

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1867/September 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16000

In the Matter of

HOUSTON AMERICAN ENERGY CORP.,
JOHN F. TERWILLIGER, JR.,
UNDISCOVERED EQUITIES INC., and
KEVIN T. MCKNIGHT

ORDER DENYING MOTION FOR
MORE DEFINITE STATEMENT

The Securities and Exchange Commission (Commission) issued an Order Instituting Cease-and-Desist Proceedings (OIP) on August 4, 2014, pursuant to Sections 8A of the Securities Act of 1933 and 21C of the Securities Exchange Act of 1934. The OIP alleges that directly or indirectly: (i) Terwilliger and Houston American violated Section 17(a) of the Securities Act, Sections 10(b) and 20(b) of the Exchange Act and Rule 10b-5 thereunder; and (ii) McKnight and Undiscovered Equities violated Section 17(b) of the Securities Act.

Motion

On August 28, 2014, Houston American and Terwilliger filed a Motion for More Definite Statement and Brief in Support (Motion).¹ The movants argue that the Division of Enforcement (Division) should provide “**all** specific alleged misstatements on which the Division’s claims are based, including the exact words used, the date of each statement, and the names of the person who made and/or received the statements.” Motion at 3 (emphasis in original); *see id.* at 8, 10-12. The movants also ask that the Division “specify which of [Section 17(a)’s] subsections forms the basis of their claims,” “the amount of funds for which it is seeking disgorgement and the specific amounts and tiers of penalties being sought.” *Id.* at 12.

Response

On September 8, 2014, the Division filed a Response to the Motion (Response). The Division identifies the “dates, settings, and substance of statements by Mr. Terwilliger and/or

¹ Undiscovered Equities and McKnight did not file a motion for a more definite statement. They did not take any part in this briefing on this Motion.

Houston American” and third parties that it alleges are attributable to Respondents. Response at 1-2 & Appendix 1. The Division identifies, by name, each person and entity described in the OIP. *Id.* at 2. The Division also specifies that it is pursuing claims under all three subsections of Section 17(a) of the Securities Act, and the amount of disgorgement and tier of penalties sought. *Id.* at 3-4.

Reply

On September 17, 2014, Houston American and Terwilliger filed a Reply in Support of the Motion (Reply). Apparently still dissatisfied with the additional information provided by the Division, Houston American and Terwilliger contend that the Division should also identify: (i) “the portion of each statement that it contends was false and the reason why it is false,” and (ii) “any specific statements made by Respondents to [third parties] which the Division contends are false or otherwise supports imposing liability” Reply at 1, 3.

Supplemental Appendix

On September 18, 2014, the Division filed a Notice of Service of Supplemental Appendix (Supplemental Appendix), identifying with greater particularity the false and misleading elements of each misstatement and “without taking a position as to whether this request is well-founded.” Supplemental Appendix at 1.

Ruling

It is well established “when dealing with challenges to the adequacy of allegations in an [OIP], that a respondent is entitled to be sufficiently informed of the charges against him so that he may adequately prepare his defense, but he is not entitled in advance of the hearing to a disclosure of the evidence on which the Division intends to rely.” *Stuart-James Co.*, Admin. Proc. Rulings Release No. 322, 1989 SEC LEXIS 5115, at *8 (May 8, 1989) (citing *Charles M. Weber*, Exchange Act Release No. 4830, 1953 SEC LEXIS 299 (Apr. 16, 1953); *J. Logan & Co.*, Exchange Act Release No. 5867, 1959 SEC LEXIS 412 (Feb. 3, 1959); *Morris J. Reiter*, Exchange Act Release No. 6108, 1959 SEC LEXIS 588 (Nov. 2, 1959)).

The non-precedential rulings cited by Houston American and Terwilliger are exceptions to established precedent. They do not support the conclusion that the OIP, especially as supplemented by the Division’s Response and Supplemental Appendix, is deficient. *Western Pacific Capital Management, LLC*, was a partial grant of a motion for a more definite statement where the judge found the OIP ambiguous regarding whether all or only a portion of the respondent’s customers were at issue. Admin. Proc. Rulings Release No. 691, 2012 SEC LEXIS 434 (Feb. 7, 2012). *Alfred M. Bauer*, which in part denied the request for greater specificity, simply ordered that the Division identify the customers, accounts, and securities at issue. Admin. Proc. No. 3-9034, 1996 SEC LEXIS 2546 (Aug. 27, 1996). The OIP, Response, and Supplemental Appendix represent more than sufficient information of the charges for Respondents to prepare their defense.

Consistent with the Commission's Rules of Practice (Rule), the Division notified Respondents of the availability of the investigative file. *See* 17 C.F.R. § 201.230(a). Houston American and Terwilliger have received portions of the investigative record and are in the process of receiving more. The OIP, considered with the Division's Response and Supplemental Appendix complies with Rule 200(b), and, in my judgment, Houston American and Terwilliger have sufficient information to defend the proceeding. The Motion, as clarified in the Reply, seeks an unreasonable amount of specificity from the Division as to facts the Division might introduce to prove the allegations in the OIP.

For these reasons I DENY the Motion for a More Definite Statement by Houston American Energy Corp. and John F. Terwilliger, Jr.

Jason S. Patil
Administrative Law Judge