

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

---

SECURITIES AND EXCHANGE  
COMMISSION,

:  
: 1:16-cv-06848 (BMC)  
:

Plaintiff,

v.

PLATINUM MANAGEMENT (NY) LLC;  
PLATINIUM CREDIT MANAGEMENT, L.P.;  
MARK NORDLICHT;  
DAVID LEVY; DANIEL SMALL; URI  
LANDESMAN; JOSEPH MANN;  
JOSEPH SANFILIPPO; and JEFFREY  
SHULSE;

Defendants

---

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE ESTATE OF  
URI LANDESMAN’S MOTION TO DISMISS THE COMPLAINT AGAINST URI  
LANDESMAN**

The Estate of Uri Landesman (the “Estate”) respectfully submits this reply memorandum of law in further support of its motion to dismiss the Complaint against him in his personal capacity, filed by Plaintiff Securities and Exchange Commission (the “SEC”) on December 19, 2016, under Federal Rule of Civil Procedure 25(a)(1). As the SEC failed to substitute the Estate as a party with ninety days of receiving formal notice of Mr. Landesman’s death, filed on this Court’s docket, and because the stay of the civil proceedings did not toll the deadline for substituting parties or otherwise excuse the SEC’s failure to timely substitute the Estate, the case against Mr. Landesman should be dismissed, and the SEC precluded from substituting in the Estate.

## ARGUMENT

The SEC objects to the Estate of Uri Landesman's motion to dismiss the complaint for failure to timely substitute parties solely on the basis of the stay that this Court has put in place for the case against the individual defendants while a related criminal action is proceeding.

The SEC's argument is incorrect. Rule 25(a)(1) should be interpreted as a mandatory claim-processing rule, as it "seek[s] to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011). Indeed, "[f]iling deadlines . . . are quintessential claim-processing rules." *Id.* Although such rules may be alterable upon proper motion, they must be enforced if properly invoked. *Hamer v. Neighborhood Housing Servs. of Chicago*, 138 S. Ct. 13, 17 (2017).

Here, the Estate of Uri Landesman properly invoked the claims-processing rules regarding substitution of parties after filing a notice of death, and thus, this Court should enforce such rules. The stay of litigation against certain of the individual defendants should not change that result. First, it is notable that the SEC was unable to find any authority in the Second Circuit that a general stay of litigation entered prior to the death of the relevant party tolls the deadlines imposed by Rule 25.

The case on which the SEC primarily relies, *Lizarazo v. Miami-Dade Corrections & Rehabilitation Department*, 878 F.3d 1008 (11th Cir. 2017), is markedly different in its procedural history from this case. In *Lizarazo*, the district court stayed proceedings for 90 days *after* the suggestion of death was filed in order to allow the plaintiff time to have the estate probated and a representative appointed. *Id.* at 1009. Then, before that stay expired, the plaintiff's attorney sought an additional stay in order to allow the process for appointing a representative to be completed; alternatively, however, the attorney also filed a protective motion to substitute. *Id.* at 1010.

In reversing the district court’s opinion, the Eleventh Circuit determined that “[d]istrict courts have discretion to extend the Rule 25 ninety-day period for substitution.” *Id.* And because the district court later determined that its initial order staying the case for 90 days to allow for the appointment of an appropriate representative of the estate was an extension of the 90-day period in Rule 25, the district court determined that the case should be reopened. *See Lizarazo v. Miami-Dade Cty.*, Case No. 1:16-cv-20558, Dkt. 97 at \*6 (S.D. Fla. Feb. 16, 2019) (attached as Exhibit A to SEC Opposition).

Here, by contrast, the stay at issue was entered over a year prior to Mr. Landesman’s death, not because of it. And the motion seeking the stay did not request a tolling of the Rule 25 deadline.<sup>1</sup> Instead, the stay was entered in order to allow the criminal prosecution of Mr. Landesman and the other individual defendants to come to a resolution before any civil action brought by the SEC. Thus, contrary to the SEC’s assertion, the court in *Lizarazo* far from “addressed the exact issue here.” (SEC Opp. at 3.)

