

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11194

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

NOV 18 2003

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 14, 2003

FIRST CLASS

In the Matter of	:	
	:	ORDER DENYING REQUESTS
PHILIP L. PASCALE, CPA	:	FOR CONTINUANCE OF THE
	:	HEARING DATE AND FOR
	:	CERTIFICATION

The Securities and Exchange Commission (Commission) instituted this proceeding on July 29, 2003. On August 19, 2003, upon joint motion of the parties, I ordered that the hearing date originally scheduled for September 8, 2003, be continued, and scheduled a telephonic prehearing conference on that date in lieu thereof. Following that prehearing conference, I entered an Order that set a prehearing schedule and a hearing date of December 2, 2003. On October 8, 2003, Respondent requested an additional continuation of the hearing date until late January 2004, as well as a continuation of the prehearing schedule, due to Respondent's counsel having to complete post-operative medical treatment. This request was denied.

A month later, Respondent filed a second request to continue the hearing date until late January 2004, in which he represented that his counsel's medical condition had worsened. In support thereof, Respondent attached documentation from his counsel's doctors, along with affidavits from Respondent and his counsel to the effect that his counsel should not attempt to use his voice. Respondent represents that the Division of Enforcement takes no position with respect to his request.

This matter was instituted more than three months ago, and I have already granted one request for postponement. I have also denied Respondent's first request to continue the hearing date. Faced with my denial, Respondent did not promptly renew his request or seek certification of my Order in an effort to obtain interlocutory review by the Commission. Nor did Respondent attempt to obtain substitute counsel. Instead, Respondent waited more than one month before filing his second request.

In addition, we are very close to the hearing date, and the parties will be completing all prehearing filings and exchanges of witness and exhibit lists within two weeks, in accordance with my September 9, 2003, Order. Furthermore, the Commission has specified that this matter be completed within 300 days following service of the Order Instituting Proceedings, which occurred on August 4, 2003. The deadline imposed by the Commission requires me to conclude that granting Respondent's request would not allow me to complete this proceeding within the

time specified. Of course, Respondent is free to represent himself or to employ others to assist his counsel if counsel must remain mute at the hearing. More importantly, the hearing can certainly be conducted in a manner that will accommodate counsel's condition.

Accordingly, pursuant to Rule 161 of the Commission's Rules of Practice, 17 C.F.R. § 201.161, the request to continue the hearing date and prehearing schedule is hereby DENIED. The hearing shall commence as scheduled on Tuesday, December 2, 2003, at 9:00 a.m. EST.

Since I have denied Respondent's request to continue the hearing date, Respondent requests, alternatively, that I certify my Order so that he may seek immediate interlocutory review with the Commission. In pertinent part, Rule 400(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.400(c), provides that an administrative law judge shall not certify a ruling to the Commission for interlocutory review unless, upon application by a party, the judge is of the opinion that: (1) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and (2) an immediate review of the ruling may materially advance the completion of the proceeding. After reviewing the issues raised by Respondent in his request, I conclude that the ruling contained in this Order does not meet the standard necessary to certify it to the Commission for interlocutory review. See Orlando Joseph Jett, 1996 SEC LEXIS 1432 (May 17, 1996). This ruling merely affects the manner in which the hearing will be conducted and certification at this stage is not likely to materially advance completion of the proceeding.

Accordingly, pursuant to Rule 400 of the Commission's Rules of Practice, 17 C.F.R. § 201.400, the request to certify this Order to the Commission for interlocutory review is hereby DENIED.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Lillian A. McEwen". The signature is written in dark ink and is positioned above a horizontal line.

Lillian A. McEwen
Administrative Law Judge