

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 789/ August 9, 2013

ADMINISTRATIVE PROCEEDING  
File No. 3-15168

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In the Matter of

JOHN J. AESOPH, CPA, and :  
DARREN M. BENNETT, CPA : ORDER  
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The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. The hearing is scheduled to commence on September 30, 2013, at the Byron White U.S. Courthouse (Courtroom 2), 1823 Stout St., Denver, CO 80257. Under consideration are the (1) Division of Enforcement's (Division) Motion for Entry of Protective Order, filed April 11, 2013; (2) Respondents' Joint Motion to Compel Production of Division Notes Taken During Interviews of Prospective Division Witnesses, filed April 26, 2013; and (3) the Division's Motion to Strike Affirmative Defenses or, in the Alternative, for a More Definite Statement, filed April 19, 2013; and responsive pleadings.

As to motions (1) and (2), the Division states that, following receipt of Respondents' Answers to the OIP, it conducted a second review of withheld materials in accordance with Brady v. Maryland, 373 U.S. 83 (1963), for any exculpatory material in light of Respondents' affirmative defenses and produced redacted versions of interview notes prepared by Commission staff that arguably contained potential Brady material. The Division seeks a protective order maintaining the partly redacted interview notes as confidential on the grounds that interview notes constitute work product, were compiled for law enforcement purposes, and disclosure would harm the Commission's related parallel litigation in federal court. Respondents do not object to a protective order but argue that unredacted versions of the notes should be produced, as well as a list of witnesses interviewed by the Division. Respondents support their requests with reference to Brady and Jencks Act provisions contained in 17 C.F.R. §§ 201.230(b)(2), .231(a).

The Third Protective Order will be issued as requested. The Division states it will provide Respondents with a list of persons it interviewed. Concerning Brady material, the Division describes two painstaking Brady reviews that it conducted. Respondents are not entitled to a fishing expedition, and their request for unredacted interview notes will be denied. Orlando Joseph Jett, 52 S.E.C. 830 (1996). Since the Division has now filed its witness list, it will provide any Jencks Act material to Respondents as soon as possible.

As to motion (3), the Division requests that six of Respondents' affirmative defenses be stricken because they fail as a matter of law, and that five of Respondents' affirmative defenses be stricken because they are poorly pled, or, alternatively, that Respondents be ordered to provide a more definite statement for these defenses. The severe remedy of striking an affirmative defense is not warranted under the circumstances, nor is a more definite statement needed. The Division's request to seek summary disposition on Respondents' thirteenth defense will also be denied.

IT IS SO ORDERED.

/S/ Carol Fox Foelak  
Carol Fox Foelak  
Administrative Law Judge