

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12359

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 30, 2006

In the Matter of :
: ORDER CONCERNING MATERIAL
ANTHONY C. SNELL and : EXCULPATORY EVIDENCE IN THE
CHARLES E. LECROY : DIVISION'S PRIVILEGE LOG
:

On August 16, 2006, the Division of Enforcement (Division) filed a privilege log, identifying the documents withheld from inspection and copying. By motion dated November 29, 2006, Respondents seek an order compelling the Division to produce notes taken by a Division attorney during separate interviews with Anthony C. Snell and Charles E. LeCroy on May 26 and May 24, 2005, respectively (interview notes). Respondents assert that the interview notes contain material exculpatory information within the scope of Brady v. Maryland, 373 U.S. 83, 87 (1963).

Rule 230(b)(2) of the Rules of Practice of the Securities and Exchange Commission provides that the Division is not authorized to withhold, in an enforcement or disciplinary proceeding, documents that contain material exculpatory evidence contrary to the doctrine of Brady. The principal tool for ensuring that the Division has complied with its Brady obligations is an affidavit by a responsible Division official. Cf. City of Anaheim, 70 SEC Docket 881 (July 30, 1999) (ALJ); Orlando Joseph Jett, 52 S.E.C. 830, 831 (1996).

The Division must now review the interview notes for Brady materials. Before the start of the hearing, a responsible Division official must submit a sworn declaration stating: (1) that the declarant has personally reviewed the interview notes in question; and (2) whether the interview notes do or do not contain Brady materials. The responsible official may be the lead trial counsel or any of her supervisors. If the interview notes do contain Brady materials, then the Division must provide the relevant materials (either in full or in redacted form) to Respondents before the start of the hearing.

SO ORDERED.


James T. Kelly
Administrative Law Judge