

ALS

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11650

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
October 6, 2004

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

OCT 9 2004

FIRST CLASS

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In the Matter of :  
: ORDER  
: KENNETH A. ORR :  
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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on September 14, 2004. The Chief Administrative Law Judge then assigned the matter to my docket and scheduled a hearing for October 25, 2004. The Office of the Secretary has provided evidence that Respondent Kenneth A. Orr (Orr) received the OIP on September 20, 2004. Under the terms of the OIP, I am required to resolve this matter within 210 days after September 20, 2004. As matters now stand, Orr's Answer to the OIP is due on October 12, 2004.

By motion dated October 4, 2004, Orr requests an additional sixty days to file his Answer to the OIP. He also requests that the hearing be postponed for sixty days. As grounds for this relief, Orr represents that his lead attorney is involved in the trial of an unrelated matter. The trial in question is expected to run through November 2004. Orr states that he will be unfairly prejudiced unless "the principal attorney" who represents him can "lead and effectively participate" in his defense. The Division of Enforcement (Division) does not oppose Orr's motion.


The allegations in the OIP are brief and straightforward. One paragraph of the OIP simply alleges biographical details about Orr. Two other paragraphs allege that Orr pleaded guilty in January 2002 to one criminal count of conspiracy to launder money; and that in September 2002, Orr was permanently enjoined from violating the antifraud provisions of the federal securities laws. The final two paragraphs of the OIP make certain factual allegations about the content of the Commission's complaint in the underlying injunctive action.

It should not require a great deal of time or effort to "admit" or "deny" these allegations in the OIP. An Answer requires no more. In any event, a party may amend its answer at any time by written consent of each adverse party or with leave of the hearing officer. See Rule 220(e) of the Commission's Rules of Practice. The issue for decision is whether the allegations in the OIP are true or not, and, if true, whether any remedial sanction is appropriate in the public

interest against Orr pursuant to Section 15(b) of the Securities Exchange Act of 1934. Orr is represented by a large law firm, and the fact that his "principal attorney" is currently unavailable does not preclude other attorneys at the firm from lending a hand in crafting Orr's Answer. Orr has presented no persuasive reasons why lead counsel's current unavailability should block all progress in this case. Orr has not even attempted to harmonize his request with the 210-day decision-making deadline. Preliminary matters, such as filing an Answer, inspecting and copying the investigative file, and deciding whether to proceed to a hearing or by summary disposition can be addressed without prejudicing Orr's opportunity for a fair proceeding on the merits.

Orr's motion for an enlargement of time to file his Answer is granted in part and denied in part. Orr's Answer will be considered timely if it is received on or before October 19, 2004. If the Division has not already done so, it shall promptly notify Orr in writing of the time and place for inspecting and copying its investigative file. If the Division intends to seek leave to file a motion for summary disposition, it shall file and serve its motion for leave to file by October 25, 2004. Of course, there will be no ruling on any such motion for leave to file until Orr has an opportunity to respond. At that time, Orr can update the record as to the availability of his principal attorney. The hearing now set for October 25, 2004, will be postponed until November 3, 2004, at the time and place previously identified.

SO ORDERED.

  
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James T. Kelly  
Administrative Law Judge