

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56961 / December 13, 2007

Admin. Proc. File No. 3-12596

In the Matter of

SALVATORE F. SODANO

c/o William R. Baker III, Esq.
Latham & Watkins, LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304

ORDER DENYING
MOTION FOR SUMMARY
AFFIRMANCE

On August 20, 2007, an administrative law judge issued a decision dismissing an administrative proceeding against respondent Salvatore F. Sodano, formerly the Chairman and Chief Executive Officer (“CEO”) of the American Stock Exchange, LLC (“Amex” or the “Exchange”). On August 27, 2007, the Commission’s Division of Enforcement (the “Division”) filed a petition for review of the law judge’s decision. On August 29, 2007, Sodano filed a motion seeking summary affirmance by the Commission of the law judge’s decision. The Division subsequently filed a response to Sodano’s motion on September 4, 2007. We have determined to deny Sodano’s motion.

The Division seeks a censure of Sodano under Section 19(h)(4) of the Securities Exchange Act of 1934. ^{1/} Under this section, the Commission is authorized “to remove from office or censure any officer or director of [a] self-regulatory organization” if the Commission finds “that such officer or director has willfully violated any provision of [the Exchange Act], the rules or regulations thereunder, or the rules of [the] self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance.”

The Order Instituting Proceedings (“OIP”), issued by the Commission on March 22, 2007, alleges that, as the Amex’s Chairman and CEO, Sodano failed to enforce compliance with federal securities laws, rules and regulations, and Amex rules by the Amex’s members and persons associated with the Amex’s members. On September 11, 2000, the Commission instituted a settled administrative proceeding against the Amex and three other respondent exchanges, in which the Commission found, among other things, that the Amex had failed to adequately enforce certain option order handling rules including critical customer-protection

^{1/} 15 U.S.C. § 78s(h)(4).

rules relating to firm quote and trading ahead. 2/ The OIP charges that Amex's regulatory deficiencies and their continuation after the Commission ordered the Amex to enhance and improve its regulatory programs for enforcing these rules resulted from Sodano's failure to pay adequate attention to and dedicate sufficient resources to regulation.

The law judge never reached the merits of the charges against Sodano because the law judge found that Exchange Act Section 19(h)(4) authorized the Commission to censure only persons who are currently officers and directors of self-regulatory organizations. In January 2005, Sodano resigned his position as Amex CEO, and he resigned his position as Amex Chairman in April 2005. As a result, the law judge found that the Commission lacked authority under Exchange Act Section 19(h)(4) to censure Sodano. Accordingly, the law judge dismissed the proceedings.

Rule of Practice 411(e)(2) provides that the Commission may summarily affirm an initial decision if the Commission determines that no issue raised in the proceeding warrants further consideration. 3/ That rule provides further that the Commission may deny a motion for summary affirmance upon a reasonable showing that, among other reasons, the initial decision embodies an exercise of discretion that is important and that the Commission should review. 4/

Sodano claims that summary affirmance is warranted for two reasons. Sodano argues that the law judge's interpretation of Section 19(h)(4) is "straightforward and correct." Sodano further contends, "This case has already occupied more of the Commission's enforcement resources than it warrants. After briefing and argument before the full Commission on this arcane statutory issue, any remand would be followed by a four- to five-week trial involving dozens of witnesses and thousands of exhibits."

In opposition to Sodano's motion for summary affirmance, the Division contends that the law judge's decision is based on an incorrect interpretation of Exchange Act Section 19(h)(4). The Division claims that Sodano's violations were pervasive and continued after Commission warnings and, as a result, were the types of violations Section 19(h)(4) is designed to address. Although the Division acknowledges that its appeal presents a question of first impression to the Commission, the Division argues that the securities laws should be interpreted broadly in general and points more specifically to the use of the past tense in the text of Section 19(h)(4) as indicating that the Section applies both to former and current officers and directors of self-regulatory organizations. The Division further claims that the law judge's interpretation of Section 19(h)(4) would permit an officer or director to avoid a censure by resigning, up to as late

2/ Certain Activities of Options Exchanges, Securities Exchange Act Rel. No. 43268 (Sept. 11, 2000), 73 SEC Docket 697.

3/ 17 C.F.R. § 201.411(e)(2).

4/ Id.

as the date of issuance of the law judge's decision. For these reasons, the Division argues that its appeal presents an important policy matter that merits Commission review.

We previously have noted that “[s]ummary affirmance is rare, given that generally we have an interest in articulating our views on important matters of public interest and the parties have a right to full consideration of those matters.” ^{5/} Summary affirmance is appropriate when it is clear that “submission of briefs by the parties will not benefit us in reaching a decision.” ^{6/}

That is not the case here. We have an interest in articulating our own views on the matters raised in this proceeding, and we wish to have the benefit of the parties' views on whether the Commission's authority to censure under Exchange Act Section 19(h)(4) extends to former officers and directors of self-regulatory organizations such as the Amex. The questions posed by the Division's petition for review involve important matters regarding the Commission's regulatory authority. Under the circumstances, it appears appropriate to consider the record and the parties' arguments as part of the normal appellate process rather than the abbreviated process involved with a summary affirmance. We therefore deny Sodano's motion.

Accordingly, it is ORDERED that the motion for summary affirmance by Salvatore F. Sodano be, and it hereby is, denied.

By the Commission.

Nancy M. Morris
Secretary

^{5/} Richard Cannistraro, 53 S.E.C. 388, 389 n.3 (1998); see also Terry T. Steen, 52 S.E.C. 1337, 1338 (1997) (denying summary affirmance and noting that such action is appropriate only where there are “compelling reasons”).

^{6/} Cannistraro, 53 S.E.C. at 389 n.3. In Cannistraro, we summarily affirmed the decision of a law judge denying a Division motion to suspend indefinitely administrative proceedings against a respondent who had evaded service. Our decision was based on Commission Rule of Practice 161, which, at the time, permitted postponement for a “reasonable period of time” and which we interpreted to mean not an “open-ended” period. In determining that summary affirmance was appropriate, we noted that the record was abbreviated, consisting primarily of the Division's motions for extensions of time to serve the respondent, and that such Commission action would “not be unjust for either party.” Id. at 389; see also Christopher A. Lowry, 55 S.E.C. 481 (2001) (denying motion for summary affirmance where the Commission “wish[ed] to have the benefit of the parties' views on, among other matters, the appropriate sanctions in the public interest”).