

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2772/June 4, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-15873

In the Matter of

THOMAS R. DELANEY II and
CHARLES W. YANCEY

ORDER ON EQUAL ACCESS TO
JUSTICE ACT PROCEEDINGS

An Initial Decision was issued in this matter on March 18, 2015, and on April 29, 2015, the Securities and Exchange Commission issued a finality order. *Thomas R. Delaney II*, Initial Decision No. 755, 2015 SEC LEXIS 1014, *finality order*, Exchange Act Release No. 74843, 2015 SEC LEXIS 1636. On May 29, 2015, Respondent Thomas R. Delaney filed a Motion for Attorney's Fees and Costs Under the Equal Access to Justice Act (EAJA).

Under the Commission's Regulations Pertaining to the EAJA, a "prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the Office or Division over which the applicant has prevailed was substantially justified." 17 C.F.R. § 201.35(a). The burden of proof that such an award should not be made is on the Division of Enforcement, which must show that its position was reasonable in law and fact. *See id.*

An individual seeking an award of attorneys' fees and other expenses under the EAJA must have a net worth of not more than \$2 million at the time the proceeding was initiated. 17 C.F.R. § 201.34(b); *see* 17 C.F.R. § 201.42(a). In support of this fact, the applicant must provide

a detailed exhibit showing the net worth of the applicant . . . when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's . . . assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The administrative law judge or the Commission may require an applicant to file additional information to determine its eligibility for an award.

17 C.F.R. § 201.42(a).

Delaney's Motion includes a declaration by him that his net worth does not, and has never, exceeded \$2 million, as required by 17 C.F.R. § 201.41(b). *See* Motion, Ex. 1. However, Delaney fails to include the detailed exhibit of his net worth required by 17 C.F.R. § 201.42(a). Accordingly, it is ORDERED that by June 22, 2015, Delaney shall file a detailed exhibit showing his net worth at the time this proceeding was initiated that provides full disclosure of his assets and liabilities and is sufficient to determine whether he qualifies under the EAJA net worth standards. *See* 17 C.F.R. § 201.42(a).

The Commission's EAJA Regulations permit me to order further proceedings, such as an informal conference, oral argument, or additional written submissions, where such proceedings are necessary for a full and fair resolution of the issues arising from the EAJA application. 17 C.F.R. § 201.55(a). After consideration of Delaney's Motion, I have determined that at this time, two additional actions are necessary. First, it is ORDERED that by June 22, 2015, Delaney shall file an accounting of the expenses incurred in responding to the Division's argument that he was motivated to aid and abet violations of Rule 204T/204 in order to dramatically increase Penson's profits, as addressed in the second paragraph of Section III.A.3 of my Initial Decision. *See Thomas R. Delaney II*, 2015 SEC LEXIS 1014, at *91-92. Delaney's submission may include, for example, the costs of his expert in rebutting this argument, attorneys' fees for time spent preparing the expert and drafting briefs on such issues, and any other relevant costs.

Second, it is ORDERED that the parties shall meet and confer as to the time, date and preferred medium (for example, telephonic or video) for an oral argument to be held during the week of July 20, 2015. At the oral argument, the parties should be prepared to present their arguments for or against Delaney's Motion and respond to questions regarding their submissions and any disputed issues. The parties should inform this Office, by email to alj@sec.gov, of the results of their meet-and-confer, including their agreement as to time, date, medium, and the length of each side's presentation of its argument, by June 29, 2015.

Jason S. Patil
Administrative Law Judge