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ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11330

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
December 24, 2003

DEC 29 2003

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In the Matter of	:	
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RITA J. McCONVILLE,	:	SECOND ORDER
and KEVIN M. HARRIS, C.P.A.	:	ON MOTION
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The Securities and Exchange Commission ("Commission") instituted this proceeding with an Order Instituting Proceedings ("OIP") on November 12, 2003. I denied Respondent McConville's motion for a more definite and certain statement of charges ("Motion") on December 17, 2003, after reviewing the Motion and the Division of Enforcement's ("Division") response.

On December 18, 2003, Respondent McConville filed a Reply Memo in Further Support of Her Motion for a More Definite Statement ("Reply Memo"). The Reply Memo argues that even if the OIP complies with the Commission's Rules of Practice, "fairness dictates that the Division more clearly articulate the charges it intends to press against" Respondent McConville. (Reply Memo at 2.) Respondent McConville faults the OIP for its brevity and its failure to "allege the who, what, and where and how of the alleged fraud." (Reply Memo at 3.) In support of her argument, the Reply Memo cites several cases, including Alfred M. Bauer, 62 SEC Docket 2415 (Aug. 27, 1996); Ernst & Whinney, 1986 SEC LEXIS 2291 (Feb. 12, 1986); First Jersey Securities, Inc., 1979 SEC LEXIS 2432 (Aug. 21, 1979); and Charles M. Weber, 35 S.E.C. 79 (1953).

**Ruling**

The Reply Memo contains the same argument made in the Motion. The case citations are new. I have reconsidered the argument and reviewed the cited cases. Ernst & Whinney is inapplicable to this situation. That proceeding involved allegations of violations of former Rule 2(e) of the Commission's Rules of Practice, and the parties compromised most of their differences so that all that was left was a request by Respondents that the Chief Accountant identify the documentary source of figures and the rationale used for the methods of calculations contained in one paragraph of the OIP. Acting pursuant to former Rule 8(d) of the

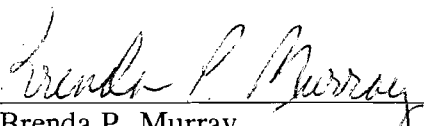
Commission's Rules of Practice, which authorized judges to act to expedite the hearing or promote fairness, Judge Soffer exercised his discretion and ordered the Chief Accountant to provide Respondents with a statement setting forth the underlying theory or theories and calculations that supported the allegation that Respondents' accounting practices inflated their client's pre-tax profits. Judge Soffer did not act pursuant to former Rule 7(d) of the Commission's Rules of Practice, which provided for motions for a more definite statement.

First Jersey Securities, Inc. is also inapplicable to this situation. That case charged ten persons with multiple violations of the securities laws. Following the exchange of information at a prehearing conference, Judge Soffer considered motions for more definite statements from nine Respondents and ordered the Division to (1) state the basis for the allegation that the Respondent broker-dealer was engaged in a "distribution" and that Respondents acted "in concert," and (2) inform one Respondent whether he would be charged with more violations than with respect to one named security, and if so, to identify the securities and/or transactions.

Judge Follick's ruling in Alfred M. Bauer, ordering the Division to identify the customers and securities referred to in one paragraph of the OIP, and the actions taken by the Commission in Charles M. Weber are not persuasive that the Motion should be granted.

The OIP in this proceeding contains many paragraphs that detail what Respondent McConville allegedly did, or did not do, from February 28, 1997, to March 20, 2001, as chief financial officer of Akorn, a Louisiana corporation, to violate Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and to cause Akorn to violate Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20 and 13a-1. The Commission's Rules of Practice and the multitude of cases on this issue establish that Respondents should be reasonably apprised of the allegations against them. This mandate includes the concept of fair treatment. Respondent McConville has not shown either a technical violation of the Rules of Practice or that the OIP is unfair to her.

I DENY the Motion for the reasons stated in this Order and for those stated in the Order On Motion issued December 17, 2003.

  
Brenda P. Murray  
Chief Administrative Law Judge