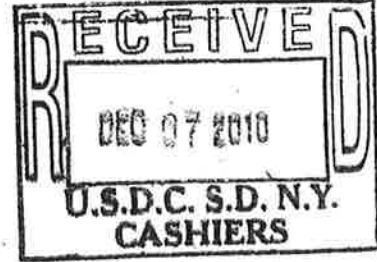


HOFFMAN & POLLOK LLP
Jeffrey C. Hoffman
William A. Rome
260 Madison Avenue, 22nd Floor
New York, New York 10016
(212) 679-2900 - phone
(212) 679-1844 - fax

JUDGE HOLWELL



STEIN LAW, P.C.
Mitchell A. Stein
24 Woodbine Avenue, Suite 4
Northport, New York 11768
(631) 757-8400 - phone
(631) 757-8404 - fax

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN ALTMAN,

10 Civ. ()

Plaintiff,

-against-

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
MARY L. SCHAPIRO, Chairman, and
ELIZABETH M. MURPHY, Secretary,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Steven Altman, by his attorneys Hoffman & Pollok LLP and Stein Law, P.C., for his Complaint against the United States Securities and Exchange Commission, its Chairman, Mary L. Schapiro, and Secretary, Elizabeth M. Murphy, alleges as follows:

NATURE OF THIS ACTION

1. This is an action for declaratory and preliminary and permanent injunctive relief against the United States Securities and Exchange Commission (“SEC” or “Commission”), and for an order of mandamus directing the Commission’s Chairman and Secretary to vacate and stay a proceeding, and series of decisions and orders emanating therefrom, which unconstitutionally usurp the authority of the New York Appellate Division, First Department and its Departmental Disciplinary Committee. By bringing and pursuing that proceeding against the plaintiff, the Commission has wrongfully sought to “federalize” the subject of attorney ethics and discipline and effectively undo the system of ordered federalism mandated by the Constitution and by Congress, relegating such authority to the state judiciary.

2. On November 10, 2010, the Commission issued an Opinion and a separate Order In the Matter of Steven Altman, Esq., Admin Proc. File No. 3-12944, which permanently denied the plaintiff “the privilege of appearing or practicing [law] before the Commission.” (Ex. A.) The proceeding and those rulings are believed to be the first instance in which the Commission has, purportedly under the authority of Rule 102(e) of its Rules of Practice (17 C.F.R. § 201.102(e)), ever disciplined a lawyer solely for alleged violations of New York State’s disciplinary rules without a prior hearing, determination or even charges brought against that lawyer by or under the New York State disciplinary procedures.

3. This action is not an appeal of the Commission’s November 10, 2010 Opinion and Order. It is a facial attack on the Commission’s jurisdiction to bring the proceeding that underlies them and to maintain and continue its prosecution. Plaintiff is not obliged to exhaust his administrative remedies before bringing this action, under the principles pronounced

by the U.S. Supreme Court in Free Enterprise Fund v. Public Accounting Oversight Board, et al., 130 S.Ct. 3138, 3149 (2010). Plaintiff has nevertheless in fact objected and continues to object to the Commission's continuing prosecution of the claims in the administrative proceeding against him.

4. The Commission does not have unlimited inherent power to discipline any lawyer who appears before it or participates (however indirectly as plaintiff did) in any Commission proceeding, and its Constitutional and statutory authority to bring actions against and impose sanctions against lawyers is not open-ended, although the Commission apparently and suddenly believes to the contrary. The regulations contained in 17 C.F.R. § 205, which were adopted following the enactment of the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7201, et seq.), are the only Commission rules specifically addressing the discipline of lawyers. Those rules do not apply to the matters at issue in the proceeding against the plaintiff as they are clearly addressed only to lawyers representing issuers before the Commission.

5. The Commission's November 10, 2010 Opinion and Order and the entirety of the proceedings on which they are based are a blatant abuse and misuse of process and unlawful usurpation of the authority and powers of of the Appellate Division, First Department and its Departmental Disciplinary Committee, the body specifically empowered by the New York State legislature to investigate and prosecute alleged misconduct by New York lawyers.

