

JUN 11 2002

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

CTFD. NO. \_\_\_\_\_

June 10, 2002

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In the Matter of :  
:   
CLARKE T. BLIZZARD and : ORDER  
RUDOLPH ABEL :  
:

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The Securities and Exchange Commission (Commission) instituted this proceeding on September 9, 1999. A prehearing conference was scheduled for June 13, 2002, to set a new hearing date after the Commission disqualified Attorney Daniel I. Small from representing Respondent Rudolph Abel and several individuals whom the Division of Enforcement (Division) proposes to call as witnesses at the hearing in this proceeding. See Clarke T. Blizzard and Rudolph Abel, 77 SEC Docket 1515 (Apr. 24, 2002) (Order) (disqualifying Mr. Small). A petition for review of the Order is pending before the United States Court of Appeals for the District of Columbia Circuit. See Abel v. SEC, No. 02-1163 (D.C. Cir. filed May 24, 2002).

Under consideration are (1) Abel and Witnesses' May 23 Motion to Stay Trial, filed by Mr. Small, and responsive pleadings;<sup>1</sup> (2) the Division's June 4 Motion for Sanctions Pursuant to Commission Rule 180 and Abel and Attorney Small's June 10 Motion to Strike and Opposition; and (3) the Division's June 4 Motion to Compel Respondent Blizzard to Comply [with the May 20 Procedural Order of the undersigned] and Respondent Blizzard's June 10 Opposition.

The Motion to Stay asks the undersigned to stay this proceeding pending a final ruling by the Court of Appeals on the petition for review of the Commission's Order. The Division's Motion for Sanctions argues that the Motion to Stay is in contempt of the Commission's Order because Mr. Small filed it. The Division requests various sanctions against Respondent Abel and Mr. Small for what it argues is contemptuous conduct within the meaning of 17 C.F.R. § 201.180 (Rule 180). Inter alia, the Division asks that the Motion to Stay be rejected pursuant to Rule 180(b).

The Motion to Stay Trial is not contemptuous conduct within the meaning of Rule 180(a). It is, however, a request to stay the effectiveness of the Commission's Order. Only

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<sup>1</sup> Responsive pleadings include the Division's May 28 Opposition, Mr. Small's May 29 filing titled "Witness Glenn Murphy's Motion for Stay," and the Division's May 31 Opposition to that pleading.

the Commission can stay its Order; the undersigned is not authorized to do so, as indicated in the April 25 prehearing conference and Prehearing Order (A.L.J. Apr. 25, 2002 [unpublished]). See 17 C.F.R. § 201.401(c). Accordingly, the Motion to Stay, as well as any responsive pleading filed by Mr. Small, is a deficient filing within the meaning of Rule 180(b). Pursuant to Rule 180(c), two weeks, that is until June 24, will be allowed to cure the deficient filing, by filing it with the Commission. The undersigned understands that, consistent with due process, the Commission has not barred Mr. Small from filing with the Commission a request concerning its Order to disqualify him.

The Division asks that, going forward, any additional filings made by Mr. Small on behalf of Respondent Abel or prospective witnesses in this proceeding be rejected, pursuant to Rule 180(b). Such filings by Mr. Small are inconsistent with the Commission's Order. Accordingly, the undersigned will reject filings made by Mr. Small in this proceeding unless the Commission or Court of Appeals modifies the terms of the Order or otherwise reverses the disqualification of Mr. Small.

The Division indicates that Respondents Abel and Blizzard have failed to make filings required by the May 20 Procedural Order (A.L.J. May 20, 2002 [unpublished]). In view of the other rulings herein, compliance with the May 20 Procedural Order is suspended.

Finally, to allow time for the deficient filing to be cured and for the Commission to consider the stay request, the prehearing conference will be postponed until July 31, 2002, pursuant to 17 C.F.R. § 201.161.

IT IS SO ORDERED.



Carol Fox Foelak  
Administrative Law Judge