UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 63665 / January 6, 2011

Administrative Proc. File No. 3-12944

In the Matter of

STEVEN ALTMAN, ESQ.

c/o Jeffrey C. Hoffman, Esq.
Hoffman & Pollok LLP
260 Madison Avenue
22nd Floor
New York, NY 10016

ORDER DENYING MOTION FOR RECONSIDERATION AND A STAY

On November 10, 2010, we issued an opinion and order permanently denying Steven Altman, Esq., an attorney licensed to practice law in New York, the privilege of appearing or practicing before the Commission pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice[1] and Section 4C of the Securities Exchange Act of 1934.[2] We found that, between January 28 and March 10, 2004, Altman engaged in unethical and improper professional conduct, in violation of New York bar rules, while representing a prospective witness for the Division of Enforcement (the "Division") in a Commission administrative proceeding. Specifically, we

[1] 17 C.F.R. § 201.102(e)(1)(ii) (providing, in pertinent part, that "[t]he Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter -- to be lacking in character or integrity or to have engaged in unethical or improper professional conduct").

[2] 15 U.S.C. § 78d-3(a)(2) (providing, in pertinent part, that "[t]he Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter -- to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct").

found that Altman offered to have his client evade the Division's service of a subpoena and/or testify falsely in exchange for financial and other benefits from two respondents in the proceeding. We concluded that Altman's conduct was fundamentally repugnant to the integrity of the Commission's processes and warranted permanent denial of the privilege of appearing or practicing before us.

Altman now moves for reconsideration of our November 10, 2010, opinion and order and for a stay pending judicial review. In his motion, Altman "urge[s] the Commission to not substitute its judgment for that of the ALJ[,] who heard, saw, and experienced first hand" the live testimony and determined to impose a nine-month suspension. According to Altman, "the Commission misperceives the basis for sanctions by eliminating the ability to demonstrate reformation and ignoring the history of the individual at issue, substituting the permanence of terminal execution for the providence of forgiveness and reform." Altman argues that "there is an absence of precedent upon which to evaluate the critical elements of remorse and deterrence in a manner that would permit such a sizeable change in the sanction, without creating the appearance, if not the fact, of the sanction as being punitive. . . ." Altman requests that we defer to the nine-month suspension imposed by the law judge because she was in the best position to determine credibility, remorse, and the "risks and threats of recidivism."

We analyze Altman's motion for reconsideration under Rule of Practice 470.[3] The remedy of a motion for reconsideration is designed to correct manifest errors of law or fact or permit the presentation of newly discovered evidence.[4] Respondents may not use a motion for reconsideration to reiterate arguments previously made or to cite authority previously available.[5] Moreover, we accept only that evidence the movant "could not have known about or adduced before entry of the order subject to the motion for reconsideration."[6]

Altman's motion fails to meet these requirements. Altman argues, in essence, that the Commission erred by not imposing the same nine-month suspension as the law judge. This argument has no merit. Once the Commission granted the parties' petitions for review, the initial decision ceased to have any force or effect.[7] On review, the Commission was vested with all of

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[3] 17 C.F.R. § 201.470.

[4] *Leslie A. Arouh*, 58 S.E.C. 162, 163 & n.6 (2005).

[5] *Id.* at 163 & n.7.

[6] *Feeley & Wilcox Asset Mgmt. Corp.*, 56 S.E.C. 1264, 1269 n.18 (2003).

[7] *Fundamental Portfolio Advisors, Inc.*, 56 S.E.C. 651, 679 n.44 (2003).

the powers which it would have had in making the initial decision.[8] The Commission was free to decide the sanction *de novo*.[9] In addition, the law judge, who heard the live testimony, found that Altman was not "candid and credible" and rejected his version of events. Altman provides no other arguments that give us any reason to reconsider our prior decision.

Nor do we see a basis for granting a stay. We generally consider a stay request in light of four factors: whether the party seeking the stay is likely to prevail on appeal; whether the party seeking the stay is likely to suffer irreparable injury if the stay is not granted; whether any other party is likely to suffer substantial harm if the stay is granted; and whether the stay will serve the public interest.[10] The party seeking the stay has the burden of demonstrating that a stay is justified.[11]

Altman's motion fails to address any of the relevant factors. Nevertheless, we have evaluated his stay request in light of the four factors. Given Altman's egregious misconduct, we believe that Altman is not likely to prevail on appeal on the issue of the Commission's asserted abuse of discretion in imposing a permanent denial of the privilege of appearing or practicing before it.[12] We therefore conclude that a stay is not warranted.

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[8] *See* 5 U.S.C. § 557(b) (stating, in pertinent part, that "[o]n appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule"); *see also* 17 C.F.R. § 201.411(a) (stating that "[t]he Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record").

[9] *See Containerfreight Transp. Co. v. ICC*, 651 F.2d 668, 670 (9th Cir. 1981).

[10] *See Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985).

[11] *Id.* at 978.

[12] Courts of appeal review the Commission's factual findings under the "very deferential" substantial evidence standard. *Siegel v. SEC*, 592 F.3d 147, 155 (D.C. Cir.), *cert. denied*, 130 S. Ct. 3333 (2010). Under this standard, "[t]he reviewing court may not substitute its own judgment for the agency's choice between two fairly conflicting views, even if that court would justifiably have made a different choice had the matter been before it *de novo*." *Id.* Courts of appeal review the Commission's conclusions regarding sanctions to determine whether they are "arbitrary, capricious, or an abuse of discretion." *Id.*; *see also Berger v. SEC*, 347 Fed. Appx. 692, 694 (2d Cir. 2009); *see generally* 5 U.S.C. § 706(2)(A). "The agency's choice of remedy is peculiarly a matter for administrative competence, and [the court of appeals] will reverse it only if the remedy chosen is unwarranted in law or is without justification in fact." *Siegel*, 592 F.3d at 155.

Accordingly, IT IS ORDERED that the motion for reconsideration filed by Steven Altman, Esq., be, and it hereby is, DENIED, and it is further

ORDERED that Altman's request for a stay of the Commission's November 10, 2010 opinion and order permanently denying him the privilege of appearing or practicing before the Commission be, and it hereby is, DENIED.

By the Commission.

Elizabeth M. Murphy
Secretary