

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

Administrative Proceedings Rulings
Release No. 6613 / June 24, 2019

Administrative Proceeding
File No. 3-16386

In the Matter of

**Traci J. Anderson, CPA,
Timothy W. Carnahan, and
CYIOS Corporation**

**Order Denying Division's
Motion to Admit Prior
Testimony and Respondents'
Renewed Motion for Ruling on
the Pleadings**

Division's Motion

The Division of Enforcement has moved to admit the prior sworn testimony of Traci J. Anderson under Commission Rule of Practice 235(a)(5)¹ or, alternatively, to have me issue a subpoena compelling her live appearance and testimony. Respondents Timothy W. Carnahan and CYIOS Corporation have not yet filed a response. Although the admission of Anderson's prior testimony would alleviate burdens on her, the Division has not shown how such admission would further the interests of justice in this proceeding. Also, Carnahan has not stipulated to the admission of prior sworn statements and the presumption is that "witnesses will testify orally in an open hearing."² Accordingly, I deny that portion of the Division's motion. If the Division and Respondents are able to reach a stipulation regarding the admission of this prior testimony, I would consider a renewed motion to admit it.

¹ 17 C.F.R. § 201.235(a)(5).

² *Id.*

I will, however, issue a subpoena compelling Anderson to attend the hearing and give testimony.³

Respondents' Motion

Respondents Carnahan and CYIOS submitted a motion dated May 22, 2019, requesting that I dismiss this case.⁴ I construe this submission as a renewal of Respondents' motion for a ruling on the pleadings under Commission Rule of Practice 250(a), which I addressed in an earlier order.⁵ In that order, I directed the Division to provide supplemental briefing on whether two specific charges from the OIP were still at issue.⁶ The Division responded that it "will not pursue these charges further and will not offer evidence supporting them."⁷ Given the Division's response, I now deny Respondents' motion as to those two charges as moot.

Respondents should note that this does not mean that there are no other charges at issue in this litigation. For the reasons stated in my April 24, 2019 order, dismissing the entire proceeding would be inappropriate.⁸ In addition to the charges the Division agreed not to pursue, the OIP alleges that (1) CYIOS violated, and Carnahan caused CYIOS's violations of, Section 17(a)(3) of the Securities Act of 1933; (2) CYIOS violated, and Carnahan caused CYIOS's violations of, the periodic-reporting requirements found in Section 13(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 13a-1 and 13a-13; (3) Carnahan violated Exchange Act Rule 13a-14; and (4) Carnahan violated Exchange Act Rule 13a-15(c).⁹ Nothing in Respondents' renewed motion alters my earlier analysis of these charges; they will be at

³ Although Rule of Practice 232 does not require a specific form, I recommend that parties use the subpoena form available at <https://www.sec.gov/alj/subpoena-to-appear.pdf> to ensure that all of the necessary information is included for each requested subpoena. *See* 17 C.F.R. § 201.232.

⁴ Resp't Mot. to Dismiss at 2 (May 22, 2019).

⁵ *See Anderson*, Admin. Proc. Rulings Release No. 6549, 2019 SEC LEXIS 961 (ALJ Apr. 24, 2019).

⁶ *Id.* at *16.

⁷ Div. Supplemental Br. at 1–2 (Apr. 30, 2019).

⁸ *See Anderson*, 2019 SEC LEXIS 961, at *16–23.

⁹ OIP ¶¶ 22–25.

issue in the hearing. Respondents will have the opportunity to defend themselves at that time.

Order

I DENY the Division's motion to admit Anderson's prior sworn testimony.

And I DENY Respondents' motion for ruling on the pleadings and decline to dismiss this proceeding.

James E. Grimes
Administrative Law Judge