

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3354 / November 30, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-15815

In the Matter of

L&L ENERGY, INC.
AND DICKSON LEE, CPA

ORDER DIRECTING SUPPLEMENTAL
BRIEFING

The Securities and Exchange Commission instituted this proceeding on March 27, 2014. The proceeding was stayed from April, 3, 2014 until April 28, 2015, because of pending criminal proceedings. On June 1, 2015, the Commission issued an Order Making Findings and Imposing Sanctions and a Cease-and-Desist Order against Dickson Lee as a result of a settlement. *Dickson Lee, CPA*, Securities Act of 1933 Release No. 9799, 2015 SEC LEXIS 2185.

L&L did not participate in the May 5, 2015, prehearing conference. Moreover, after failing to file an Answer due May 26, 2015, it did not file an opposition to the Division of Enforcement's motion for default and sanctions filed on May 29, 2015. The Division would have me order L&L to disgorge the approximately \$750,000 that L&L raised through its stock offering during the period of its alleged fraud. *See* Order Instituting Proceedings (OIP) ¶ 35; Div. Br. at 23-24.

I have two concerns. First, the Division makes assertions in its brief that appear to supplement the allegation appearing in paragraph 35 of the OIP, but does not cite evidence in support. *Compare* OIP ¶ 35 with Div. Br. at 24. Second, and more critically, the Division appears to assume that the entire \$750,000 constituted illicit profits as opposed to, perhaps, money that the company raised and distributed to investors or otherwise used for legitimate purposes. Case law does recognize that because of the difficulty in separating "legal from illegal profit . . . , it is proper to assume that all profits gained while defendants were in violation of the law constituted ill-gotten gains." *SEC v Bilzerian*, 814 F. Supp. 116, 121 (D.D.C. 1993) (internal citations omitted), *aff'd*, 29 F.3d 689 (D.C. Cir. 1994). However, the Division's current submission is unclear whether the entire amount constituted a profit as there is no evidence showing what happened to the \$750,000.

"The Division has the initial burden of demonstrating a reasonable approximation of profits causally connected to the violation." *Jay T. Comeaux*, Securities Act of 1933 Release No. 9633, 2014 SEC LEXIS 3001, at *9 (Aug. 21, 2014) (internal quotation marks omitted). Although that burden is not high, it does need to show "but-for causation between a [respondent]'s violations and profits." *Id.* I direct additional briefing by December 30, 2015, on the issue of disgorgement in hopes that the Division can provide any additional evidence regarding its requested disgorgement amount.

Brenda P. Murray
Chief Administrative Law Judge