

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12559

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 30, 2007

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

Background

On February 5, 2007, the Securities and Exchange Commission (Commission) instituted this administrative and cease-and-desist proceeding (OIP) pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 9(b) and 9(f) of the Investment Company Act of 1940 (Investment Company Act), and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (Advisers Act).

On March 13, 2007, I granted an application by the Attorney General of the State of New York (NYAG) to intervene to request that the proceeding be stayed until the conclusion of a parallel criminal proceeding against Respondent James M. Wilson, Jr. (Wilson), in the Supreme Court of the State of New York.¹ On March 13, 2007, I stayed all procedural dates for six months.

On March 23, 2007, in response to a motion by Respondent Mark Barbera (Barbera), made pursuant to Section 21C of the Exchange Act, that the hearing begin within sixty days of when Barbera was served with the OIP, I: (1) lifted the stay as to all Respondents; (2) ordered Respondents to Answer the OIP by March 29, 2007; (3) ordered the Division of Enforcement (Division) to make its investigative file available to Respondents by March 30, 2007; and (4) ordered the hearing to begin on April 13, 2007.

¹ Wilson was arrested on September 13, 2006. The bill of particulars is dated November 3, 2006. (NYAG Application to Intervene and Motion to Stay this Administrative Proceeding.)

At a prehearing conference on March 29, 2007:

I GRANTED a Joint Motion of the Division and Respondent Jerome Snyder (Snyder) for a stay only as to Snyder pursuant to Commission Rule of Practice 161(c)(2).² 17 C.F.R. §201.161(c)(2). Snyder shall submit a signed Offer of Settlement within fifteen business days of the stay and the Division shall submit the Offer of Settlement and accompanying recommendation to the Commission within twenty days of receipt. The Division and Snyder shall notify me if Snyder's planned settlement is withdrawn or denied. If the Offer of Settlement is not accepted, Snyder will be bound by the procedural deadlines applicable to the other Respondents.

I DENIED a Motion by the NYAG for: (1) reconsideration of my order lifting the six-month stay or certification of the ruling for interlocutory review by the Commission, and (2) reinstatement of the stay pending reconsideration. Rule 400 of the Commission's Rules of Practice specifies that interlocutory appeals will be allowed in extraordinary circumstances where "the ruling involves a controlling question of law as to which there is substantial grounds for difference of opinion; and an immediate review of the ruling may materially advance the completion of the proceeding." 17 C.F.R. § 201.400. There is no substantial grounds for a difference of opinion with respect to cease-and-desist proceedings; Section 8A(b) of the Securities Act, Section 21C(b) of the Exchange Act, Section 9(f) of the Investment Company Act, and Section 203(k) of the Advisers Act provide: "The notice instituting proceedings . . . shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served." In addition, an interlocutory appeal will delay rather than advance the completion of the proceeding.

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. (Letter dated March 28, 2007.)

Barbera filed a Reply opposing the NYAG's Motion for Reconsideration and Interlocutory Review dated March 29, 2007. In the pleading, and as amplified at the prehearing conference, Barbera: (1) opposed the NYAG's requests; (2) reaffirmed his request that his hearing begin within sixty days of service of the OIP; and (3) gave notice that he will oppose the Division's request to amend the OIP to withdraw the cease-and-desist proceedings.

² Barbera filed an Opposition to the Joint Motion dated March 29, 2007, based on a misunderstanding of the Joint Motion.

At the prehearing conference, all Respondents, except Barbera, objected to having the hearing begin within sixty days.³ These respondents maintain that the discovery materials, which only Wilson has received from the NYAG, consist of millions of pages of documents and hundreds of hours of recorded materials and that if they are forced to defend themselves at a hearing in two weeks without ample opportunity to review this enormous amount of material, their due process rights will be eviscerated.

Finally, at the prehearing conference a party advised that there is a court date on April 3, 2007, in the parallel criminal proceeding against Wilson and that the criminal case is close to a resolution. However, the NYAG did not confirm or deny this statement.

