SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 51364 / February 18, 2005

Admin. Proc. File No. 3-11625

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| In the Matter of<br><br>VLADISLAV STEVEN ZUBKIS,<br><br>Respondent | ORDER REMANDING REQUEST TO SET ASIDE DEFAULT |

On December 3, 2004, an administrative law judge entered an order making findings and imposing remedial sanctions by default against Vladislav Zubkis, formerly associated with various broker-dealers and a participant in a penny stock offering. 1/ The law judge found that Zubkis (i) had been enjoined from violating registration and antifraud provisions of the securities laws, (ii) had been ordered to disgorge over $21 million in ill-gotten gains and prejudgment interest, and (iii) had been permanently prohibited from acting as an officer or director of a public company, based on allegations that he had participated in a fraudulent scheme to sell unregistered securities. 2/ The law judge barred Zubkis from association with any broker or dealer and from participating in an offering of penny stock.

On December 9, 2004, Respondent filed what he captioned a "motion to reconsider" under Commission Rule of Practice 470, challenging the law judge's decision to find him in default. 3/ The Division of Enforcement ("Division") opposed the motion, contending, among other things, that Zubkis could not seek reconsideration under Rule of Practice 470 because that

1/ Zubkis is appearing pro se.

2/ SEC v. Vladislav Steven Zubkis, et al., Civil Action No. 97 Civ. 8086, 2001 U.S. Dist. LEXIS 24011 (S.D.N.Y. June 21, 2001).

3/ 17 C.F.R. § 201.470(a). It is unclear whether Mr. Zubkis intended to address his motion to the law judge or to the Commission.

rule applies only to Commission determinations. 4/ Zubkis responded, stating "Rule 470 is not proper, Rule 155(b) is the proper Rule to seek relief setting aside a default . . . ." The law judge took no action on Zubkis's request. After reviewing the matter, we have determined to deem Respondent's request to be a motion to set aside default under Rule of Practice 155(b) and remand it to the law judge for consideration as such. 5/

I.

On September 1, 2004, the Commission issued an Order Instituting Public Administrative Proceedings ("OIP") against Zubkis based on an injunction issued by the U.S. District Court for the Southern District of New York. According to the OIP, the Commission's civil complaint in that case alleged, among other things, that Zubkis orchestrated a fraudulent scheme to sell unregistered securities of Stella Bella Corporation, now known as International Brands, Inc., to investors through an unregistered broker-dealer (as well as other, registered broker-dealers); the complaint also alleged that Zubkis made material misrepresentations to investors about those securities.

On September 15, 2004, Zubkis filed a timely answer to the OIP in which he argued, among other things, that the Commission lacked jurisdiction to bring this proceeding. A telephonic prehearing conference was scheduled, and Zubkis filed two letters with the law judge noting that, although he would be "present under duress" because the Commission did not have authority to sanction him, he would nonetheless "in good faith be available" for the conference. 6/ On September 29, 2004, the parties participated in a pre-hearing telephone conference, at which time Zubkis reiterated his motion to dismiss for lack of jurisdiction. The law judge denied his motion and set the hearing for December 7, 2004, in San Diego,

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4/ Rule 470 states that "[a] party or any person aggrieved by a determination in a proceeding may file a motion for reconsideration of a final order issued by the Commission." 17 C.F.R. § 201.470(a).

5/ 17 C.F.R. § 201.155(b). The Rule states as follows:

> A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

6/ These letters were received by the law judge on September 23 and 28, 2004.

California. 7/ Zubkis filed several more written submissions following this conference contesting the Commission's jurisdiction and authority to sanction him. 8/

On November 15, 2004, the Division received an "Administrative Notice" from Zubkis in which he stated that he "will not attend the Administrative Law Hearing set for December 7, 2004." 9/ Thereafter, on November 17, 2004, the Division filed a motion for default. 10/ On November 23, 2004, Zubkis submitted an opposition to the Division's motion, stating that "my refusal to attend the hearing is only because the SEC refuses to prove its authority over me and my business."

