

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 709/ July 5, 2012

ADMINISTRATIVE PROCEEDING

File No. 3-14880

In the Matter of	:	
	:	
JOHN JANTZEN	:	ORDER DENYING RESPONDENT'S
	:	MOTION REQUESTING RELEASE
	:	OF INFORMATION WITHOUT
	:	PREJUDICE
	:	

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) on May 15, 2012, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The Commission alleges that on March 29, 2012, a final judgment was entered against John Jantzen (Jantzen) permanently enjoining him from future violations of Section 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder, in SEC v. Jantzen, Civil Action Number 1:10-cv-740-JRN (W.D. Tex.). The Commission instituted this proceeding to determine whether the allegations set forth in the OIP are true, and to determine what, if any, remedial action is appropriate in the public interest against Jantzen. OIP, p. 2.

Jantzen was served with the OIP on May 19, 2012, and a telephonic prehearing conference was held on June 11, 2012. On June 12, 2012, Jantzen filed a Motion Requesting Release of Information (Motion), asking the Commission's Fort Worth, Texas, Office to produce: "Any and all records from an April 6, 2010[,] meeting between Jonathan Scott, one other unidentified SEC representative, Don Mann[,] VP Dell, Inc[.], and John Wander[,] VE Law Firm." Motion, ¶ 2. Jantzen argues that the meeting is directly related to this case and that the materials requested may be exculpatory. Id., ¶ 3.

The Division of Enforcement (Division) filed a response to Jantzen's Motion on June 21, 2012 (Response). The Division argues that the Motion should be denied because Jantzen is seeking information for the improper purpose of re-litigating the underlying judgment against him. Response, p. 1. The Division also asserts that it produced the entire non-privileged investigative file to Jantzen during the district court litigation and that no memoranda, recordings, or transcripts of the April 6, 2010, informal interview of Don Mann exist. Id., p. 2. The Commission acknowledges that it is possible that Jonathan Scott, the lead investigative

attorney for this matter, took handwritten notes during the meeting, but that Mr. Scott does not specifically recall taking notes, and even if such notes existed, they would be subject to “a host of privileges.” Id.

It is significant that Jantzen alleges that the requested materials may be exculpatory. Motion, ¶ 3. The Supreme Court’s decision in Brady v. Maryland, 373 U.S. 83 (1963), regarding the production of exculpatory evidence, has been incorporated into the Commission’s Rules of Practice. Rule 230(b) of the Commission’s Rules of Practice authorizes the Division to withhold certain documents from a respondent during a disciplinary proceeding, including internal memoranda, however, subsection (b)(2) of that Rule provides that the Division is not authorized to withhold documents that contain material exculpatory evidence contrary to the doctrine of Brady. 17 C.F.R. § 201.230(b).

Even given Rule 230(b)’s clear mandate regarding the production of exculpatory evidence, Jantzen is not entitled to “engage in [a] ‘fishing expedition[.]’ through confidential Government materials in hopes of discovering something helpful to [his] defense.” Orlando Joseph Jett, 52 S.E.C. 830, 830 (June 17, 1996). Before any further investigation into Jantzen’s allegations is justified, Jantzen must make a “‘plausible showing’” that the information requested is both “favorable and material” to his defense. Id., p. 831. Jantzen has not made such a showing in his Motion. While Jantzen asserts that the information requested may be exculpatory, he does not explain the basis for this belief or put forth any evidence as to why this would be true. Nor does the Motion set forth how the requested information would be material to his defense of this proceeding.

Accordingly, it is ORDERED that the MOTION is DENIED WITHOUT PREJUDICE. If Jantzen is able to make the required showing set forth above, he may submit a renewed Motion for my consideration.

Cameron Elliot
Administrative Law Judge