

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11716

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
January 25, 2005

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

JAN 26 2005


FIRST CLASS

In the Matter of :
 :
THOMAS J. DONOVAN : ORDER
 :

The Securities and Exchange Commission (Commission) instituted this proceeding on October 21, 2004, with an Order Instituting Proceedings (OIP). The OIP alleges, in ¶ II.B.10., that Respondent Donovan (Respondent) was enjoined from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder in SEC v. Delaney, No. 2:03 CV 4206 (JWB) (D.N.J. Sept. 27, 2004). Based on this, the Division of Enforcement (Division) is seeking to bar Respondent from association with a broker or dealer. The hearing is scheduled to commence February 15, 2005, in New York City.

In a January 21, 2005, filing, Respondent moved for dismissal of this administrative proceeding on the ground that he had not been properly served with notice in SEC v. Delaney, the underlying injunctive proceeding.¹ He enclosed a January 21, 2005, letter directed to the presiding U.S. District Judge in that proceeding indicating his intention to appeal on the basis of lack of notice. The pendency of an appeal does not, however, preclude "follow-up" action based on Respondent's injunction. Joseph P. Galluzzi, 78 SEC Docket 1125, 1130 n.21 (Aug. 23, 2002). Accordingly, this administrative proceeding will not be dismissed.

IT IS SO ORDERED.



Carol Fox Foelak
Administrative Law Judge

¹ Respondent also stated that the Division has consistently mailed all important correspondence to his previous address. The Commission's records indicate that the OIP and all other orders in this proceeding were mailed to him at 361 88th St., Brooklyn, NY 11209, which he stated is his present address.