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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3409/December 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16509

In the Matter of

EDWARD M. DASPIN, a/k/a "EDWARD (ED) MICHAEL,"   ORDER
LUIGI AGOSTINI; and
LAWRENCE R. LUX

Respondent Edward M. Daspin has filed motions to stay and for summary disposition. Because there is no basis to grant either motion, they are DENIED.

Daspin's most recent stay request—there have been previous stay or continuance requests—rests on three bases. Daspin first relies on the fact that the United States Court of Appeals for the Second Circuit entered a stay during its consideration of the appeal in *Tilton v. SEC*, No. 15-2103 (2d Cir., appeal filed July 1, 2015). Stay Mot. at 1. Second, he relies on the fact that he and Respondent Luigi Agostini have each filed actions in district courts. *Id.*; *see Daspin v. SEC*, No. 2:15-cv-8299 (D.N.J., filed Nov. 25, 2015); *Agostini v. SEC*, No. 1:15-cv-9595 (S.D.N.Y., filed Dec. 7, 2015). The fact, however, that the court of appeals stayed Ms. Tilton's case to preserve the status quo while it considers her appeal does not mean a stay is warranted here. Similarly, the fact Daspin and Agostini have filed district court actions does not mean that a stay is warranted.

Daspin also relies on arguments supporting his motion for summary disposition. Stay Mot. at 2-4. As is discussed below, Daspin's arguments do not support summary disposition. And even if they did, the resolution would be to dismiss the charges, not to stay the proceeding.

On December 4, 2015, Daspin submitted an eighteen-page motion for summary disposition. Based on purportedly exculpatory documents Daspin received from the Division of Enforcement, he asserts that the Commission was "tricked[]by many disingenuous claim[s], many mischaracterizations regarding the facts by the [Commission's] [N]ew [Y]ork office." Summary Disp. Mot. at 1. According to Daspin, the exculpatory evidence demonstrates that the case against him is baseless. *Id.* at 1-18.

On Sunday, December 6, 2015, Daspin submitted a thirty-one page document that he variously described as a "declaration with respect to a motion for summary judgment" and as a "brief [that] represents my motion for summary judgment."

On Tuesday, December 8, 2015, he announced that he had "taken the liberty of supplementing [his] motion" and forwarded a five-page document with more argument. Later that day, he forwarded a separate, six-page "supplemental declaration in further support of [his] motion," and on December 9 forwarded more material to "add . . . to [his] supplemental declaration." Though styled as a "declaration," the document is a motion.

Considering Daspin's filings as a combined whole, there are several problems with his motion. First, motions for summary disposition were due October 19, 2015. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3041, 2015 SEC LEXIS 3348, at *10-11 (Aug. 14, 2015). Without seeking leave, Daspin filed his motion over six weeks late and only one month before the hearing. This fact alone is sufficient to deny the motion.

Even putting aside the untimeliness of the motion, in ruling on summary disposition, I must take as true the allegations in the OIP. 17 C.F.R. § 201.250(a). At most, Daspin has shown that material facts alleged in the OIP are in dispute. But if material facts are in dispute, a motion for summary disposition must be denied. *See* 17 C.F.R. § 201.250(b)

To the extent Daspin asks me to dismiss this proceeding based on his allegation of prosecutorial misconduct, his motion is denied. At most, Daspin has alleged that the evidence does not support the Division's case. But that allegation, without more, cannot be determined based on arguments concerning Daspin's view of the evidence. Standing alone, Daspin's speculative belief is not sufficient to warrant summary disposition.

Daspin's motion to stay and his motion for summary disposition are DENIED.

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James E. Grimes
Administrative Law Judge