

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

Administrative Proceedings Rulings  
Release No. 6423 / December 26, 2018

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 Edward M. Daspin’s  
Motion for Reconsideration**

This proceeding, which began when the Securities and Exchange Commission issued an order instituting proceedings (OIP) on April 23, 2015, was assigned to me after the Commission vacated all prior orders and decisions and ordered a new hearing before an administrative law judge who did not previously participate in the matter. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at \*2-4 (Aug. 22, 2018); *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at \*2, \*4 (ALJ Sept. 12, 2018). Edward M. Daspin is the only remaining Respondent. On November 19, 2018, I ordered a prehearing schedule which includes a public hearing beginning on February 25, 2019. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 6342, 2018 SEC LEXIS 3260, at \*3-4 (ALJ).

Daspin emails a great deal of unsolicited material to my office and to others at the Commission. Some of the emails are considered filings and portions require action by the presiding administrative law judge. On December 6, 2018, Daspin emailed to my office a “Reconsideration Motion **declaration**” (emphasis in original). The filing requests that I: (1) transfer this administrative proceeding to the federal district court in New Jersey; (2) recuse myself from presiding because I have a conflict of interest and am biased; and (3) stay the procedural schedule because Daspin cannot comply

because he is ill, his wife is ill and needs his care, and he needs an attorney and he has no funds to hire one. Motion at 1, 4, 10-11; Response at 4.<sup>1</sup> The Motion also contends that this administrative proceeding is unconstitutional and violates the Equal Protection Clause of the Constitution because if the decision is adverse, Daspin will not have an automatic right to appeal to the circuit court. Motion 4-5, 10.

The Division of Enforcement filed an opposition on December 12, 2018, to the motion responding in detail to Daspin's contentions. In summary, the Division maintains that administrative law judges lack authority to move an administrative proceeding to the federal courts. *See* 17 C.F.R. § 201.111. The Division notes a lack of factual basis for Daspin's repetitive claim that I am biased against him and cites *McLaughlin v. Union Oil Co. of California*, 869 F.2d 1039, 1047 (7th Cir. 1989), for the proposition that an adverse ruling is almost never evidence of bias. *See also* Office of Inspector General, SEC, *Final Report of Investigation*, Case No. 15-ALJ-0482-I (Jan. 21, 2016), <https://www.sec.gov/files/Final%20Report%20of%20Investigation.pdf>. The Division points out that Daspin is factually incorrect regarding his appellate rights because a person subject to a final Commission order has a statutory right to obtain review of that order in the court of appeals. *See* 15 U.S.C. §§ 77i, 78y(a)(1).

Daspin transmitted an additional email, declaration, and response on December 13, 2018.

### **Ruling**

I DENY Daspin's motion and all requested relief. I will address each of Daspin's arguments in turn.

I have no authority to transfer an administrative proceeding to federal district court. *See* 17 C.F.R. § 201.111; *accord* OIP at 15 (directing that a hearing take place before an administrative law judge, not a federal district court judge).

Daspin has not identified any grounds for recusal other than my reassignment of the proceeding from one judge to another. *See* 17 C.F.R. § 201.112(b). Proceedings are reassigned to balance workloads and, on occasion, because of a judge's personal situation. The reassignment of this

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<sup>1</sup> The pages of the document are unnumbered. I have begun at one for the first page.

proceeding to me was caused by Commission order. *See Pending Admin. Proc.*, 2018 SEC LEXIS 2264, at \*1, \*4.

Finally, Daspin's arguments for an indefinite stay do not merit a delay of the proceeding; I have stated that I would work to accommodate his personal situation and will do so where Daspin can show good cause for doing so. *See* 17 C.F.R. § 201.161(b)(1); Prehr's Tr. at 28-31 (Nov. 14, 2018).

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Brenda P. Murray  
Chief Administrative Law Judge