

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1691/August 11, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15820

In the Matter of

DELSA U. THOMAS AND
THE D. CHRISTOPHER CAPITAL
MANAGEMENT GROUP, LLC

ORDER ON MOTION FOR EXTENSION

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on April 2, 2014, pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 against Delsa U. Thomas and The D. Christopher Capital Management Group, LLC (collectively, Respondents).

A telephonic prehearing conference was held on May 27, 2014. Following the prehearing conference, I ordered Respondents to file an Answer by June 20, 2014, and the parties to file motions for summary disposition by June 27, 2014, oppositions by July 18, 2014, and replies, if any, by July 28, 2014. Delsa U. Thomas, Admin. Proc. Rulings Release No. 1469, 2014 SEC LEXIS 1824 (May 28, 2014).

On June 20, 2014, the day their Answer was due, Respondents filed an Unopposed Motion to Extend Answer Date and Dates to File Motions for Summary Disposition, Oppositions, and Replies, requesting that the deadline for filing their Answer be continued to July 7, 2014, the deadline for motions for summary disposition be continued to July 14, 2014, the deadline for oppositions be continued to August 4, 2014, and the deadline for replies be continued to August 14, 2014. I granted this motion. Delsa U. Thomas, Admin. Proc. Rulings Release No. 1547, 2014 SEC LEXIS 2173 (June 20, 2014).

On July 7, 2014, the day their Answer was then due, this Office received Respondents' Second Unopposed Motion to Extend Answer Date and Dates to File Motions for Summary Disposition, Oppositions, and Replies, requesting that the deadline for filing their Answers be continued to July 14, 2014, the deadline for motions for summary dispositions be continued to July 21, 2014, the deadline for oppositions be continued to August 11, 2014, and the deadline for replies be continued to August 21, 2014. Again, I granted this motion. Delsa U. Thomas, Admin. Proc. Rulings Release No. 1590, 2014 SEC LEXIS 2418 (July 7, 2014).

Finally, on the afternoon of August 8, 2014, one business day before their opposition was now due, Respondents emailed this Office a Motion to Extend Answer Date to File Motions for Opposition to Summary Disposition, and Replies (Motion), requesting that the deadline for their opposition be extended to September 8, 2014, and the deadline for replies be extended to September 22, 2014. Respondents argue that this postponement is necessary for them to secure legal counsel after their most recent representation withdrew.

Under Commission Rule of Practice 161, the factors to consider in determining whether to grant a motion for extension include

- (i) the length of the proceeding to date; (ii) the number of postponements, adjournments or extensions already granted; (iii) the stage of the proceedings at the time of the request; (iv) the impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and (v) any other such matters as justice may require.

17 C.F.R. § 201.161(b). Rule 161 also instructs the hearing officer to consider “any other relevant factors” and to “adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.” Id.

These factors weigh against granting this Motion. The OIP was served on Respondents over four months ago, and Respondents have been on notice to expect a motion for summary disposition from the Division since at least May 27, 2014, when the prehearing conference was held. In addition, as demonstrated above, this Motion is Respondents' third request for an extension, and follows a pattern of waiting to request an extension until the day, or day before, filings are due.¹ I am also concerned that Respondents' requested dates call for briefing to conclude in late September, leaving me only slightly more than a month to consider the evidence and briefings and to render a decision. These concerns are magnified by Respondents' repeated inability to meet deadlines, even after multiple extensions.

I also find that Respondents have not made a “strong showing that the denial of the request or motion would substantially prejudice their case.” The Division filed its motion for summary disposition on July 21, 2014. Respondents were represented by their prior counsel until August 1, 2014, a span of over ten days after Division filed its motion. Respondents have not shown, or even argued, that the work done by their prior counsel before withdrawing is not sufficient to respond to the Division's motion. Instead, Respondents merely state that the extension is necessary “to have the full capacity to respond appropriately” to Division's motion.

¹ Because this Motion was filed only one business day before Respondents' filings were due, the Division has not indicated its position. Respondents claim that they attempted to confer with Division counsel, but admit that those attempts at communication occurred on August 8, 2014, the day the Motion was emailed to this Office.

This is not a sufficient showing to overcome the “policy of strongly disfavoring” a motion for extension.

Accordingly, Respondents’ Motion is DENIED WITHOUT PREJUDICE. The dates set in my July 7, 2014, order continue to stand. Respondents may submit additional briefing demonstrating in greater detail what, if any, substantial prejudice they may suffer absent an extension.

Cameron Elliot
Administrative Law Judge