6. The Commission proceeding against the plaintiff is also violative of his rights under the Constitution, and constitutes an illegal taking of his protected personal property rights, particularly his identity, likeness, and personal and professional reputation, which is his stock in trade.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to the Court's general federal question equity jurisdiction, 28 U.S.C. §1331, the Administrative Procedure Act, 5 U.S.C. § 702, as the plaintiff has been aggrieved by the Commission's actions, the Mandamus Act, 28 U.S.C. § 1361, in that the plaintiff is seeking, among other relief, an order compelling the Commission to properly perform duties owed to him, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that the plaintiff practices law and defendant transacts substantial business in this District and a substantial part of the events that give rise to the plaintiff's claims took place in the State of New York and in this District.

PARTIES

9. Plaintiff Steven Altman is an attorney admitted to practice in New York since 1987. He is a member in good standing of the New York Bar and currently admitted to practice in the this Court and the United States District Court for the Eastern District of New York. He is a New York citizen.

10. Defendant United States Securities and Exchange Commission is a federal agency established by the Securities Exchange Act of 1934, and part of the Executive branch of government (Free Enterprise, supra) which maintains its principal offices in Washington, D.C. The Commission's stated "mission" is "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation." (www.sec.gov/about/whatwedo.shtml) Its stated "responsibility" is to:

- interpret federal securities laws;
- issue new rules and amend existing rules;
- oversee the inspection of securities firms, brokers, investment advisers, and rating agencies;
- oversee private regulatory organizations in the securities, accounting, and auditing fields; and
- coordinate U.S. securities regulation with federal, state, and foreign authorities.

(Id.)

11. Defendant Mary L. Schapiro is currently Chairman of the Commission.

As Chairman, she is responsible for carrying out the powers granted to the Commission by Congress under the Securities Exchange Act of 1934. Ms. Schapiro is sued in her official capacity.

12. Defendant Elizabeth M. Murphy is currently Secretary of the Commission.

As Secretary, she is responsible for carrying out the powers granted to the Commission by Congress under the Securities Exchange Act of 1934. Ms. Murphy is sued in her official capacity.

FACTS

The Commission's Rule 102(e) Proceeding Against the Plaintiff

13. On January 30, 2008, the Commission issued an Order Instituting Administrative Proceedings against the plaintiff purportedly pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice. The Order Instituting Proceedings alleged that in late 2003 and early 2004 the plaintiff engaged in improper professional conduct, contending that he knowing violated DR 1-102(A)(4), DR 1-

102(A)(5) and DR 1-102(A)(7) of the New York State Bar Association's Code of Professional Responsibility's Disciplinary Rules while representing an individual who was a witness in a Commission administrative proceeding entitled In the Matter of Harrison Securities Inc., AP File No. 3-11084.

14. Never, on information and belief, in the Commission's history prior to that time had a Rule 102(e) proceeding been brought against a lawyer for his or her alleged failure to comply with state disciplinary rules without a prior adjudication by a state disciplinary authority against that lawyer and its confirmation by a state or federal court.

15. The Order Instituting Proceedings against the plaintiff ordered that a public hearing be held for the purpose of taking evidence, that the plaintiff file an Answer to the allegations with the Commission, and that an Administrative Law Judge publically hear the matter and render an initial decision in the case no later than 300 days later. The Commission published the Order Instituting Proceedings on its website and issued a release (SEC Release No. 57240), which was also published on its website, announcing its commencement. On February 25, 2008, plaintiff filed his Answer to Allegations denying that he intentionally engaged in any unethical or improper conduct and asserting affirmative defenses, including among others, that the Commission's action against him was without "legal precedent or basis."

16. Certain discovery was had and a public hearing held before Commission Chief Administrative Law Judge Brenda Murray on May 5-7 and 29, 2008. By Initial Decision dated January 14, 2009 (Ex. B), Judge Murray found that the plaintiff had violated New York State's disciplinary rules and recommended that his right to appear or practice before the Commission be suspended for nine months. The Commission published the Initial Decision on

its website and issued a release (SEC Initial Decision Release No. 367) announcing it, which was also published on the Commission's website.

17. The Commission's Office of General Counsel ("OGC"), not satisfied with the Administrative Law Judge's Initial Decision, sought review of it by the Commission on the issue of the appropriate sanction. OGC sought a permanent bar of the plaintiff on that review. Plaintiff filed a cross petition opposing the OGC's petition and seeking reversal of the Initial Decision based on the Administrative Law Judge's misapprehension of the relevant law, reliance on prejudicial and irrelevant evidence, demonstrable false factual findings and conclusions, disregard of critical evidence and display of pronounced prejudice against the plaintiff.

