

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 643/ June 27, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13008

In the Matter of	:	
	:	ORDER DENYING REQUEST FOR
MITCHELL M. MAYNARD and	:	SUBPOENA
DORICE A. MAYNARD	:	

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on April 16, 2008, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The central allegation in the OIP is that the State of Vermont’s Department of Banking, Insurance, Securities, and Health Care Administration issued a decision and order in In Re: Mitchell M. Maynard and Dorice A. Maynard, Docket No. 02-009-S (Vermont Order) that became final on February 2, 2007. The OIP alleges that the Vermont Order constitutes a final order of a state securities commission or agency performing a like function that is based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct, and imposes a bar from association with an entity regulated by a state securities commission or from engaging in the business of securities.

I held a telephonic prehearing conference on May 16, 2008, and permitted the Division of Enforcement (Division) to file a motion for summary disposition, which it did on June 2, 2008. See 17 C.F.R. § 201.250. On June 25, 2008, Respondents, who appear pro se, filed a Motion to Compel Disclosure; Issuance of Subpoena, with Exhibits A and B (Subpoena Request). The subpoena would require the Division to supply Respondents, on or before June 27, 2008, with:

All documents and other records contained in the SEC I/A File No. 801-56340, which were formerly in the possession of the Pacific Regional Office and pertain to the September 2000 examination, inspection, and investigation of Leveraged Index Management Company “LIMCO” and the parties Mitchell M. Maynard and Dorice A. Maynard that are not privileged or otherwise lawfully withheld.

The Division filed in opposition to Respondents’ Subpoena Request (Opposition) on June 26, 2008. The Division maintains that the Subpoena Request is beyond the scope of Rule 230 of the Commission’s Rules of Practice because the file being sought was not part of the investigative file of the Division’s Boston office when the Boston office recommended initiation

of this administrative proceeding¹. The Division also contends that the Subpoena Request is an attempt by Respondents to re-litigate the findings in the Vermont Order.

On June 25, 2008, I received a pleading, Respondents' Support of Respondents' Motion to Compel Disclosure, claiming that the examination report is material to Respondents' position that this administrative proceeding may be an inappropriate abuse of discretion, and the LARO is easily accessible to them, so granting access would not burden the Division.

Ruling

The criteria for issuing a subpoena are whether the subpoena is unreasonable, oppressive, excessive in scope, or unduly burdensome. See 17 C.F.R. § 201.232(b). Respondents' Subpoena Request is unreasonable, excessive in scope, and unduly burdensome because it concerns matters that are not relevant to the issues in this administrative proceeding. Respondents admit that the State of Vermont issued the order described in the OIP, so the issue is what, if any, remedial action is appropriate pursuant to Section 203(f) of the Advisers Act. (OIP at 3; Respondents' Answer at 2; Prehearing Transcript (Tr.) 8, 12.) I noted at the prehearing conference that Respondents are not permitted to contest the findings in the Vermont Order in this administrative proceeding. (Tr. 8-9.)

Respondents' belief that the "examination report and other documents" contain exculpatory material has no rational basis. (Subpoena Request at 2.) The Vermont Order has no connection to a Commission examination. The fact that the Commission examined Respondents' business and did not initiate an action is not relevant to the findings in the Vermont Order. (Tr. 7-8.) Similarly, Respondents' argument that they should see an examination report to possibly challenge the Commission's action in initiating this administrative proceeding is unpersuasive.

The Order setting the procedural schedule was issued on May 19, 2008. Respondents appear to have first requested the materials in a phone call on June 13, 2008. (Subpoena Request at 1.) The Subpoena Request is unreasonable because it was presented after the Division filed its Motion for Summary Disposition on June 2, 2008, and just before the due date for Respondents' Brief in Opposition, June 27, 2008.

Order

For the reasons stated, I DENY Respondents' Subpoena Request.

Brenda P. Murray
Chief Administrative Law Judge

¹ The Division denies that it ever received the entire examination file from the Los Angeles Regional Office (LARO) as Respondents contend, but it represents it contacted the LARO based on Respondents' allegations and provided Respondents with the material it received, which consisted of "some LARO examination material." (Opposition at 3n.1.) The Division asserts that Rule 230 does not require production of privileged materials, including the LARO's examination reports. (Opposition at 4n.3.)