On December 2, 2004, the law judge held a telephone conference in which she referred to Zubkis's November 23, 2004 filing and asked Zubkis whether he intended to appear at the hearing. Zubkis did not answer the law judge's question directly, but repeatedly expressed his concern that the Commission lacked jurisdiction and requested that the hearing be conducted in a "written," rather than an oral, format. The law judge denied Zubkis's request for a written hearing and asked him again if he intended to appear at the December 7 hearing; Zubkis replied, "I am not answering anymore questions, your Honor." The law judge and Division counsel agreed that they interpreted his position as a refusal to appear; when the law judge told Zubkis he would "get a default," Zubkis responded, "[y]our Honor, I believe that all – that this administrative hearing should be dismissed. I believe that you shouldn't default me," and reiterated his position that he would not "say anything until the Court or the Commission answers all the pending motions in writing . . . ." The law judge issued her default order against Zubkis the following day, four days before the date set for the hearing.

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7/ Zubkis resides near San Diego.

8/ According to the record, the Commission received from Respondent a total of nine submissions in this case: three before the September 29, 2004 pre-hearing conference, four following it, and two in response to the law judge's default order.

9/ Zubkis addressed this letter to "Lillian McEwen, Administrative Law Judge; Brenda P. Murray, Chief Administrative Law Judge; Joan E. McKown, Chief Counsel; John J. Graubard, Senior Enforcement Attorney; Kay Kackey [sic], Enforcement Attorney; Peter Pizzani, Enforcement Attorney; All other SEC personnel involved in this case." The Division included a copy of the letter in its motion for default, but the record indicates that neither the law judge nor the Commission received this letter from Respondent until Zubkis included a copy of this letter as an attachment to a filing he made to the Commission on December 9, 2004.

10/ The Division also sought, in the alternative, leave to file a motion for summary disposition against Zubkis pursuant to Rule of Practice 250, 17 C.F.R. § 201.250, or relocation of the hearing to either New York or Washington, D.C.

II.

Under the circumstances, we have determined that remand to the law judge is appropriate. We believe that, as a general matter, a motion to set aside a law judge's default order under Rule of Practice 155(b) should be first considered by the law judge, who is most familiar with the issues, rather than by the Commission. 11/ In addition, we consider it appropriate here to provide the law judge with an opportunity to consider whether her default order, issued several days before the scheduled hearing date, was premature. Rule of Practice 155(a) provides that a party "may be deemed to be in default . . . if that party fails (1) to appear, in person or through a representative, at a hearing or conference of which that party has been notified; (2) to answer . . . or otherwise defend the proceeding; or (3) to cure a deficient filing . . . ." 12/ Although Respondent expressed an unwillingness to attend the hearing based on his jurisdictional objection, he participated in both prehearing conferences and submitted numerous written filings in defense of his position. 13/ Moreover, as we have recently noted, we generally consider it a prudent practice for a law judge who is considering the issuance of a default order against a respondent to first order that respondent to show cause why a default is not warranted. 14/ No such show cause order was issued here, and we believe such fact further supports a remand.

Accordingly, IT IS ORDERED that consideration of Respondent's December 9, 2004 Motion to Reconsider be and is remanded to the administrative law judge for consideration in accordance with the foregoing.

By the Commission.

Jonathan G. Katz
Secretary

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11/ Although Rule of Practice 155(b) authorizes both the law judge and the Commission to rule on motions to set aside defaults, we believe that, unless there are unusual circumstances, the Commission generally should rule only after a ruling by the law judge.

12/ 17 C.F.R. § 201.155(a).

13/ We do not mean to suggest that a respondent's stated unwillingness to participate in a hearing can never provide the basis for a default order. To the contrary, we are not unsympathetic to the Division's position that a law judge should not be required to engage in "futile acts" before issuing such an order. Nevertheless, we believe that the "futility" of such an attempt should be manifest before declaring a party to be in default.

14/ See, e.g., Richard S. Kern, Securities Exchange Act Rel. No. 51115 (Feb. 1, 2005), __ SEC Docket __; Gregg Baker, Exchange Act Rel. No. 49244 (Feb. 13, 2004), 82 SEC Docket 677.