

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

May 25, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 77921 / May 25, 2016

Admin. Proc. File No. 3-16768

In the Matter of the Application of
Michael Earl McCune
For Review of Disciplinary Action Taken by
FINRA

ORDER GRANTING STAY

On March 15, 2016, the Commission issued an order and opinion sustaining disciplinary action taken by FINRA against Michael E. McCune.¹ The Commission found that McCune willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose a bankruptcy, three federal tax liens, and one state tax lien in violation of NASD Rule 2110, Interpretive Material-1000-1, and FINRA Rules 1122 and 2010. The Commission sustained the sanction FINRA imposed; a six-month suspension in all capacities and a \$5,000 fine.

McCune has filed a petition for review of the Commission's order and opinion in the United States Court of Appeals for the Tenth Circuit. He seeks a stay, pending appeal, of the sanctions assessed against him. FINRA did not file a brief in opposition.

¹ *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 WL 1039460 (Mar. 15, 2016).

The Commission considers the following factors in determining whether to grant a stay of FINRA action under Rule of Practice 401²: (i) whether there is a strong likelihood that the moving party will succeed on the merits of its appeal; (ii) whether the moving party will suffer irreparable harm without a stay; (iii) whether any person will suffer substantial harm as a result of a stay; and (iv) whether a stay is likely to serve the public interest.³ Each criterion is not accorded equal weight.⁴ For example, a stay may be granted where there is a high probability of irreparable harm, but a lower probability of success on the merits, or vice versa.⁵ The party seeking a stay has the burden of establishing that relief is warranted.⁶

Consistent with that standard, the Commission has granted stays where the sanction imposed is of a short-term nature and requiring applicants to comply with the sanctions during the pendency of the appeal would put them in jeopardy of losing the benefit of a successful appeal.⁷ In keeping with our granting of stays in similar circumstances, we grant the stay.

Accordingly, IT IS ORDERED that the Commission's March 15, 2016 order suspending McCune for six-months in all capacities and requiring him to pay a \$5,000 fine is stayed pending determination of McCune's appeal by the Court of Appeals.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

² 17 C.F.R. § 201.401.

³ *Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 WL 7074282, at *2 (Nov. 13, 2015) (citing *Harry W. Hunt*, Exchange Act Release No. 68755, 2013 WL 325333, at *3 (Jan. 29, 2013)); *see also Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985); Rules of Practice, Exchange Act Release No. 35833, 60 Fed. Reg. 32,738, 32,772 (June 23, 1995) (prior comment to Rule of Practice 401).

⁴ *Electronic Transaction Clearing, Inc.*, Exchange Act Rel. No. 73698, 2014 WL 6680112, at *1 (Nov. 26, 2014).

⁵ *Id.*

⁶ *Dawson James Sec.*, 2015 WL 7074282, at *2 (citing *Hunt*, 2013 WL 325333, at *3).

⁷ *See, e.g., Anthony A. Adonnino and Thomas Cannizzaro*, Admin. Proc. File No. 3-10916 (Nov. 14, 2003).