

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93626 / November 19, 2021

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

In the Matters of

JOCELYN MURPHY
and
MICHAEL SEAN MURPHY

ORDER ADJOURNING PREHEARING CONFERENCE AND DENYING MOTION TO
APPOINT A HEARING OFFICER

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

On July 16, 2021, the Division of Enforcement filed a motion for summary disposition and imposition of sanctions against both Respondents. On July 21, 2021, the Commission issued an order that set a briefing schedule for the Division’s motion and required the parties to file a statement advising the Commission of any agreements reached at the prehearing conference specified in the OIPs.⁴ Respondents did not file an opposition brief, and no party filed a prehearing conference statement or other document advising of the parties’ efforts to meet and confer. Instead, on October 12, 2021, Respondents filed a motion seeking three forms of relief. The Division did not respond to Respondents’ motion.

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 *Jocelyn Murphy*, 2021 WL 3109828, at *1; *see also Jocelyn Murphy*, 2021 WL 1835414, at *1 n.3 (referencing prehearing conference requirements in the OIPs). If a prehearing conference were not held, the parties were ordered to file a statement advising the Commission of the efforts made to meet and confer. *Jocelyn Murphy*, 2021 WL 3109828, at *1.

First, Respondents requested that the Commission order a revised briefing schedule for their opposition to the motion for summary disposition and the Division's reply. The Commission issued an order revising the briefing schedule on October 20, 2021.⁵

Second, Respondents requested that the Commission adjourn the prehearing conference until after it rules on the motion for summary disposition. Respondents asserted that this relief is warranted because, if the Division's motion is granted, no conference will be needed, and if the motion is not granted, a conference can be held and a report submitted expeditiously. Because no party asserted that a prehearing conference must be held before the Commission resolves the motion for summary disposition, and because the parties previously conferred regarding the consolidation of these proceedings, the prehearing conference is adjourned.

Third, Respondents asserted that the Commission should appoint a hearing officer to preside over this proceeding. Respondents contended that it is "completely improbable" that the Commission would hold a live evidentiary hearing in this case, and that declining to appoint a hearing officer thus "would support an inference that the Commission has improperly pre-judged whether or not this proceeding can be resolved via summary disposition." No such inference is warranted. As stated in the OIPs, the Commission will issue a final order resolving this proceeding after either (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) the completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition, where the Commission has determined that no public hearing is necessary; or (C) the determination that a party is in default and no public hearing is necessary.⁶ Whether this consolidated proceeding may be resolved pursuant to the Division's motion for summary disposition depends on the content of the record and the parties' briefs, not whether a hearing officer has been appointed to preside over the case.

Accordingly, IT IS ORDERED that the prehearing conference is adjourned pending further order; and it is further

ORDERED that Respondents' motion for appointment of a hearing officer is denied.

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

Vanessa A. Countryman
Secretary

⁵ *Jocelyn Murphy*, Exchange Act Release No. 93393, 2021 WL 4894888 at *1 & n.1 (Oct. 20, 2021) (addressing "Respondents' time-sensitive request for more time to oppose" the summary disposition motion and stating that their other requests would be addressed by separate order).

⁶ *Jocelyn Murphy*, 2021 WL 842614, at *4; *Michael Sean Murphy*, 2021 WL 950025, at *4.