

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 700 / March 30, 2012

ADMINISTRATIVE PROCEEDING  
File No. 3-14700

---

|                      |   |                          |
|----------------------|---|--------------------------|
| In the Matter of     | : | ORDER DENYING MOTION FOR |
|                      | : | ISSUANCE OF SUBPOENA     |
| GREGORY BARTKO, ESQ. | : |                          |

---

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on January 18, 2012, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> The OIP alleges that in United States v. Bartko, No. 5:09-CR-321-D (E.D.N.C. Nov. 18, 2010), Respondent was found guilty of one count of conspiracy, four counts of mail fraud, and one count of the sale of unregistered securities.

On March 29, 2012, Respondent, pro se, filed a motion pursuant to Rule 232 of the Commission's Rules of Practice, requesting the issuance of a subpoena or an order of production to compel the Commission and its staff to produce certain documents related to the underlying criminal proceeding. The Division of Enforcement (Division) filed a brief in opposition on the same day.<sup>2</sup>

Respondent's request is unreasonable and excessive in scope. It is well-established that the findings and conclusions made in an underlying action are immune from attack in a follow-on administrative proceeding. See Phillip J. Milligan, Exchange Act Release No. 61790 (Mar. 26, 2010), 98 SEC Docket 26791, 26796-97; Ted Harold Westerfield, Exchange Act Release No. 41126 (Mar. 1, 1999), 54 S.E.C. 25, 32 n.22 (collecting cases). The appropriateness of any remedial sanctions in this proceeding will be guided by the well-established public interest factors listed in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Conrad P. Seghers, Advisers Act Release No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2303-04, petition for review denied, 548 F.3d 129 (D.C. Cir. 2008). They include: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3)

---

<sup>1</sup> The Commission also issued an Order of Suspension on January 18, 2012, suspending Respondent from appearing or practicing before the Commission, pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

<sup>2</sup> Because Respondent is incarcerated, he has not had the opportunity to reply to the Division's opposition brief. Accordingly, the Division's brief was not taken into account in deciding this issue.

the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. Steadman, 603 F.2d at 1140. It does not appear that the requested documents would provide Respondent with any information, not already in his possession, that would be relevant to the public interest factors.

Accordingly, it is ORDERED that Respondent's motion is DENIED in its entirety. See 17 C.F.R. § 201.232(b).

---

Cameron Elliot  
Administrative Law Judge