

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68435 / December 14, 2012

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3429 / December 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15077

In the Matter of

STORMY L. DEAN

ORDER DENYING MOTION
TO LIFT TEMPORARY SUSPENSION
AND DIRECT HEARING

On October 24, 2012, we issued an order instituting proceedings against Stormy L. Dean pursuant to Commission Rule of Practice 102(e)(3)¹ that temporarily suspended him from appearing or practicing before the Commission.²

The OIP alleges that Dean was the chief financial officer of infoUSA, Inc. from approximately January 2000 through September 2003 and January 2006 through December 2008, and in that position certified infoUSA's Forms 10-K that were filed with the Commission.³

¹ Rule of Practice 102(e)(3)(i), 17 C.F.R. § 201.102(e)(3)(i), provides:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

² *Stormy L. Dean*, Securities Exchange Act Release No. 68097, 2012 WL 5246491 (Oct. 24, 2012).

³ *Id.* at *1. The OIP also alleges that Dean "passed the certified public accountant ('CPA') examination in 1995 and holds a CPA certificate in the state of Nebraska" but "has never obtained a CPA license." *Id.* at *1.

On March 15, 2010, the Commission filed a complaint in the United States District Court for the District of Nebraska alleging that Dean engaged in securities fraud and other violations of the securities laws by preparing and reviewing infoUSA's Forms 10-K and proxy statements that materially understated and failed to properly disclose perquisite compensation to Vinod Gupta, infoUSA's former chief executive officer and Chairman of the Board of Directors, and failed to properly disclose related party transactions involving Gupta.⁴ The complaint also alleged that Dean aided and abetted the filing of infoUSA's false Forms 10-K.

A jury found that Dean violated the antifraud, false proxy statements, false certifications, false statements and omissions to accountants and auditors, and books-and-records provisions of the federal securities laws. A jury also found that Dean aided and abetted infoUSA's violations of the reporting and record-keeping provisions of the Securities Exchange Act of 1934.⁵ On May 29, 2012, the district court entered a judgment permanently enjoining Dean from future violations, directly or indirectly, of §§ 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), and 14(a) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-14, 13b2-1, 13b2-2, 14a-3, and 14a-9 promulgated thereunder.⁶ The judgment also barred Dean from serving as a director or officer of a publicly traded company for a period of three years, and ordered Dean to pay a civil monetary penalty of \$50,000.⁷

In issuing the OIP, we found it "appropriate and in the public interest" that Dean be temporarily suspended from appearing or practicing before the Commission based on the District Court's final judgment. We stated that the temporary suspension would become permanent unless Dean filed a petition challenging it within thirty days of service of the order, pursuant to Rule of Practice 102(e)(3)(ii). We further advised that, pursuant to Rule of Practice 102(e)(3)(iii), upon receipt of such a petition, we would either lift the temporary suspension, set the matter down for hearing, or both.

In his petition, Dean requests that the temporary suspension be lifted, arguing that (i) he has appealed the injunction entered against him, and it would be improper and in derogation of his rights "to allow a temporary suspension to become permanent based upon an injunction that may not be upheld on appeal," (ii) the OIP was filed more than ninety days after final judgment and was therefore untimely under Rule 102(e)(3), (iii) the doctrine of collateral estoppel prevents

⁴ *SEC v. Stormy L. Dean, et al.*, No. 10-CV-00102 LSC (FG3), available at <http://www.sec.gov/litigation/complaints/2010/comp21451-dasanddean.pdf>.

⁵ The jury found that Dean violated (i) the antifraud provisions in Exchange Act § 10(b), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; (ii) the false proxy statements provisions of Exchange Act § 14(a), 15 U.S.C. § 78n(a), and Rules 14a-3 and 14a-9 thereunder, 17 C.F.R. §§ 240.14a-3 and 14a-9; (iii) the false certifications provisions of Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14; (iv) the false statements and omissions to accountants and auditors provisions of Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2; and (v) the books-and-records provisions of Exchange Act § 13(b)(5), 15 U.S.C. § 78m(b)(5), and Rule 13b2-1 thereunder, 17 C.F.R. § 240.13b2-1. The jury further found that Dean aided and abetted infoUSA's violations of (i) the issuer reporting requirements in Exchange Act § 13(a), 15 U.S.C. § 78m(a), and Exchange Act Rules 12b-20 and 13a-1 thereunder, 17 C.F.R. §§ 240.12b-20 and 240.13a-1; and (ii) the books-and-records provisions of Exchange Act § 13(b)(2), 15 U.S.C. § 78m(b)(2).

⁶ *SEC v. Stormy L. Dean, et al.*, Civil Action No. 8:10-cv-00102.

⁷ *Id.*

the Commission from imposing a permanent suspension based on findings made by the district court, and (iv) the suspension is not in the public interest. The Division of Enforcement has not filed an opposition to Dean's petition.

Rule 102(e)(3)(i)(a) permits the Commission to suspend any accountant or other professional or expert who has been "[p]ermanently enjoined . . . from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder."⁸ Generally, a respondent in a "follow-on" proceeding is precluded from challenging the basis for, or findings in, the underlying injunction action.⁹ Although Dean is entitled to appeal the underlying case against him, the possibility of an appeal to the court of appeals "does not alter the effect" of the jury's finding of securities law violations or the court's imposition of an injunction here.¹⁰

At this stage it appears that the findings made in the injunctive proceeding and the injunction issued against Dean "justify the continuance of his suspension until it can be determined what, if any, action may be appropriate to protect the Commission's processes."¹¹ As provided in Rule 102(e)(3)(iii),¹² therefore, we will set the matter down for public hearing.

Accordingly, IT IS ORDERED that this proceeding be set down for public hearing before an administrative law judge in accordance with Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500; it is further

ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this order; and it is further

ORDERED that the temporary suspension of Stormy L. Dean, entered on October 24, 2012, remain in effect pending a hearing and decision in this matter.

By the Commission.

Elizabeth M. Murphy
Secretary

⁸ 17 C.F.R. § 201.102 (e)(3)(i)(A).

⁹ See, e.g., *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *4 n.20 (Jan. 16, 2007) (noting that the appropriate forum for respondent's challenges to underlying litigation is the appellate court).

¹⁰ *Daniel S. Lezak*, Exchange Act Release No. 50729, 2004 WL 2721400, at *2 n.16 (Nov. 23, 2004); see also *Michael T. Studer*, Exchange Act Release No. 50411, 2004 WL 2104496, at *3 (Sept. 20, 2004) (noting that "the fact that Studer is still litigating that action [on appeal] does not affect our statutory authority to conduct this proceeding"), *aff'd*, 148 F. App'x 58 (2d Cir. 2005).

¹¹ *Williams D. Shovers*, Exchange Act Release No. 59874, 2009 WL 1271170, at *2 (May 6, 2009).

¹² 17 C.F.R. § 201.102 (e)(3)(iii).