

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92459 / July 21, 2021

Admin. Proc. File Nos. 3-20239, 3-20242

In the Matters of

JOCELYN MURPHY
and
MICHAEL SEAN MURPHY

ORDER SETTING BRIEFING SCHEDULE AND DIRECTING THE FILING OF
PREHEARING CONFERENCE REPORT

On March 5, 2021, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Proceedings (“OIP”) pursuant to Section 15(b) of the Securities Exchange Act of 1934 against Jocelyn Murphy.¹ On March 12, 2021, the Commission issued an OIP pursuant to Exchange Act Section 15(b) against Michael Sean Murphy.² On May 7, 2021, the Commission issued an order consolidating the two proceedings.³ The order also required the parties to conduct a prehearing conference pursuant to Commission Rule of Practice 221 within 14 days of the date of the order and, following the conference, to file a statement with the Office of the Secretary advising the Commission of any agreements reached.⁴ To date, the parties have not filed a statement regarding a prehearing conference.

On July 16, 2021, the Division of Enforcement filed a motion for summary disposition against both Respondents that requested that the Commission permanently bar them from the securities industry. Rule of Practice 250(b) provides that summary disposition is appropriate if “there is no genuine issue with regard to any material fact and . . . the movant is entitled to

¹ *Jocelyn Murphy*, Exchange Act Release No. 91270, 2021 WL 842614 (Mar. 5, 2021).

² *Michael Sean Murphy*, Exchange Act Release No. 91310, 2021 WL 950025 (Mar. 12, 2021).

³ *Jocelyn Murphy*, Exchange Act Release No. 91797, 2021 WL 1835414 (May 7, 2021).

⁴ *Id.* at *1.

summary disposition as a matter of law.”⁵ An opposition to a motion for summary disposition should precisely specify in the brief the basis for that opposition, identify with particularity the material factual issues in dispute, and address relevant Commission precedent.⁶

It is appropriate to set the following briefing schedule for the Division’s motion for summary disposition. This schedule provides the parties with more time than generally provided in Rule 154(b) for the filing of opposition and reply briefs.⁷

Accordingly, IT IS ORDERED that Respondents’ opposition is due by August 16, 2021; and the Division’s reply is due by August 30, 2021;⁸ and it is further

ORDERED that by August 2, 2021, the parties shall file a statement advising the Commission of any agreements reached at the prehearing conference specified in the OIPs. If a prehearing conference was not held, both parties shall file by that date a statement, jointly or separately, advising the Commission of that fact and of the efforts made to meet and confer.

Pursuant to Rule of Practice 180(c), a party’s failure to file a brief or to comply with this order may result in the Commission’s determination of the matter at issue against that party, a finding of waiver, dismissal of the proceeding, or such other sanction as the Commission finds

⁵ 17 C.F.R. § 201.250(b). Motions for summary disposition may be made under Rule 250(b) after a respondent’s answer has been filed and documents have been made available to the respondent for inspection and copying pursuant to Rule of Practice 230. *Id.*; 17 C.F.R. § 201.230. Both respondents have answered, and we assume that documents have been made available to them pursuant to Rule 230. If that is not the case, the parties should notify the Commission and this scheduling order will be modified.

⁶ *See, e.g., Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 & n.68 (Dec. 12, 2013) (discussing appropriateness of summary disposition in follow-on proceedings and providing citations), *petition denied*, 773 F.3d 89 (D.C. Cir. 2014); *Conrad P. Seghers*, Investment Advisers Act Release No. 2656, 2007 WL 2790633, at *4-6 (Sept. 26, 2007) (discussing unsuccessful attempt to oppose summary disposition), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

⁷ *See* 17 C.F.R. § 201.154(b) (providing that briefs in opposition to a motion shall be filed within five days after service of the motion and reply briefs within three days after service of the opposition).

⁸ Attention is called to Rules of Practice 150-153, 17 C.F.R. §§ 201.150-153, with respect to form and service, and Rule of Practice 250(e) and (f), 17 C.F.R. § 201.250(e) and (f), with respect to length limitations. *See also In re: Pending Admin. Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001, at *1 (Mar. 18, 2020) (stating that “pending further order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161” (citing 17 C.F.R. § 201.161(b)(1))).

appropriate.⁹ The parties' attention is also directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.¹⁰

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

Vanessa A. Countryman
Secretary

⁹ 17 C.F.R. § 201.180(c).

¹⁰ *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465-81.