

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 1951A/October 28, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-15918

In the Matter of

DENNIS J. MALOUF

REVISED ORDER ON SUBPOENA TO
UASNM, INC.

On October 6, 2014, this Office received Respondent's Motion to Enforce Subpoena Duces Tecum Without Deposition Directed to UASNM, Inc. (Motion). The Motion represents that UASNM did not comply with the subpoena directed to it, as modified by this Office's Order of September 22, 2014. Motion at 2; *see Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1827, 2014 SEC LEXIS 3493 (Sept. 22, 2014). On October 10, 2014, this Office ordered UASNM to show cause why it had not yet complied with the subpoena. *Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1906, 2014 SEC LEXIS 3818. On October 14, 2014, UASNM opposed the Motion and responded to the Order to Show Cause (UASNM Response). Respondent did not file a reply.

The Motion, to the extent it asks to refer the matter for enforcement proceedings in federal district court, is DENIED as premature. UASNM is ORDERED to produce the responsive documents to Respondent by November 4, 2014, provided that Respondent agrees to bear the following costs of UASNM's subpoena compliance.

First, in advance of the UASNM production, Respondent shall tender payment of \$1356.00 for the cost of the consultant retained by UASNM to compile responsive emails. *See* UASNM Response at 4-5.

Second, although the cost of attorney time in responding to a subpoena in reviewing documents for relevance and privilege is not a regularly reimbursed cost; here, as noted in the order modifying and quashing in part this subpoena, given the uncharacteristically large scope of the subpoena with respect to UASNM, Respondent will be required to bear reasonable costs and expenses associated with UASNM's production, including select costs of attorney time. UASNM seeks \$22,838.08 for legal fees and \$27,900 for ninety-three hours of internal work compiling documents. UASNM Response at 4. UASNM seeks to charge Malouf \$300 per hour for UASNM's internal work, a seemingly excessive amount of time for compiling documents, and at a rate that, compared to the hourly rate of its law firm (about \$200), is unreasonable. Following UASNM's November 4, 2014, production of the responsive documents to

Respondent, it is ORDERED that UASNM will file and serve final, itemized billing records of the costs and time spent in complying with the subpoena, and that based on those records, this Office shall order Respondent to pay as much as \$20,000 in reasonable costs of compliance. However, if Respondent does not agree, in advance, to bear additional reasonable costs up to \$20,000, then UASNM need not produce its documents.

Finally, Respondent and UASNM are encouraged to negotiate, in good faith, an alternative, mutually agreeable resolution to the dispute over the costs of subpoena compliance. If they reach an alternative resolution, they should make appropriate notice to this office.

Jason S. Patil
Administrative Law Judge