Currently, there is no stay in place pursuant to Rule 210(c)(3) of the Commission's Rules of Practice. 17 C.F.R. § 201.210(c)(3). However, I advised the parties at the conclusion of the hearing that they should not take any procedural action until I reassessed the situation based on the information provided at the prehearing conference.

Rulings and Orders Following the Prehearing Conference

I ORDER that the Division confer with the NYAG and make available to Respondents, except Snyder, for inspection and copying the Division's investigative file that the NYAG believes can be disclosed without damaging prosecution of the parallel criminal case.⁴ 17 C.F.R. § 201.230. This should include all material the NYAG has provided to Wilson. I will consider at a later date release of any portions of the investigative file that the NYAG believes would damage the government's position in the parallel criminal case.

I FURTHER ORDER that Respondents' Answers to the OIP are due April 27, 2007. 17 C.F.R. § 201.220.

I FURTHER ORDER that the hearing scheduled to begin on Friday, April 13, 2007, is postponed to Monday, June 4, 2007, beginning at 9:30 a.m. EDT in Hearing Room 2, 100 F Street, N.E., Washington, D.C. 20549. The size of the investigative record in this proceeding is such that beginning the hearing in less than two weeks time is impossible without depriving all Respondents, except Barbera, of their due process rights. Exchange Act Section 21C refers to "any respondent" consenting to a date beyond the sixty-day maximum, and now it is clear that only Respondent Barbera wants to proceed to hearing within sixty days.⁵ My research indicates that the language was intended to apply to an individual respondent. H.R. Rep 101-616, 1990 U.S.C.C.A.N. 1379, 1391; Matthew Scott Morris, The Securities Enforcement

³ I conclude that all Respondents except Snyder object because I assume that Trautman Wasserman & Company, Inc., will take the same position as Respondents Gregory O. Trautman and Samuel M. Wasserman.

⁴ The NYAG will work with the Division to provide Respondents with that discovery that will not prejudice the criminal proceeding.

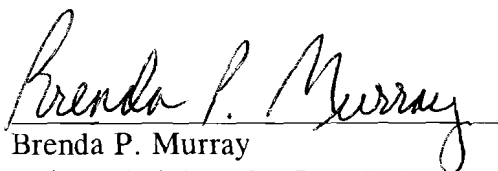
⁵ Rule of Practice 201(b) makes clear that only the Commission can sever a Respondent from a proceeding.

Remedies and Penny Stock Reform Act of 1990: by Keeping Up With the Joneses, the SEC's Enforcement Arsenal is Modernized, 7 The Administrative Law Journal 151, 163 n.46 (1993). The phrase "not later than sixty" in Section 21C(b) appears to have been intended to make certain that allegations that might result in cease-and-desist orders be resolved quickly and to "enhance the SEC's enforcement capabilities without sacrificing individual rights." 7 The Administrative Law Journal at 195.

The issue here is whether one Respondent should be allowed to use a literal reading of the statute to thwart the public hearing ordered by the Commission, or whether, in these circumstances, it is in the public interest to deny that respondent a hearing within sixty days and to manage the proceeding so as to accomplish what appears to have been the Congressional intent of protecting individual rights by permitting persons a hearing at the earliest possible time. 7 The Administrative Law Journal at 195. I select the latter position given that an Initial Decision is almost certain to be issued within 300 days or very close thereto. Accordingly,

I FURTHER ORDER the following procedural schedule:

- May 11, 2007: Division shall provide Respondents with the names of its witnesses and a list of proposed exhibits, with copies of those exhibits that Respondents do not have;
- May 18, 2007: Division will provide Respondents with written testimony from any experts;
- May 25, 2007: Respondents will provide the Division with the names of their witnesses and a list of proposed exhibits;
- May 30, 2007: Respondents will provide the Division with written testimony from any experts; and
- May 31, 2007: Submission of Prehearing Briefs.


Brenda P. Murray
Chief Administrative Law Judge