

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11201

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 18, 2003

NOV 19 2003

FIRST CLASS

In the Matter of	:	
	:	
NEVIS CAPITAL MANAGEMENT, LLC,	:	ORDER
DAVID R. WILMERDING, III,	:	
and JON C. BAKER	:	
	:	

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings on July 31, 2003. On November 10, 2003, I issued an Order requiring the Division of Enforcement (Division) to provide Respondents with a portion of a checklist utilized during the November 1999 Investment Adviser Examination and Investment Company Examination of Respondents (November 1999 Examination). I also denied Respondents' request for in camera review of all documents relating to the November 1999 Examination.


On November 13, 2003, Respondents filed a motion for reconsideration of my November 10 Order (Motion). In support thereof, Respondents state that they have a reasonable belief that interview notes exist from the November 1999 Examination. Respondents seek production of these notes, including any notes that relate to potential witnesses, which they are entitled to under Rule 231 of the Commission's Rules of Practice, 17 C.F.R. § 201.231. Respondents also request production of the entire checklist utilized during the November 1999 Examination. On November 14, 2003, the Division filed an opposition to Respondents' Motion. The Division opposes Respondents' requests and represents that no witness statements exist. The Division further represents that it has already produced all hand-written attorney notes taken by the Division during interviews of Respondents' clients. The Division also states that it has provided Respondents with transcripts of testimony taken from Respondents' clients, in addition to all other transcripts of testimony taken during the investigation from the individual Respondents, Respondents' staff members, and others. On November 14, 2003, the time for filing evidentiary motions and responses expired, pursuant to my August 29, 2003, Order.

I have reconsidered my November 10 Order and for the same reasons stated therein, Respondents are not entitled to the in camera review that they are seeking. Respondents have failed to make a "plausible showing" that there are additional documents from the November 1999 Examination that are favorable and material to their defense. See Orlando Joseph Jett, 52

S.E.C. 830, 831 (1996). Furthermore, I accept the Division's representation that no witness statements exist other than what has already been provided. Additionally, as stated in my November 10 Order, I find that production of the checklist as a whole is not required under Rule 230(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.230(b).

IT IS ORDERED, that Respondents' request for in camera review of all documents relating to the November 1999 Investment Adviser Examination and Investment Company Examination of Respondents is DENIED; and

IT IS FURTHER ORDERED, that Respondents' request for production of the entire checklist produced during the November 1999 Investment Adviser Examination and Investment Company Examination of Respondents is DENIED.


Robert G. Mahony
Administrative Law Judge