

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3137 / September 16, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16223

In the Matter of

SANDS BROTHERS ASSET MANAGEMENT, LLC,
STEVEN SANDS,
MARTIN SANDS, AND
CHRISTOPHER KELLY

ORDER ON
SUBPOENA REQUEST

The Securities and Exchange Commission commenced this proceeding on October 29, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Respondents, pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940. The hearing is scheduled to commence on November 9, 2015, in New York City.

On September 13, 2015, Respondent Christopher Kelly (Kelly) submitted to this Office a request (Request) that I issue several documentary subpoenas. A party may request the issuance of subpoenas requiring the production of documentary or other tangible evidence. 17 C.F.R. § 201.232. However, I need not issue a subpoena if it is unreasonable, oppressive, excessive in scope, or unduly burdensome. 17 C.F.R. § 201.232(b).

On September 15, 2015, the Division submitted to this Office a letter response to the Request, and later that same day, Kelly submitted a letter responding to the Division's points and elaborated on his reasons for the Request. The Division raises a general objection to the Request on the grounds of untimeliness. However, Kelly's Request came promptly after I set this case for a hearing, which is scheduled for November 9, 2015. The October 8, 2015, date for the exchange of exhibits is not a basis for precluding Kelly from obtaining additional evidence. If responsive documents are produced after that date, Kelly must promptly furnish those exhibits to all other parties.

The Request seeks four categories of documents. First, it seeks emails from Cornick Garber & Sandler LLP (Cornick), the auditor for the financial statements at issue in this proceeding, and emails and certain "evidence of reimbursements" from Greenwich Fund Services (GFS), the administrator of the funds advised by Respondent Sands Brothers Asset Management, LLC (SBAM). *See* SBAM Form ADV (2014), at 41, 45. This first category does not appear to be unreasonable, oppressive, excessive in scope, or unduly burdensome, however,

to the extent documents were already produced to the Commission as part of the investigation, Cornick and GFS need not produce them again. As to the GFS subpoena, seeking evidence of reimbursements to Kelly when he used his own credit card on behalf of SBAM, such evidence could be relevant to issues such as the degree of control that Kelly exercised and how Martin and Steven Sands (the Sands) managed SBAM. The subpoenas to Cornick and GFS will therefore issue without modification.

Second, the Request seeks from the Commission materials relating to the Division's communications and other dealings with Gusrae Kaplan Nusbaum PLLC (Gusrae), SBAM's previous counsel in this proceeding, and phone records for three Division employees for calls to or from Kelly in early 2014. This category is unreasonable. Kelly does not dispute the Division's representation that on June 26, 2015, it produced to him all written communications in its possession between the Division and Gusrae, including emails. Also, the relevance of such communications is unclear. Similarly unclear is the relevance of the Division's phone records. It is undisputed that the Division had telephone conversations with Kelly, and that Kelly left voicemails with the Division; the only potential relevance is not the fact of those phone calls but rather the import or content of those conversations and voicemails. Moreover, Kelly should be able to obtain the record of his phone calls by examining his own phone records. Accordingly, the subpoena to the Commission will not issue, and if Kelly continues to seek such documents he will be required to show their relevance and the reasonableness of their scope. *See* 17 C.F.R. § 201.232(b).

Third, the Request seeks invoices and emails relating to those invoices from five law firms, including Gusrae, as well as communications between Gusrae and the Commission in connection with this proceeding. Kelly asserts that the law firm invoices would be helpful to show the extent to which the Sands controlled SBAM and matters related to this proceeding, and that all of the law firms worked on matters related to the production of audits. This request may yield evidence relevant to the issues in this proceeding, and the scope is reasonable as it pertains to when the firms may have worked on related matters for SBAM. The Division suggests that Kelly has delayed seeking this information, but now that the issues are more precisely defined following summary disposition, Kelly may have a clearer idea of what information is relevant to his defense. The Division also asserts that Kelly has not shown why such documents are not privileged. But law firm invoices and attorney billing statements are not necessarily privileged in their entirety. *See DiBella v. Hopkins*, 403 F.3d 102, 120 (2d Cir. 2005); *Pryor v. Pryor*, No. FA084026674S, 2010 WL 654753, at *3 (Conn. Super. Ct. Jan. 22, 2010). I will therefore issue the subpoenas to the law firms. If any material is redacted or withheld on the ground of privilege, a complete privilege log should be produced.

As to communications between Gusrae and the Commission in connection with this proceeding, as explained, the Division has already produced this information to Kelly, and their relevance is in any event unclear. Accordingly, this portion of the subpoena to Gusrae will be stricken. If Kelly continues to seek such materials from Gusrae, he will be required to show their relevance and the reasonableness of their scope.

Fourth, the Request seeks a variety of documents from SBAM. Some of the requested documents have no apparent relevance, for example, communications between SBAM and its tax

preparer, SBAM credit card statements, records regarding SBAM's alleged nonpayment of overdue attorney fees, and records regarding reimbursement of Cornick for a trip to Kentucky. Some of the requested documents should already be in the investigative file, for example, valuations, emails related to fund audits, and general ledgers. Some of the requested documents seem unlikely to exist and therefore cannot be produced, for example, lists of attorneys not paid in full by SBAM, or who sued SBAM, and previous versions of SBAM website pages. To be sure, some of the requested documents may be suitable for a subpoena – for instance, SBAM's tax returns between 2010 and 2013 would seem relevant, may not be in the investigative file, and are surely readily available from SBAM – but overall the fourth category of the Request is unreasonable and excessive in scope. Accordingly, the subpoena to SBAM will not issue, and if Kelly continues to seek documents from SBAM he will be required to show their relevance and the reasonableness of their scope.

It is therefore ORDERED that Christopher Kelly's request for issuance of subpoenas is GRANTED IN PART and DENIED IN PART WITHOUT PREJUDICE, as outlined above.

Cameron Elliot
Administrative Law Judge