

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 61928 / April 16, 2010

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3016 / April 16, 2010

INVESTMENT COMPANY ACT OF 1940
Rel. No. 29207 / April 16, 2010

Admin. Proc. File No. 3-13337

In the Matter of

Diane M. Keefe
c/o Robert Knuts
Park & Jensen, LLP
630 Third Avenue
New York, New York 10017

CORRECTED
ORDER REMANDING PROCEEDING
TO ADMINISTRATIVE LAW JUDGE

I.

Diane M. Keefe, a former employee of Pax World Management Corp. ("Pax Management"), a registered investment adviser, appeals an administrative law judge's decision. The law judge found that Keefe, a portfolio manager of the Pax World High Yield Fund ("Fund"), an investment company registered with the Commission and advised by Pax Management, willfully violated Section 34(b) of the Investment Company Act of 1940¹ by creating handwritten notes that falsely represented that several Fund investment committee ("Investment Committee") meetings involving all three committee members occurred on certain

¹ 15 U.S.C. § 80a-33(b). Investment Company Act Section 34(b) prohibits any person from making an untrue statement of material fact in, among other things, any document the keeping of which is required pursuant to Investment Company Act Section 31(a).

dates. The law judge suspended Keefe for twelve months from association with an investment adviser, broker, or dealer.

II.

A. Procedural History

The law judge decided this matter by summary disposition pursuant to Commission Rule of Practice 250 after cross-motions were filed by the parties.² Under Rule 250(a), the facts of the pleadings of the party against whom such a motion is made must be taken as true, except as modified by stipulations, admissions, uncontested affidavits, or facts of which the Commission may take official notice.³ A record on summary disposition is limited to the parties' filings, supplemented by attachments. Here, the record includes investigatory testimony from Keefe and Pax Management compliance liaison, Janet Spates, excerpts of Fund registration statements and proxies regarding the Investment Committee, and certain communications between Commission staff and employees or counsel for Pax Management.

B. Undisputed Facts

During the period at issue, Keefe was the portfolio manager for the newly created Fund. Keefe was responsible for the day-to-day management of the Fund's portfolio, including deciding which portfolio securities to buy and sell on behalf of the Fund. Pax Management was responsible for, among other things, managing the Fund's assets, subject to the supervision of the Fund's board of directors.

The Fund's registration statements and proxy statements filed with the Commission from 2000 to 2004 state that the Fund had an Investment Committee with "the responsibility of overseeing the investments of the Fund." However, the Fund's board never adopted a resolution forming the Investment Committee. The Fund's disclosure documents differed as to the makeup of the purported Investment Committee. The supplementary statements of additional information identify the Investment Committee members as Thomas W. Grant, the president and a director of the Fund and the president of Pax Management, and Laurence A. Shadek, the chairman of the board of directors of the Fund and Pax Management. The proxy statements identify Grant, Shadek, and Keefe as Investment Committee members. The proxy statements filed from 2001 to 2004 each state that the Investment Committee held two meetings during the previous calendar year. Keefe, Shadek, and Grant worked in the adviser's New York office.

In August 2003, staff from the Commission's Office of Compliance Inspections and Examinations notified the Pax World Fund Family, a family of mutual funds including the Fund, of an imminent examination. Janet Spates, the Fund's assistant treasurer who also served as the

² 17 C.F.R. § 201.250.

³ 17 C.F.R. § 201.250(a).

adviser's operations manager, chief financial officer, chief operating officer, and a "compliance liaison," assisted in the preparation of materials for the examination. Keefe faxed the notes at issue to Spates, who worked in the adviser's New Hampshire headquarters. Keefe has appealed the initial decision to the Commission, and this proceeding followed.

