

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-9793

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 4, 2003

MAR 05 2003

CTED. NO. 1ST CLASS

In the Matter of :
: ORDER DENYING MOTION
JEAN-PAUL BOLDUC, et al. : FOR SUMMARY DISPOSITION
:
:

This proceeding concerns alleged manipulation of earnings reported from 1991 to 1996 by W.R. Grace & Co. (W.R. Grace) of its subsidiary National Medical Care, Inc. (NMC). The hearing is scheduled to commence April 28, 2003. Respondents are former officers of W.R. Grace or NMC. Under consideration is Respondent A. Miles Nogelo's February 21, 2003, Motion for summary disposition (Motion).¹ The Division of Enforcement (Division) opposed the Motion on March 3, and 17 C.F.R. § 201.250 (Rule 250) does not contemplate a reply pleading.

The charges against Nogelo are authorized as a cease-and-desist proceeding only, pursuant to Section 21C of the Securities Exchange Act of 1934. Citing KPMG Peat Marwick LLP, 74 SEC Docket 384, 429 (Jan. 19, 2001), recon. denied, 74 SEC Docket 1351 (Mar. 8, 2001), aff'd, 289 F. 3d 109 (D.C. Cir. 2002), Nogelo argues that he retired from business six years ago so that there is no possibility of future violation and no basis for a cease-and-desist order against him. Pursuant to Rule 250(a), "[t]he facts of the pleadings of the party against whom the motion is made shall be taken as true." Thus, Nogelo will be assumed to have committed the violations alleged in the Order Instituting Proceedings. For a cease-and-desist order to issue, "there must be some likelihood of future violation." KPMG, 74 SEC Docket at 429. Nogelo's statement concerning his recent work history, at most, raises an issue of material fact as to the likelihood of future violation. Therefore, his Motion will be denied, pursuant to Rule 250(b).

IT IS SO ORDERED.



Carol Fox Foelak
Administrative Law Judge

¹ The undersigned granted Nogelo's February 21 request for leave to file a motion for summary disposition, pursuant to 17 C.F.R. § 201.250(a), by unpublished Order on February 25.