

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12559

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

APR 09 2007

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 9, 2007

In the Matter of :
: :
TRAUTMAN WASSERMAN & :
COMPANY, INC., : ORDERS ON MOTIONS
GREGORY O. TRAUTMAN, :
SAMUEL M. WASSERMAN, :
MARK BARBERA, :
JAMES A. WILSON, JR., :
JEROME SNYDER, and :
FORDE H. PRIGOT :

The Securities and Exchange Commission (Commission) instituted this administrative and cease-and-desist proceeding (OIP) on February 5, 2007. A number of procedural issues have been addressed at prehearing conferences held on March 5 and 29, 2007, and decided there and in prior written orders.

Currently, the Division of Enforcement (Division) is required to make available to all respondents for inspection and copying the portions of its investigative file that the New York Attorney General (NYAG) believes can be disclosed without damaging prosecution of the parallel criminal proceeding, People v. James Wilson, Indictment No. 4188/2006, Supreme Court of New York. Disclosure was to include all materials that duplicate what the NYAG made available to Respondent James A. Wilson, Jr. (Wilson).

Prehearing procedural dates are in place for a hearing scheduled to begin on June 4, 2007, in Washington, D.C.

New Matters

On April 4, 2007, Wilson pleaded guilty in the parallel criminal case.¹ The NYAG requests that I: (1) adjourn this administrative proceeding until after sentencing, which will not occur until June 7, 2007, at the earliest; and (2) continue to require the Division to confer with the NYAG to make available to respondents "the Division's investigative file that the NYAG

¹ According to the Division, Wilson pleaded guilty to one felony charge under New York State's Martin Act based on the same conduct alleged in this proceeding.

believes can be disclosed without damaging prosecution of the parallel criminal case.” (NYAG letter dated April 5, 2007.)

The Division: (1) has informed me that “[g]iven [my] order dated March 30, 2007, the Division has decided not to make a motion to the Commission to withdraw the cease-and-desist proceedings at this time,” and (2) requests on behalf of all parties that the hearing take place in New York City at the Northeast Regional Office. (Division letter dated April 5, 2007.)

On April 6, 2007, Respondent Mark Barbera (Barbera) filed a “Renewed Application to Set Trial Date Pursuant to 30 to 60 Day Statutory Requirement, Motion to Dismiss, Motion to Clarify Record for Interlocutory Review and Motion to Clarify Order.”

Discussion, Rulings, and Orders

NYAG

I DENY the NYAG’s requests. The NYAG has no standing to request that I adjourn the hearing. Rule 210(c)(3) authorizes:

leave to participate on a limited basis to . . . an authorized representative of any criminal prosecutorial authority of any State . . . for the purpose of requesting a stay during the pendency of a criminal . . . prosecution arising out of the same or similar facts that are at issue in the pending Commission proceeding. 17 C.F.R. § 201.210(c)(3) (emphasis added).

Moreover, the strongest reasons that the NYAG gives in support of a stay – the substantial overlap of the allegations and the fact that most of the witnesses will be the same and discovery could permit witnesses to shape their testimony prejudicing the NYAG - no longer exist now that Wilson has pleaded guilty. Accordingly, I ORDER the Division to make its complete investigative file available to respondents.

Division

I GRANT the request that all hearings be held in New York City. 17 C.F.R. § 201.200(c).

The provisions of the securities statutes that are the bases for the Division’s ability to seek a cease-and-desist order in this proceeding give Barbera the right to have a hearing on those allegations not earlier than thirty nor later than sixty days after service of the OIP.² I issued my March 30, 2007, order expecting that the Division would, as set out in the order:

² Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Section 9(f) of the Investment Company Act of 1940, and Section 203(k) of the Investment Advisers Act of 1940.

At the March 29, 2007, prehearing conference, the Division represented that it would “promptly file a motion with the Commission seeking, pursuant to Rules 154 and 200 of the Commission’s Rules of Practice, to amend the OIP in this matter and to withdraw the cease-and-desist proceedings against all respondents, but maintain” the other statutory provisions for the administrative proceeding that are set out in the OIP. (Division letter dated March 28, 2007.)

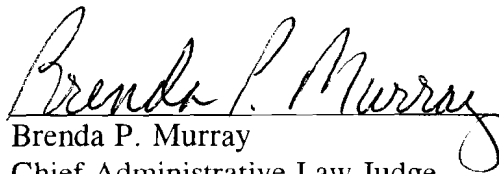
I apologize to the Division because my March 30, 2007, order was not clear that the cease-and-desist provisions must be stricken at least as to Barbera. If those provisions remain in the OIP, Barbera has a statutory right to a hearing within sixty days of February 12, 2007, the date he was served with the OIP. The fact that Barbera waited until March 22, 2007, or when over half the sixty days had expired before he demanded his right to a speedy hearing under Section 21C, does not negate the language of Section 21C even though a hearing in this time frame on these facts is impractical.

Accordingly, unless the Division files a motion with all supporting documentation to amend the OIP to withdraw the cease-and-desist proceedings against Barbera with the Commission’s Secretary by noon on Wednesday, April 11, 2007, I ORDER a hearing as to Barbera beginning in a court room in New York City beginning 9:30 a.m. EDT, on Friday, April 13, 2007.³

The June 4, 2007, hearing and the procedural schedule outlined in the March 30, 2007, remains in effect for all other respondents and for Barbera as well if the Division files a motion to amend the OIP as to him by noon on April 11, 2007.

Barbera

Given the ORDERS issued, Barbera’s requests for dismissal with prejudice, certification to the Commission, and clarification of the March 30, 2007, order are moot.


Brenda P. Murray
Chief Administrative Law Judge

³ My Office will begin working with persons in the Commission’s Northeast Regional Office to find a suitable court room in New York City. The hearing will take place in a hearing room at the Commission’s Northeast Regional Office only if no other location can be found.