

MOTION INFORMATION STATEMENT

Docket Number(s): 19-3886 Caption [use short title] _____

Motion for: Dismissal Hong v. SEC

Set forth below precise, complete statement of relief sought:
Respondents United States of America
and U.S. Department of Justice respectfully
request that the Court dismiss the petition
for review insofar as it names the United
States and the Department of Justice as
respondents.

MOVING PARTY: United States; Dep't of Justice
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: Petitioner Victor Hong

MOVING ATTORNEY: Casen B. Ross
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: Richard S. Corenthal

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P.O. Box 9064 Melville, NY 11747
631.249.6565

Court-Judge/Agency appealed from: U.S. Securities and Exchange Commission

Please check appropriate boxes:
Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____
Opposing counsel's position on motion:
 Unopposed Opposed Don't Know
Does opposing counsel intend to file a response:
 Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:
Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

N/A

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney: /s/ Casen B. Ross Date: 01/30/2020

Service by: CM/ECF Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VICTOR HONG,
Petitioner,

v.

U.S. SECURITIES AND EXCHANGE
COMMISSION, UNITED STATES OF
AMERICA, U.S. DEPARTMENT OF
JUSTICE,
Respondents.

No. 19-3886

**MOTION TO DISMISS AS TO RESPONDENTS UNITED STATES OF
AMERICA AND U.S. DEPARTMENT OF JUSTICE**

Pursuant to Federal Rule of Appellate Procedure 27, respondents United States of America and U.S. Department of Justice respectfully request that the Court dismiss the petition for review filed by Victor Hong insofar as it names the United States and the Department of Justice as respondents. The U.S. Securities and Exchange Commission (the Commission) is the only appropriate respondent in this petition for review of the Commission's rejection of petitioner's application for a whistleblower award. Federal Rule of Appellate Procedure 15(a)(2)(B); *see also* 15 U.S.C. § 78u-6(f).

1. This petition arises from the Commission’s denial of petitioner’s claim for a whistleblower award under Section 21F of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-6. That statute requires the Commission to pay certain awards to whistleblowers who voluntarily provided original information to the Commission, concerning a covered judicial or administrative action, which led to the successful enforcement of the covered judicial or administrative action.

2. On September 5, 2019, Petitioner submitted a whistleblower award application, Form WB-APP, to the Commission. Doc. 2 at 2 (Nov. 15, 2019). In that application—petitioner’s fourth similar such application to the Commission—petitioner cited the matter, “Royal Bank of Scotland/DoJ Settlement” as the basis for his award request. The Commission rejected petitioner’s application (as it had on three prior occasions), explaining that the “Royal Bank of Scotland/DoJ Settlement” was not a “Covered Action” under the Securities Exchange Act of 1934, 15 U.S.C. § 78u-6(a)(1). Doc. 2 (Nov. 15, 2019). The Commission explained that a “Covered Action” eligible for an award is limited to “any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding \$1,000,000,” *id.* (emphasis omitted), and the “Royal Bank of

Scotland/DoJ Settlement” did not “appear to have been brought by the Securities and Exchange Commission, but instead by the U.S. Department of Justice.” *Id.* The Commission thus could not “consider [petitioner’s] claim for [a whistleblower] award.” *Id.*

On October 18, 2019, the Commission reiterated that petitioner had “not submitted a properly filed whistleblower award application” and the Commission thus could not “consider [his] claim for an award.” Doc. 2 at 1.

3. Petitioner filed a petition for review in this Court on November 15, 2019. The petition seeks review of the Commission’s denial of petitioner’s whistleblower award application under the applicable judicial review provision of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-6(f), and names as respondents the Commission, the United States of America, and the U.S. Department of Justice.

4. Because the petition for review before this Court seeks review of the Commission’s decision under the Section 21F of the Securities Exchange Act of 1934, the Commission is the only proper respondent in this case. *See* 15 U.S.C. § 78u-6(f) (“Any determination made under this section . . . shall be in the *discretion of the Commission*. . . . The court shall review the determination *made by the Commission* in accordance with section 706 of

Title 5. (emphasis added)); *see also, e.g., Kilgour v. SEC*, 942 F.3d 113, 120 (2d Cir. 2019) (naming only the Commission as respondent in an action brought under 15 U.S.C. § 78u-6(f)); *Stryker v. SEC*, 780 F.3d 163, 165 (2d Cir. 2015) (same); *Greenspan v. SEC*, 727 F. App'x 381 (9th Cir. 2018) (unpublished) (same); *Cerny v. SEC*, 707 F. App'x 29 (2d Cir. 2017) (unpublished) (same).

Accordingly, the United States and the Department of Justice respectfully request that they be dismissed as respondents in this case.

CONCLUSION

For the foregoing reasons, the Court should dismiss the United States and the U.S. Department of Justice as respondents in this case

Respectfully submitted,

Marleigh D. Dover

/s/ Casen B. Ross

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JANUARY 2020

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rules of Appellate Procedure 32(g)(1) and 27(d)(2)(A) because it contains 623 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word in CenturyExpd BT 14-point font, a proportionally spaced typeface.

/s/ Casen B. Ross

CASEN B. ROSS

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2020, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Casen B. Ross
CASEN B. ROSS