

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 1780/September 9, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-15918

In the Matter of

DENNIS J. MALOUF

ORDER REGARDING MOTIONS TO
QUASH SUBPOENAS

The Securities and Exchange Commission (Commission) commenced this proceeding on June 9, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) pursuant to Section 8A of the Securities Act of 1933; Sections 15(b), 15C(c), and 21C of the Securities Exchange Act of 1934; Sections 203(f) and 203(k) of the Investment Advisers Act of 1940; and Section 9(b) of the Investment Company Act of 1940.

On September 8, 2014, this Office received (1) a Motion to Quash Respondent's Subpoena (FBS Motion) from Morgan Lewis & Bockius LLP on behalf of Fidelity Brokerage Services LLC (FBS); (2) an Application to Quash Subpoena (ACA Application) from Hogan Lovells US LLP on behalf of ACA Compliance Group Holdings, LLC (ACA Holdings); and (3) a Motion to Quash Multiple Subpoenas (ABL Motion) from Albuquerque Business Law, P.C. (ABL)¹ (collectively, Motions to Quash).

FBS argues, in sum, that the FBS subpoena is unreasonable, overly broad, oppressive, unduly burdensome, and seeks information wholly unrelated to the matters at issue in the underlying proceeding. *See* FBS Motion at 1, 5-9.

ACA Holdings argues, in sum, that the ACA subpoena is unreasonably broad and would be unduly burdensome for ACA Holdings to search for and produce the requested documents for the 2004-2006 and January 2013-present time periods. ACA Application at 1-2.

ABL objects to and moves to quash not only the ABL subpoena, but also the subpoenas issued to UASNM, Inc. (UASNM); Peltier, Gustafson & Miller; ACA Holdings; and Capital Forensics, Inc. (collectively, Recipients). *See* ABL Motion at 1. ABL argues that the ABL subpoena is unreasonable, irrelevant, and oppressive, and also consists of primarily privileged

¹ With the ABL Motion is the Verification in Support of Motion to Quash and Certification as to Completeness of Document Production by James T. Burns III, President of ABL (Burns Decl.).

and work product materials. *Id.* at 5-11. ABL argues that the Recipients' subpoenas contain ABL-related privileged communications and work product. *Id.* at 12-14.

ABL also moves for entry of an order modifying the subpoenas and a protective order sealing the ABL Motion, all documents produced pursuant to the ABL subpoena, "any hearings where produced documents may be discussed," and "all hearings on this case." ABL Motion at 1-2, 14. In support of this request, ABL asserts that ABL, UASNMM, and "various parties" will be "harmed by the disclosure of these various confidential and protected documents," and the president of ABL declares that he has a good faith basis to believe that some responsive documents are entitled to protection under 17 C.F.R. § 201.232(e)(2). ABL Motion at 2 & Burns Decl.

A motion for protective order "should include a general summary or extract" of the documents at issue, that is, the documents at issue must be identified and described. 17 C.F.R. § 201.322(a). Their identification and description must be sufficient to conclude that "the harm resulting from disclosure would outweigh the benefits of disclosure." 17 C.F.R. § 201.322(b). ABL has not made this particularized showing. For example, ABL has not pointed to any confidential information contained in the ABL Motion, nor do I see any.

It is ORDERED that compliance with the subpoenas is SUSPENDED pending resolution of the Motions to Quash, and the parties have until Monday, September 15, 2014, to file oppositions or other responses to the Motions to Quash. No reply briefs are permitted. *See* 17 C.F.R. § 201.232(e).

It is FURTHER ORDERED that ABL's motion for a protective order is DENIED WITHOUT PREJUDICE. Because ABL need not comply with the ABL subpoena until the ABL Motion has been resolved, there is no need for a temporary protective order pending that resolution. *See* 17 C.F.R. § 201.322(d).

Cameron Elliot
Administrative Law Judge