The SEC has cited no authority that a stay entered prior to a party’s death serves as a blanket stay of all deadlines, including claims-processing (rather than merits-based) deadlines such as those in Rule 25, when properly invoked. The closest that the SEC comes is with its citation to *Serrano v. Henry*, No. 12-CV-24367-MORENO, 2015 WL 11199846 (S.D. Fla. Mar. 13, 2015), which involved a stay of all proceedings entered prior to the death of the defendant because of his failing health. *Id.* at \*1. However, the defendant in that case did not object to the substitution at the time of the plaintiff’s motion, and only raised the issue on a motion for

---

<sup>1</sup> Notably the *purpose* of the stay—to allow the criminal proceedings against Mr. Landesman to proceed prior to the SEC action—also became irrelevant upon Mr. Landesman’s death. After passing away, he was no longer a defendant in the criminal action or subject to any criminal liability. Accordingly, the interests that were being protected by staying the SEC action were no longer relevant as to Mr. Landesman.

reconsideration. *Id.* The court therefore considered the issue under the clear error standard, rather than the higher bar set by *Hamer*, which requires properly-invoked claims-processing rules to be followed. *Serrano*, 2015 WL 11199846, at \*1; *Hamer*, 138 S. Ct. at 17.

In this case, by contrast, Mr. Landesman's Estate timely invoked the procedures and limits described by Rule 25(a), and it was the SEC, rather than the Estate, that failed to object, seek clarification, or otherwise seek relief from this Court. Indeed, the SEC could have sought clarification from this Court upon the Estate's filing of the notice of Mr. Landesman's death that the stay also applied to purely procedural deadlines that operate to ensure that the correct parties are named in the suit. But the SEC failed to do so, instead choosing to rely on its own erroneous interpretation of the breadth of the stay pending resolution of the criminal action. The case should therefore be dismissed.

In a footnote, the SEC alternatively argues that its failure to adhere to the Rules of Civil Procedure should be excused for excusable neglect. (SEC Opp. at 5 n.2.) However, Second Circuit precedent is clear that ignorance of the law does not qualify as excusable neglect. *See, e.g., Mendell ex rel. Viacom, Inc. v. Gollust*, 909 F.2d 724, 731 (2d Cir. 1990). And the Second Circuit has taken a "hard line" approach to excusable neglect, explaining that "the equities will rarely if ever favor a party who 'fail[s] to follow the clear dictates of a court rule.'" *Silivanich v. Celebrity Cruises, Inc.*, 333 F.3d 355, 366-67 (2d Cir. 2003) (quoting *Canfield v. Van Atta Buick/GMC Truck, Inc.*, 127 F.3d 248, 250-51 (2d Cir. 1997)).

Here, the SEC's only proffered basis for allowing the filing of a motion to substitute out of time (despite not actually filing such a motion) is that it was justified in relying on the stay of the civil matter. But this is essentially an argument that the SEC misunderstood the law,

expecting the Court's stay order to toll all procedural, claims-processing deadlines. Such "ignorance of the law" is not a proper basis for invoking excusable neglect defense.

Because of the mandatory nature of properly-invoked claims processing rules and the lack of excusable neglect, this Court should enter an order dismissing the SEC's complaint against Mr. Landesman with prejudice and barring any suit by the SEC against the Estate.

Respectfully submitted,

Dated: April 15, 2019  
Newark, New Jersey

By: /s/ Eric R. Breslin  
Eric R. Breslin  
Melissa S. Geller  
**DUANE MORRIS LLP**  
**A Delaware Limited Liability Partnership**  
One Riverfront Plaza  
1037 Raymond Blvd., Suite 1800  
Newark, NJ 07102-5429  
Telephone: +1 973 424 2000  
Fax: +1 973 424 2001  
*Attorneys for the Estate of Uri Landesman*