

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1726/ August 26, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15737

In the Matter of

THOMAS C. GONNELLA

ORDER ON MOTION TO STRIKE

The parties sent post-hearing briefs to this Office on August 20, 2014. The brief filed by the Division of Enforcement contains what is styled as “Appendix A: Thomas Gonnella’s Credibility.” Appendix A contains five tables, each with its own heading emphasizing particular aspects of Mr. Gonnella’s testimony. Each table contains two columns and each of the columns contains brief excerpts of Mr. Gonnella’s testimony. The two-column arrangement is designed to highlight what the Division believes are discrepancies in Mr. Gonnella’s testimony.

By letter dated August 22, 2014, Mr. Gonnella objected to the inclusion of Appendix A in the Division’s brief. He argues that Appendix A is argumentative and constitutes an “attempt to circumvent” the page limits I imposed relative to the parties’ post-hearing briefs. Mr. Gonnella asks that I “strike and not consider” Appendix A.

The Division responds that Appendix A “merely contains quotations from the hearing transcript and admitted exhibits.” It also says that “mere transcript quotations, without more, clearly do not amount to legal argument,” and “are frequently attached . . . to briefs,” without being “counted against page-limit requirements.”

I construe Mr. Gonnella’s letter as a motion to strike or not consider Appendix A, and the Division’s letter as an opposition to the motion. So construed, I GRANT Mr. Gonnella’s motion and will not consider Appendix A.

It is true that transcript pages are often attached to briefs in order to assist a court in its adjudication. *See, e.g.*, Fifth Cir. R. 30.1.5(e). Had the Division simply attached copies of exhibits or pages of the transcript to which it referred in its post-hearing brief, Mr. Gonnella would have no basis to complain. Contrary to the Division’s argument, however, Appendix A does not contain “mere transcript quotations, without more.” Instead, it contains descriptive headings with side-by-side comparisons of testimony. In substance, Appendix A amounts to an argumentative presentation, which properly belongs in the Division’s brief. Inasmuch as (1) the

Division's brief is currently at the 40-page limit I imposed; and (2) the Division did not object to the limit or seek leave to exceed it, I will not consider Appendix A.

SO ORDERED.

James E. Grimes
Administrative Law Judge