

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 4107/August 31, 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

I held a telephonic prehearing conference in this matter on July 19, 2016, during which I proposed setting a deadline for subpoena requests. Tr. 126-27. Neither party objected. In an order following that conference, I set August 15, 2016, as the deadline for requesting subpoenas requiring the attendance of witnesses at the upcoming hearing in this matter. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 4005, 2016 SEC LEXIS 2500 (ALJ July 20, 2016).

Respondent Luigi Agostini timely submitted a request that I issue subpoenas to various people, including Commission employees James E. Burt, IV, Leslie Kazon, and Timothy Casey, all located in the Commission’s New York Regional Office.<sup>1</sup> He also asked that I subpoena the estate of a deceased individual named Beryl Wolk. On August 16, 2016, I denied Agostini’s request as to those individuals and the Beryl Wolk estate without prejudice to renewal by August 26, 2016. *Edward M. Daspin*, 2016 SEC LEXIS 2806, at \*1 & n.1. In denying Agostini’s request, I directed him to “show cause . . . why the testimony he seeks is ‘general[ly] relevan[t]’ and how his request is ‘reasonable [in] scope.’” *Id.* at \*3 (quoting 17 C.F.R. § 201.232(b)). I also provided that “[i]f Agostini fails to file a response to this order by August 26, 2016, I will consider his request withdrawn.” *Id.*

Agostini responded to the order to show cause by asserting that Wolk, were he alive, would provide relevant and exculpatory testimony, and asking that I order testimony from the three Commission employees whom Agostini believes interviewed Wolk: “James E. Burt, Barry

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<sup>1</sup> Agostini also sought to subpoena current and former Securities and Exchange Commission administrative law judges. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 4067, 2016 SEC LEXIS 2806, at \*1 (ALJ Aug. 16, 2016).

O’Connell[,] and Elizabeth Baier.”<sup>2</sup> Response at 1-2. O’Connell and Baier were not included in Agostini’s initial request, and Agostini does not mention Leslie Kazon or Timothy Casey, who were included in that initial request. Agostini also expands his initial request to include “all notes of witness interviews and attorney proffers, without restriction.” *Id.* at 6. Finally, he asserts that the Division of Enforcement has violated its obligation to disclose exculpatory evidence and Jencks Act material. *See id.*

The Division has informed my office that it intends to respond to Agostini’s most recent filing by the end of the day tomorrow, September 1, 2016. In addition to the matters it deems appropriate to address, the Division in its response should clarify what it has disclosed to Agostini and what it has withheld and why. If possible, it should also submit a declaration “describing [its] review of documents in its withheld document list and representing that all identified possible material exculpatory evidence” and Jencks Act material “was included in the list it provided.” *David F. Bandimere*, Securities Act of 1933 Release No. 9972, 2015 WL 6575665, at \*22 (Oct. 29, 2015); *see Orlando Joseph Jett*, Admin. Proc. Rulings Release No. 514, 1996 WL 360528, at \*1 (June 17, 1996) (Commission order relying on the Division’s sworn affidavit); Response at 6.

The parties should confer regarding a convenient time to hold a telephonic prehearing conference on Wednesday, September 7, 2016, to address the issues presented by Agostini’s response to the order to show cause. The parties should notify my office of the results of their discussion as soon as possible.

With regard to Agostini’s attempt obtain evidence regarding Beryl Wolk, it would be helpful if the parties are prepared to address the work-product doctrine, as well as *In re Grand Jury Investigation*, 599 F.2d 1224, 1231-32 (3d Cir. 1979) and *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986).

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James E. Grimes  
Administrative Law Judge

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<sup>2</sup> Agostini has abandoned his attempt to subpoena current and former Commission administrative law judges; they are not mentioned in his renewed request.