

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1924/October 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15918

In the Matter of

DENNIS J. MALOUF

ORDER AS TO CAPITAL FORENSICS, INC.

On September 3, 2014, Respondent served Capital Forensics, Inc., with a subpoena duces tecum. Capital Forensics never moved to quash or modify that subpoena.¹ See 17 C.F.R. § 201.232(e)(1).

On September 8, 2014, UASNM, Inc., moved to quash Respondent's subpoenas to certain third parties, including Capital Forensics, "to the extent they demand production of the same objectionable documents of UASNM as provided herein that are in the possession of those non-parties . . ." UASNM Motion to Quash at 1. Similarly, Albuquerque Business Law, P.C. (ABL) objected to the subpoena to the extent it sought privileged communications between ABL and Capital Forensics and protected work product. ABL Motion to Quash at 5-6, 12-13.

On September 22, 2014, this Office quashed in part and modified in part the subpoena requests concerning UASNM and ABL. The Order noted that "[t]o the extent that ABL is concerned with potential privilege and work product issues as to . . . Capital Forensics, Inc., it should consult with [Capital Forensics] as part of [Capital Forensics'] privilege review." *Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1827, 2014 SEC LEXIS 3493, at *12-13.

On October 6, 2014, this Office received Respondent's Motion to Enforce Subpoena Duces Tecum to Capital Forensics, Inc. (Motion), which represents that Capital Forensics failed to comply with the subpoena directed to it. On October 10, 2014, this Office ordered Capital Forensics to show cause as to why it had not complied. *Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1906, 2014 SEC LEXIS 3818. On October 14, 2014, Capital Forensics answered the Order to Show Cause and opposed Respondent's Motion. On October 16, 2014, Respondent replied to Capital Forensics' Opposition.

¹ In his Motion to Enforce Subpoena, Malouf asserts that he served the subpoena on Capital Forensics' registered agent on September 3, 2014. Capital Forensics does not oppose this assertion.

Because Capital Forensics failed to timely respond to the underlying subpoena, all its objections were waived. *See* 17 C.F.R. § 201.232(e)(1). To the extent that Capital Forensics attempts to avail itself of the objections of USANM and ABL, those objections were already addressed by this Office's September 22, 2014, Order. Other arguments, unique to Capital Forensics, are untimely.

A principal purpose of Rule 232 is to allow documents subject to subpoena to be reviewed prior to the final prehearing conference. *See* Rules of Practice, 60 Fed. Reg. 32738, 32741 (June 23, 1995) (to be codified at 17 C.F.R. pt. 201) (discussing rationale for 17 C.F.R. § 201.232). Here, the final prehearing conference is set for October 31, 2014. Capital Forensics shall produce its responsive, non-privileged documents to Respondent, and a privilege log to account for responsive but otherwise privileged documents. Capital Forensics' failure to comply with this Order will result in referral for enforcement proceedings.

Capital Forensics, Inc., is ORDERED to produce all responsive, non-privileged documents and a privilege log to Respondent by October 28, 2014.

Jason S. Patil
Administrative Law Judge