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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Mark R. Meador

In the Matter of

Philip Serpe,

Appellant.

Matter No. 9441

**THE AUTHORITY'S OPPOSITION TO APPELLANT'S
SECOND MOTION FOR STAY OF SANCTION PENDING REVIEW**

Appellant Philip Serpe’s most recent request is just as brazen as his last. In December, Appellant moved to inject new constitutional issues not previously raised to the arbitrator or administrative law judge (“ALJ”), and for stay relief never previously requested. Now, Appellant makes another baseless argument for the same extraordinary stay relief based on new issues of fact in support of a legal claim he has never before pressed. The Commission correctly denied Appellant’s request to belatedly inject new evidence and legal claims into this proceeding. *See Order Denying In Part Appellant’s Combined Mot. 4.* It should also deny his second motion to stay his suspension pending the Commission’s review.

1. As the Authority explained when Appellant sought the same relief in December, the request to stay his now six-month-old suspension comes too late. Appellant could have asked the ALJ for “a stay of all or part of that sanction,” but such a request had to “be filed concurrently with the application for review of the sanction.” 16 C.F.R. § 1.148(b)(1). Appellant did not meet that deadline—choosing instead to limit his appeal to whether the arbitrator should have imposed an *additional* sanction (the fine) in order to set up a Seventh Amendment claim unconnected to the suspension.

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Appellant also could have asked the Commission “for a stay of the sanction . . . within 7 days of the Commission’s order . . . ordering review.” 16 C.F.R. § 1.148(b)(2)(ii). But he chose to forgo that opportunity, too. Instead, after the Commission issued its considered order granting review and staying the fine imposed by the ALJ, Appellant requested to extend the briefing schedule while his suspension was ongoing. Mot. for Clarification and Extension of Time 1-2.

Appellant nevertheless contends (in a footnote) that his stay motion is “timely” because he is also “ask[ing] the Commission to consider new issues.” Mot. 10 & n.8. But the deadline to seek a stay runs from the Commission’s order granting review of the ALJ “decision,” 16 C.F.R. §§ 1.147(a), 1.148(b)(2)(ii), not “from the date of any Commission order granting review of [a particular] issue,” Mot. 10 n.8. In any event, the Commission has denied Appellant’s request to consider the new issues. *See Order Denying In Part Appellant’s Combined Mot. 3-4.* There is thus no “Commission order granting review of those issues” from which a renewed seven-day clock could run. Mot. 10 & n.8. Accordingly, the Commission should reject Appellant’s belated stay request outright.

2. Regardless, as with his prior stay motion, Appellant cannot satisfy any (much less all) of the factors governing a timely stay application. As to his likelihood to succeed on the merits, Appellant bases his renewed stay request on his “new evidence” and its supposed ability to “severely weaken[] HIWU’s contention that [he] is culpable for the charged offense.” Mot. 11. But the Commission declined to consider this additional evidence because Appellant, “who has been ably represented by counsel throughout these proceedings,” did not demonstrate “reasonable grounds” for his failure to timely present it to the Arbitrator, the ALJ, or the Commission. *Order Denying In Part Appellant’s Combined Mot. 3.*

Further, the Commission declined to expand its review to include Appellant’s “liability or the length of his suspension,” both because Appellant “all but abandoned any argument about his liability before the ALJ,” and because—given the Commission’s refusal to consider Appellant’s late-

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proffered evidence—“the premise underlying [Appellant’s] request to expand the scope of review no longer exists.” Order Denying In Part Appellant’s Combined Mot. 3-4. Appellant’s second motion to stay his suspension, then, adds nothing to his first. And as the Authority previously explained, Appellant’s Article III claim—the only claim on which his first motion to stay is based—is both forfeited and unlikely to succeed on the merits. *See* The Authority’s Combined Opp. To Appellant’s Mot. For Leave To Brief Additional Issues And Mot. To Stay Suspension 4-5.

If that were not enough, Appellant’s failure to seek a stay of his suspension since it was imposed now *six* months ago undermines any assertion of irreparable harm. *See, e.g., Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977) (“The applicants’ delay in filing their petition and seeking a stay vitiates much of the force of their allegations of irreparable harm.”). Granting a stay, moreover, would not serve the public interest. It would effectively bless Appellant’s strategic choice to flip-flop his positions and disregard the governing regulatory scheme—one in which aggrieved parties must raise and preserve any arguments they intend to make and seek any stay within the relevant timeline. The Commission should not encourage that conduct.

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For all these reasons, Appellant’s motion to stay his suspension pending review should be denied.

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Respectfully submitted,

/s/Bryan H. Beauman

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PUBLIC**CERTIFICATE OF SERVICE**

Pursuant to 16 CFR § 1.146(a) and 16 CFR § 4.4(b), I certify that on February 6, 2026, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of the filing. A courtesy copy will be sent via email to the following:

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