18. On November 10, 2010, the Commission issued an Opinion and separate Order Imposing Remedial Sanctions, which were both published on the Commission's website (SEC Release No. 63306), and widely reported in the legal press, including front-page coverage in the New York Law Journal and numerous postings on the Internet. On November 22, 2010, plaintiff asked the Commission for a 30-day extension of time to move for reconsideration. On November 23, 2010, the Commission denied that application giving plaintiff until December 8, 2010 to make the reconsideration motion, expressly stating that "[n]o further extensions will be granted."

No Congressional or Other Authority for the Rule 102(e) Proceeding Against the Plaintiff

19. While Commission Rule 102(e) and 15 U.S.C. § 78d-3 under which it was promulgated do by their terms provide general authority for the Commission to discipline lawyers who appear and practice before it, there is absolutely no statutory authority granting the Commission to unilaterally apply part or even all of the New York State Disciplinary Rules to

anyone. The Commission in bringing its Rule 102(e) action against the plaintiff purports to be applying the New York State Disciplinary Rules, but in fact has applied only those that suit the Commission and ignoring others that provide specific rights and protections to accused practitioners. For example, the New York State Disciplinary Rules mandate that all disciplinary proceedings against lawyers be strictly confidential and they may not be made public in any way until and unless the charges have been sustained and approved by a New York State court. (Judiciary Law § 90(10).) In brazen disregard of that requirement, the Commission has made its findings against the plaintiff a matter of public record.

20. The Commission has never, and certainly not prior to the commencement of its administrative proceeding against the plaintiff, promulgated any rules purporting to adopt the New York State Disciplinary Rules for its own purposes or proceedings. That lack of statutory authority, compliance with all rule-making requirements and implementation of any approved rule stands in sharp contrast to the limited authority it has specifically been granted by Congress under Sarbanes-Oxley and the rules it has enacted under and in accordance with that statutory authority, which by their express terms are limited to “Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer.” See 17 C.F.R. § 205 and Ex. C (“Implementation of Standards of Professional Conduct for Attorneys,” S.E.C. File No. S7-45-02, RIN 3235-AI72, November 21, 2002).

No New York State Disciplinary Proceedings Against the Plaintiff

21. As of December 6, 2010, no disciplinary proceedings have been lodged against the plaintiff by any New York State disciplinary authority and plaintiff is not aware of any inquiry into his conduct arising out of the matters at issue in the Commission action against him or otherwise.

22. The Departmental Disciplinary Committees of the Appellate Division, First Department of the Supreme Court of the State of New York is “charged with the duty and empowered to investigate and prosecute matters involving alleged misconduct by attorneys [who, like plaintiff, have offices in New York City] ... and to impose discipline” on them pursuant to N.Y. Ct. Rule. § 603.4(a)(1). Under New York Judiciary Law, Section 90(10), during the investigation and resolution of a disciplinary complaint – much unlike the Commission’s Rule 102(e) proceeding against the plaintiff – the entire disciplinary proceeding, including the existence of the complaint, is strictly confidential and the Departmental Disciplinary Committee may not disclose it to the public. Only if a recommendation for a public sanction, such as a suspension or permanent debarment, is forwarded to and upheld by a Court is the Court’s written decision and the prior proceedings then available to the public.

Irreparable Damages to the Plaintiff

23. Plaintiff has been seriously and irreparably aggrieved by the Commission’s action against him. He has been denied the opportunity and right to have the disciplinary charges as to which the Commission has charged and now found him to have committed, to be heard confidentially by the New York State disciplinary authorities, who are statutorily empowered to hear and determine such matters. That “genie” can never be put back in the bottle.

24. Plaintiff has been vilified by the Commission and in effect been accused of being and found to be unfit to practice law at all, a conclusion which is not in any way supported by and contrary to his record.

25. A clear and justiciable controversy exists between plaintiff and defendant, warranting a judgment by this Court declaring their respective rights and duties.

COUNT I

(Unconstitutional Usurpation of the New York State Disciplinary Rules)

26. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 25 of this Complaint.

27. The Securities Exchange Act of 1934 and the rules and regulations promulgated under it, including but not limited to Rule 102(e) of the Commission's Rules of Practice and Parts 201 and 205 of Title 17 of the Code of Federal Regulation, do not empower the Commission to bring plenary disciplinary proceedings against lawyers based solely on the Commission's allegations of violation of New York State or any other state disciplinary rules or canons of ethics.

