

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4812/May 19, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17699

In the Matter of

SHERVIN NEMAN and
NEMAN FINANCIAL, INC.

ORDER

On May 15, 2017, Respondents filed a “Reply to April 18th Call” and proposal to “subpoena witnesses.” Mot. at 1.

First, regarding the April 18 prehearing conference, Respondents contend that the Division of Enforcement incorrectly “claim[ed] that the SEC case is . . . totally separate from the criminal case when the former [Division] attorney had used the criminal conviction in her motions.” Mot. at 1. While the OIP and Division’s motion for default do address Respondent Shervin Neman’s criminal conviction, *see* OIP ¶ 5; Div. Default Mot. Ex. 7 – and I agree with Respondents that the criminal conviction is relevant to this proceeding – Division counsel correctly noted that the Division’s allegations are based on a final judgement in a civil case entered November 16, 2016. Tr. 24-25.¹ Respondents demonstrated a clear understanding of the distinction between the criminal and civil case at the April 18 conference. Tr. 14-15; *see* Tr. 27. Neman also reiterated Respondents’ position that “ALL THE WITNESSES LIED” in his criminal case and “ALL [of Neman’s] CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED.” Mot. at 2. Neman advised that he timely filed a petition for certiorari of his criminal conviction with the U.S. Supreme Court in order to address these issues. Tr. 6.

Second, Respondents “propose subpoenaing the witnesses, prosecutor, FBI agent, SEC lawyers” as part of a “full investigation.” Mot. at 3. I interpret this request, in part, as a motion to reconsider my denial of Respondents’ recommendation on April 18 that I “subpoena every witness that the SEC has,” Tr. 17, as well as an additional request to subpoena the prosecutor, FBI agent, and Division counsel. Respondents’ motion is denied, without prejudice to making subpoena requests, for documents or testimony, that comply with my previous ruling:

[Subpoena requests] with respect to individuals who have knowledge, should wait for . . . the Division’s motion [for] summary disposition. They are going to set forth all of the facts that they deem relevant to the relief that they request. . . .

¹ Transcript from the prehearing conference held April 18, 2017.

[L]ook through those facts, look through that information, and identify what individuals from your knowledge have information which would tend to discredit or undermine those representations being made by the Division of Enforcement.

Until I've had that sort of explanation and had an opportunity to see what the Division says in their motion . . . ordering subpoenas for either documents or testimony would be premature. I'm not telling you I would be unwilling to do that, but first I need to see what the Division has to say, and then I need to see what you write in response with respect to who would have information or knowledge which would disprove the contentions relied upon by the [D]ivision

Tr. 17-18.

At the April 18, 2017 conference it was also clarified that:

[Respondents] should identify not only the people who . . . have knowledge of what went on, but . . . also need to describe what things they would know which would tend to discredit or contradict the Division of Enforcement's contentions.

It is not enough just to say, "We should subpoena A, B and C people and ask them questions." In order to have a reasonable basis to have someone testify, you need to give me some idea of what knowledge and information they would have and what they should be able to say; all right?

And you put that in [writing], what you think they saw, what they did, what they should be able to testify about, and I will consider that in determining any sort of request for testimony by an individual.

But I need . . . an explanation of what specifically they would have knowledge about, how they knew it, and what they would be able to testify to

And in your written response, include a section about who you think should testify in this matter, what you understand that they would say, and how they would know that information, and that will be helpful to me in determining whether or not those individuals should ultimately be called to testify.

Tr. 30-31.

Respondents' current request, that everyone's testimony should be compelled by subpoena as part of a "full investigation" is akin to the broad, nonspecific request I declined to endorse at the April 18 prehearing conference. With regard to any request for a subpoena to issue for documents or hearing testimony, Respondents are directed to proceed in the manner specified above.

Respondents are reminded that the Division will file its motion for summary disposition today. Respondents' opposition to the Division's motion is due by July 3, 2017.

Jason S. Patil
Administrative Law Judge