

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 3328/November 18, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-16509

In the Matter of

EDWARD M. DASPIN, a/k/a “EDWARD (ED) MICHAEL,”  
LUIGI AGOSTINI; and  
LAWRENCE R. LUX

ORDER

Respondent Edward M. Daspin, *pro se*, has filed a motion “for a 6 month tolling of [the] scheduled hearing.” The Division of Enforcement opposes Daspin’s latest motion, asserting that he has “made essentially the same arguments in two recent prior motions for a continuance, both of which have been denied.” Opp. at 1. I agree. I construe Daspin’s motion as a request to reconsider my previous orders setting the schedule in this matter and denying his request for a stay.<sup>1</sup> So construed, Daspin’s motion is DENIED.<sup>2</sup>

Daspin’s request “for a 6 month tolling” appears to refer to tolling agreements into which parties sometimes enter with the Division. To the extent he is referring to a tolling agreement, he is informed that a tolling agreement is an agreement that a party might reach with the Division *during the Division’s investigation*. See, e.g., *Eric J. Brown*, Securities Act of 1930 Release No. 9299, 2012 SEC LEXIS 636, at \*45-47 (Feb. 27, 2012). The agreement extends an applicable

<sup>1</sup> See *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3183, 2015 SEC LEXIS 4001 (Sept. 30, 2015); *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3041, 2015 SEC LEXIS 3348 (Aug. 14, 2015).

<sup>2</sup> See *Estate of Gaither ex rel. Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 10 (D.D.C. 2011) (“motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier” (internal quotation marks and citations omitted)); cf. *Richard G. Cody*, Securities Exchange Act of 1934 Release No. 65235, 2011 SEC LEXIS 3041, at \*2-3 (Aug. 31, 2011) (stating that under Rule of Practice 470, the Commission does “not grant reconsideration to consider arguments previously addressed or authority previously available, and will only consider additional evidence if ‘the movant could not have known about or adduced [such evidence] before entry’ of the Opinion” (brackets in original)).

statute of limitations while the Division continues its investigation and temporarily forestalls the potential institution of a civil or administrative action.<sup>3</sup> Once an action is instituted, however, there is no longer anything to toll. Moreover, and in any event, administrative law judges have no role with respect to tolling agreements.

In his reply, Daspin purports to present the substance of discussions he has had with the Division about possible settlement. So as not to prejudice Daspin, I have not considered this information.<sup>4</sup> As required by Rule of Practice 161, in the event Daspin and the Division “agree[] in principle to a settlement on all major terms,” I will enter an order staying this matter. *See* 17 C.F.R. § 201.161(c)(2).

Daspin also makes reference to being “furnish[ed] . . . with . . . subpoena rights.” Mot. at 2. Under Rule of Practice 232, he has already been “furnished” with the right to request the issuance of subpoenas. *See* 17 C.F.R. § 201.232. The form for a subpoena to produce documents is found here, <http://www.sec.gov/alj/subpoena-to-produce.pdf>, and the form for a subpoena to appear and testify is found here, <http://www.sec.gov/alj/subpoena-to-appear.pdf>.

Finally, Daspin’s latest reply contains an extended discussion of the circumstances surrounding this matter. This discussion suggests that Daspin believes I am aware of all the evidence that will be presented during the hearing. It also suggests a possible belief that he must present his defense now. Neither belief is correct. As the trier of fact, I will decide Daspin’s case solely based on the evidence presented at the hearing. I have not been given a preview of the evidence that will be presented and am not privy to discussions he or his counsel may have had with the Division.

Separately, on November 2, 2015, the Division submitted a letter representing that Daspin wishes to appear at the hearing via Skype. In the letter, the Division asks that Daspin not be permitted to appear via Skype or “any other video conferencing technology.” The Division states that it is aware of no medical reason why Daspin cannot appear in person, and argues his appearance via Skype would “create numerous problems,” including the potential for technical delays and interruptions. The Division also notes that it is unclear how Daspin would present and/or view documents during the hearing if Skype were used.

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<sup>3</sup> *See Nat’l Credit Union Admin. Bd. v. Barclays Capital Inc.*, 785 F.3d 387, 392 (10th Cir. 2015) (“Federal statutes of limitations can often be tolled by agreement.”); *SEC v. Kelly*, 663 F. Supp. 2d 276, 287 (S.D.N.Y. 2009) (characterizing a tolling agreement with the Commission as “[a]n agreement between a potential plaintiff and a potential defendant by which the defendant agrees to extend the statutory limitations period on the plaintiff’s claim, usu[ally] so that both parties will have more time to resolve their dispute without litigation” (internal quotation marks and citations omitted)).

<sup>4</sup> *See* Andrew J. Wistrich, Chris Guthrie & Jeffrey J. Rachlinski, *Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding*, 153 U. Pa. L. Rev. 1251, 1286-93 (2005).

For the reasons provided in the Division's letter, the Division's request to foreclose Daspin from appearing via Skype is GRANTED. I remain mindful, however, of Daspin's claims regarding his medical condition, and the Division has not demonstrated why "any other video conferencing technology" would create the "numerous problems" posed by Skype. As a result, the Division's request to foreclose Daspin from appearing via "any other video conferencing technology" is DENIED. Any video conferencing technology, however, would have to be sufficiently reliable to address the concerns identified in the Division's letter. For example, a professional video teleconference service that would allow Daspin to present and view documents and ensure an uninterrupted video and audio connection might suffice.

I FURTHER ORDER that if the parties cannot agree on and jointly propose an alternative hearing method and location by November 24, 2015, then each party may submit by December 1, 2015, a short letter proposing an alternative hearing method and location and explaining the reasons therefor. In the event no acceptable alternatives are proposed, the hearing will take place as currently scheduled, beginning January 4, 2016, in Courtroom 238 of the Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

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James E. Grimes  
Administrative Law Judge