28. The New York Appellate Division, First Department and its Departmental Disciplinary Committee is the sole governmental authority expressly empowered and uniquely experienced and qualified to hear and adjudicate complaints about New York lawyers for violation of New York's Rules of Conduct. The Departmental Disciplinary Committee has promulgated detailed rules and regulations that include procedural safeguards, including but not limited to requirement of strict confidentiality, that protect the inalienable reputational interests and rights of New York attorneys.

29. In bringing and prosecuting the proceeding against the plaintiff the Commission has stepped plainly beyond the bounds of its constitutional, statutory and regulatory authority and caused irreparable damage to the plaintiff.

30. Plaintiff has clearly been injured, and threatens to continue to be immediately and irreparably injured without suitable remedy at law, as he has been deprived the

confidential forum of a New York State disciplinary proceeding to hear and consider the charges lodged against him and has been publically vilified as a result of the Commission's publication of its action and findings against him.

31. Plaintiff is also clearly within the zone of interests to be protected by the federal and state Constitutions, and the rules, regulations and procedures set forth and administered by the New York Appellate Division, First Department Departmental Disciplinary Committee.

COUNT II

(Violation of the Plaintiff's Equal Protection, Due Process and Privacy Rights)

32. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 31 of this Complaint.

33. Plaintiff has clear rights to equal protection, due process and the right or privacy under the Constitution.

34. In bringing and prosecuting its Rule 102(e) proceeding against him, the Commission has acted in clear derogation of the plaintiff's constitutional due process, equal protection and personal property rights, and caused irreparable damage to him.

35. Plaintiff is also clearly within the zone of interests to be protected by the Constitution, including, without limitation the right to equal protection, due process and privacy.

36. Plaintiff has clearly been injured, and threatens to be immediately and irreparably further injured, and is without adequate remedy at law, as he has been deprived the confidential forum of a New York State disciplinary proceeding to hear and consider the charges

lodged against him and has been publically vilified as a result of the Commission's publication of its action and findings against him.

37. Plaintiff's reputation as a lawyer is his stock in trade. That reputation has been intentionally and permanently marred by the Commission's unconstitutional actions against him.

WHEREFORE, plaintiff Steven Altman demands judgment:

(1) immediately, temporarily, preliminarily and permanently staying the administrative proceeding brought and maintained by the Securities and Exchange Commission its Commissioners, officers, agents, attorneys and all those in active concert and participation with them ("SEC" or "Commission") against plaintiff, entitled In the Matter of Steven Altman, Esq., Admin. Proc. File No. 2-12944 ("Proceeding");

(2) vacating the Proceeding, including the November 10, 2010 Opinion and Order (Ex. A) and the January 14, 2009 Initial Decision that preceded it in that Proceeding (Ex. B), and all prior orders and Commission pleadings in that Proceeding;

(3) directing the Commission to publish in all manners and on all sources it regularly uses for publication, including but not limited to, on its website, an official Release acknowledging and quoting, verbatim, this Court's Orders and stating that the Proceeding and all Decisions and Orders have been stayed and/or vacated and have no force or effect, and that its prior issuances should be deemed not to in any way negatively reflect on the plaintiff or his fitness to practice law, and to publish nothing else and nothing further unless and until directed by this Court;

(4) declaring that the Commission's administrative Proceeding action against him is unconstitutional or otherwise in excess of the authority granted the Commission;

(5) awarding him costs and attorneys' fees pursuant to any applicable statute or authority; and

(6) for such other, further and different relief as is just and proper.

December 7, 2010
New York, New York

HOFFMAN & POLLOK LLP

By: _____

Jeffrey C. Hoffman
William A. Rome
260 Madison Avenue, 22nd Floor
New York, New York 10016
(212) 679-2900 - phone
(212) 679-1844 - fax

- and -

STEIN LAW, P.C.

By: _____

Mitchell A. Stein
24 Woodbine Avenue, Suite 4
Northport, New York 11768
(631) 757-8400 - phone
(631) 757-8404 - fax

Attorneys for Plaintiff, Steven Altman

VERIFICATION

I, Steven Altman, am the plaintiff in this action. I have read the foregoing Verified Complaint for Injunctive and Declaratory Relief, and aver that the factual allegations stated therein are either true to my own personal knowledge or believed to be true, based on publically available and other records.

Pursuant to 28 U.S.C. § 1746, I declare that the foregoing is true and correct.

Executed:
December 7, 2010
New York, New York

Steven Altman