111(c), (d), and (h), and 154(c) of the Commission's Rules of Practice. I also deny Becker's request to sanction the Division.

Becker's second motion is moot, insofar as it seeks an unspecified amount of additional time to oppose the Division's Motion for Summary Disposition. The initial scheduling order set a due date of April 30, 2004, for Becker's opposition to summary disposition (Order of Mar. 4,

2004). In recognition of the supplemental material the Division filed on April 15, 2004, my Order of April 19, 2004, granted Becker an enlargement of time until May 17, 2004, to file his opposition.

Becker also objects to the admissibility of several of the exhibits submitted in connection with the Division's Motion for Summary Disposition.

Becker objects to the admissibility of Division Exhibit A, a printout of his most recent Form U-4 Application. The Division obtained this document from the National Association of Securities Dealers' electronic Central Registration Depository database. Becker asserts that the document is immaterial, irrelevant, non-factual, incomplete, and unauthorized in that it lacks his signature. Becker has not identified any specific factual errors in the document. I find that the document is unquestionably material and relevant. The Form U-4 itself undercuts Becker's challenge to authenticity and admissibility:

I authorize any employer or prospective employer to file electronically on my behalf any information required in this form or any amendment thereto; I certify that I have reviewed and approved the information to be submitted to any jurisdiction or [self regulatory organization] on this Form U-4 Application; I agree that I will review and approve all disclosure information that will be filed electronically on my behalf; I further agree to waive any objection to the admissibility of the electronically filed records in any criminal, civil, or administrative proceeding.

Applicant or applicant's agent has typed applicant's name under this section to attest to the completeness and accuracy of this record. The applicant recognizes that this typed name constitutes, in every way, use or aspect, his or her legally binding signature.

Date: 01/18/2001 Signature of Applicant: EDWARD BECKER

(Exhibit A at SEC 325).

Becker next objects to the admissibility of Division Exhibit B, which is the original indictment charging him with felony securities fraud and conspiracy to commit mail, wire, and securities fraud. Becker objects to Exhibit B on the grounds that it is not the indictment to which he later pled guilty. At my request, the Division provided a copy of the superseding indictment on April 15, 2004, thus rendering Becker's objection moot. I agree with the Division that Exhibit B is still relevant as evidence of the date of the initial indictment. Exhibit B also demonstrates, when compared to the superseding indictment, the scope of the charges involved in Becker's guilty plea.


Becker also objects to Division Exhibits E and F, which are customer complaint letters to the Commission and other regulatory agencies. These exhibits discuss unresolved (or, at the least, unadjudicated) factual disputes. At the summary disposition stage, a decision maker must take as true the facts of the pleadings of the party against whom the motion is made. See Rule

250(a) of the Commission's Rules of Practice. Consistent with the Commission's policy about liberally admitting evidence, I have already admitted these two exhibits into the record. However, it is highly unlikely that I will rely on these exhibits for any purpose in resolving the Division's pending motion for summary disposition.

Finally, Becker objects to the Division's reference to the transcripts of telephonic prehearing conferences in its Motion for Summary Disposition. He argues that the Division was obliged to provide copies of these transcripts to him under Rule 230(a)(1)(iv) of the Commission's Rules of Practice before filing its Motion for Summary Disposition. There is no merit to this claim. The transcripts in question were not part of the investigative file the Division assembled before it recommended that the Commission issue the OIP. Moreover, the Rule only requires the Division to provide Becker with an opportunity for inspection and copying of the investigative file. It does not require the Division to provide free copies of the documents in the investigative file. See Rule 230(f) of the Commission's Rules of Practice. Nothing in the transcripts of the two prehearing conferences constitutes material exculpatory information within the scope of Brady v. Maryland, 373 U.S. 83 (1963), or Rule 230(c) of the Commission's Rules of Practice. Becker's motion to exclude all references to the transcripts of the prehearing conferences is denied.

Becker also claims that the Division's Motion for Summary Disposition should be denied because it lacks factual support and because the Division has failed to meet its burden of proof. I will reserve a ruling on these matters until I have received Becker's opposition to the Division's Motion (due May 17, 2004) and the Division's reply to Becker's opposition (due May 27, 2004).

SO ORDERED.



James T. Kelly
Administrative Law Judge