C. Conclusion

We have reviewed the limited record before us and believe that the record would benefit from direct and cross-examination of any relevant witnesses and the fact-finding determinations of a law judge. Moreover, the parties did not address the issue of sanctions in their cross-motions for summary disposition. While Rule 250 in many circumstances is an appropriate means for disposition of a proceeding,⁴ we believe that this case should be remanded to continue the process initiated by the Order Instituting Proceedings. Pursuant to the Commission's Rules of Practice, the parties are free to explore issues as they see fit during a hearing process. However,

⁴ We have repeatedly upheld the use of summary disposition by a law judge in cases where the respondent has been enjoined or convicted of an offense listed in certain sections of the federal securities laws, the sole determination is the proper sanction, and no material fact is genuinely disputed. *See, e.g., Chris G. Gunderson, Esq.*, Securities Exchange Act Rel. No. 61234 (Dec. 23, 2009), 97 SEC Docket 24040 (injunction); *Martin A. Armstrong*, Investment Advisers Act Rel. No. 2926 (Sept. 17, 2009), 96 SEC Docket 20556 (conviction and injunction), *appeal filed*, No. 09-1260 (D.C. Cir. Oct. 1, 2009); *Scott B. Gann*, Exchange Act Rel. No. 59729 (Apr. 8, 2009), 95 SEC Docket 15818 (injunction), *aff'd*, No. 09-60435 (5th Cir. 2010) (slip copy); *Gary M. Kornman*, Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246 (conviction), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Rel. No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104 (injunction), *petition denied*, 561 F.3d 548, 553 (6th Cir. 2009); *Conrad P. Seghers*, Advisers Act Rel. No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293 (injunction), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008); *Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598 (conviction and injunction); *Michael Batterman*, 57 S.E.C. 1031 (2004) (injunction), *aff'd*, No. 05-0404 (2d Cir. 2005) (unpublished); *Charles Trento*, 57 S.E.C. 341 (2004) (conviction); *Joseph P. Galluzzi*, 55 S.E.C. 1110 (2002) (conviction and injunction); *John S. Brownson*, 55 S.E.C. 1023 (2002) (conviction), *petition denied*, 66 F. App'x. 687 (9th Cir. 2003) (unpublished). Courts have acknowledged the propriety of applying Rule 250 in such circumstances because, in most instances, the "proceeding has resolved the central issue concerning the nature of the 'alleged misconduct' and only the question of the appropriate sanctions remains." *Kornman v. SEC*, 592 F.3d 173, 182 (D.C. Cir. 2010); *see also Gibson v. SEC*, 561 F.3d 548, 553 (6th Cir. 2009) (denying respondent's petition for review and noting that the Commission has held that summary disposition is not disfavored in follow-on proceedings, such as the proceeding at issue, and that the respondent already agreed not to dispute the facts alleged in the original district court complaint).

We also have upheld the use of summary disposition by a law judge in a case where the respondent admitted that it failed to file quarterly or annual reports required under Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13. *Eagletech Commc'ns., Inc.*, Exchange Act Rel. No. 54095 (July 5, 2006), 88 SEC Docket 1225.

we note that amplification of the current record with facts supporting either party's position on the issue of materiality would aid any decisional process.⁵

Accordingly, IT IS ORDERED that the disciplinary proceeding against Diane M. Keefe be, and it hereby is, remanded for further consideration; and it is further

ORDERED that the Administrative Law Judge shall issue an initial decision no later than 234 days (300 days as provided in the original Order Instituting Proceedings less 66 days that elapsed between the date of service of the Order Instituting Proceedings and the filing of pleadings regarding each party's motion for summary disposition) from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

By the Commission.

Elizabeth M. Murphy
Secretary

⁵ The Division filed, pursuant to Commission Rule of Practice 452, a motion to supplement the record with fifteen sets of Fund board minutes. The Division asserts that these minutes reveal that the board meetings did not provide the kind of supervision Keefe claims to have received and therefore undermines her argument that the notes were not material. Because we are remanding this proceeding, we do not address the motion, and leave it for the law judge to decide on remand if the Division still wishes to pursue it.