

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4067/August 16, 2016

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 ON SUBPOENA
REQUESTS

Respondent Luigi Agostini has asked that I issue subpoenas to various individuals, including current and former Securities and Exchange Commission administrative law judges and Commission employees located in the Commission’s New York Regional Office. Agostini’s request is denied as to those persons without prejudice to his explaining the “general relevance and reasonable scope of the testimony” he seeks from them.¹ *See* 17 C.F.R. § 201.232(b).

Subpoenas are governed by Rule of Practice 232, which permits a party to “request the issuance of subpoenas requiring the attendance and testimony of witnesses” at the hearing. 17 C.F.R. § 201.232(a). If “it appears . . . that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome,” an administrative law judge may “require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony . . . sought.” 17 C.F.R. § 201.232(b). Subsection (b) thus authorizes an administrative law judge to determine, at the threshold, whether a requested subpoena is “unreasonable, oppressive, excessive in scope, or unduly burdensome.” *Id.*

In December 2015, Respondent Edward M. Daspin submitted a witness list that included “attorneys from the Division of Enforcement, and all five of the Commission’s administrative

¹ With the exception of Agostini’s request that I issue a testimonial subpoena to “Beryl Wolk Estate c/o IMC/Beryl Wolk,” I have issued the other subpoenas Agostini has requested. The Wolk subpoena is apparently directed to the estate of a deceased person. Although the estate could appoint a representative to testify on its behalf, the scope of the anticipated testimony is unknown. I therefore have not issued this subpoena and direct Agostini to submit a revised subpoena request either identifying the estate’s representative by name or specifying the nature of the anticipated testimony so that the estate can ascertain to whom the subpoena should be directed. In either event, he should also explain the anticipated relevance of the representative’s testimony.

law judges.” *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3416, 2015 SEC LEXIS 5164, at *1 (ALJ Dec. 18, 2015). Primarily because he failed to show the relevance of the testimony he sought, I granted the Division’s motion to strike the referenced witnesses from Daspin’s witness list. *Id.* at *1, *5-11.

Agostini has not explained why he wishes to call current and former Commission administrative law judges or employees located in the Commission’s New York Regional Office. In light of my prior ruling determining that Daspin in his similar request did not establish the relevance of such evidence, I DENY Agostini’s subpoena request as to those persons without prejudice. I ORDER Agostini to show cause by August 26, 2016, why the testimony he seeks is “general[ly] relevan[t]” and how his request is “reasonable [in] scope.”² 17 C.F.R. § 201.232(b). If Agostini responds to this order, he should carefully consider the December 18, 2015 order in which I granted the Division’s motion to strike witnesses from Daspin’s witness list. If Agostini fails to file a response to this order by August 26, 2016, I will consider his request withdrawn.

James E. Grimes
Administrative Law Judge

² In a cover letter, Agostini states that he is “also requesting that the Division provide [him] the full names and addresses of all the Division’s investigator(s) that participated in collaborating to produce the *Brady* witness debriefing evidence and for the Court to provide [him] an extension of time to include them as part of [his] submission.” If Agostini submits a subpoena request for “the Division’s investigator(s),” he must address the factors in Rule 232(b) discussed above and explain why he should be granted an extension of time.

In the same cover letter, Agostini also asks that I allow certain witnesses to appear “via video conferencing and to provide such accommodations at the Court room location to be determined.” If the parties agree, witnesses may testify via video teleconference. Absent agreement, however, Agostini has not provided any information that would allow me to determine whether it would be appropriate to order that any witness be permitted to testify by video.

Finally, Agostini says that he is “relying on the SEC’s subpoena list as additional witnesses.” The Division should not release a witness to whom I have issued a subpoena without first conferring with Agostini.