

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 2350 / February 25, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-16178

In the Matter of

GREGORY T. BOLAN, JR. AND  
JOSEPH C. RUGGIERI

ORDER ON MOTIONS FOR  
SUMMARY DISPOSITION

Respondents have each moved for summary disposition under Rule of Practice 250. Thereafter, the Division of Enforcement filed an opposition, and Respondents filed their replies. I held oral argument on Respondents' motions, and the parties filed supplemental submissions. On February 12, 2015, I ruled that the Division must establish that Gregory T. Bolan, Jr., received a personal benefit for allegedly tipping material, non-public information, but reserved decision on the issue whether the Division's alleged evidence may satisfy that requirement. *See Gregory T. Bolan, Jr.*, Admin. Proc. Rulings Release No. 2309, 2015 SEC LEXIS 523.

In this exceedingly close matter—whether summary disposition is appropriate due to the apparent absence of “proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature,” *United States v. Newman*, 773 F.3d 438, 452 (2d Cir. 2014)—the Division has a slight edge. This is because, under the summary disposition standard, “[t]he facts of the pleadings of the party against whom the motion is made shall be taken as true . . . .” 17 C.F.R. § 201.250. “Typically, Commission proceedings that reach litigation involve basic disagreement as to material facts. Based on past experience, the circumstances when summary disposition prior to hearing could be appropriately sought or granted will be comparatively rare.” Rules of Practice, 60 Fed. Reg. 32738, 32768 (June 23, 1995).

The Division alleges that Bolan tipped his “good friend” Joseph C. Ruggieri in order to successfully obtain an accelerated promotion and concomitant \$50,000 annual raise. Div. Suppl. Submission (Feb. 13, 2015) at 2-6; *see* OIP at 8; Div. Mem. Opp. Summary Disposition (Jan. 22, 2015) at 15-16, 30-33. The Division alleges that Bolan and Ruggieri's relationship was characterized by, among other circumstances, recurring conversations about their personal lives outside work. Div. Suppl. Submission at 2-3. While the means by which Ruggieri allegedly facilitated Bolan's promotion seem circuitous, and are not yet completely clear, “the Division intends to call several non-party witnesses, including Todd Wickwire, Matthew Brown, Timothy Evans, and Scott Friedman” to “prove both personal benefit and other elements.” Div. Letter

(Feb. 23, 2015) at 2. The testimony of Bolan and Ruggieri, regardless of which party adduces it, will be relevant to the personal benefit issue. Presumably, the Division's presentation of testimony from several witnesses on the personal benefit element may substantiate its allegations. Respondents have raised some persuasive counterpoints to the Division's allegations, but deciding those points calls for the weighing of evidence and balancing of probabilities, neither of which should take place in the absence of the aforementioned testimony.

The Division also alleges that Bolan and decedent Trader A had a close, meaningful personal relationship. Div. Suppl. Submission at 9-10; *see* OIP at 8; Div. Mem. Opp. Summary Disposition at 16, 33 n.14. Because the Division has not alleged a potential pecuniary gain to Bolan as a result of tipping Trader A, its position appears to be that nature of the friendship itself, absent potential pecuniary gain, may nonetheless represent a potential gain of a similarly valuable nature. Although mere friendship, particularly of a casual or social nature, will not be enough for the Division to prevail with respect to Trader A, it is in my mind an open question whether and what sort of friendship may satisfy the personal benefit element in this matter. *See Dirks v. SEC*, 463 U.S. 646, 664 (1983); *Newman*, 773 F.3d at 452; *United States v. Jiau*, 734 F.3d 147, 153 (2d Cir. 2013). Other than the documentary evidence already submitted, Bolan's testimony would be the most relevant to this issue, as would any percipient witnesses to that friendship, though based on the Division's submission Bolan may be the only such witness.

Although the parties could consent to participate in a limited evidentiary hearing in order to resolve the case or substantially narrow the issues, in the absence of such mutual agreement, the matter shall proceed to a hearing on the merits as originally scheduled.

As such, I DEFER decision on the motions for summary disposition at the present time.

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Jason S. Patil  
Administrative Law Judge