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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2239/January 21, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16037

In the Matter of		
	:	POST-FINAL PREHEARING
EDGAR R. PAGE and	:	CONFERENCE ORDER
PAGEONE FINANCIAL INC.	:	

On January 20, 2015, the hearing officer and counsel for the parties participated in a final telephonic prehearing conference that addressed the following issues.

I GRANTED the Division's motion in limine to preclude Respondents from offering evidence to establish an advice of counsel defense (Division Motion in Limine No. 1). Respondents waived that defense during the conference. Respondents had not followed the steps I indicated would be necessary if they chose to assert an advice of counsel defense. However, they indicated that, without waiving attorney-client privilege, facts relating to Respondents' "engagement of counsel" may be used to form a lesser defense that goes to Respondents' "good faith," mental state, and scienter. By January 23, 2015, Respondents shall file a letter (up to three pages, single spaced) identifying binding or persuasive authorities that support this defense, and analogizing the facts underlying those authorities to the facts of this proceeding. By January 27, 2015, the Division shall file a responsive letter (also up to three pages, single spaced).

Having expressed my inclination to do so during the prehearing conference, I now DENY the Division's motion in limine to preclude the report and testimony of Respondents' expert Professor Thel (Division Motion in Limine No. 2). Although the Division's point that each and every potential conflict of interest of an investment adviser must be disclosed is well taken, Respondents have persuasively argued that there is a good faith dispute of fact and law regarding whether the nature and extent of their disclosure was legally sufficient, and that Professor Thel's testimony on that point, as well as other evidence adduced at the hearing, should not be foreclosed. Respondents offered in their opposition brief of January 21, 2015, and during the prehearing conference some examples – with notably different facts than those here – that effectively illustrate that not all failures to disclose a conflict of interest, or misrepresentations in disclosure, are actionable. And while Respondents, and Professor Thel, rely on authorities regarding the fiduciary duty a public company owes to its shareholders that are not precisely on point, the Division has yet to cite any cases involving an investment adviser's negotiations to sell its firm, showing that nondisclosure of any negotiations, no matter the status of negotiations, is

always contrary to an investment adviser's duty to disclose potential or actual conflicts of interest.[1]

The Division is invited to raise similar legal arguments at the close of hearing and in its post-hearing briefs, but Professor Thel's report and testimony is admissible under the broad standard for the admission of evidence under Commission Rule of Practice 320. Although I will ultimately determine the disputed issues of fact and law in this proceeding, in reaching his opinion, Professor Thel and other experts are entitled to form an understanding of the facts (which may be further influenced by the testimony at the hearing) and to rely on an understanding of the applicable law.

I DENIED the Division's motion to preclude purportedly irrelevant evidence of Respondents' effort "to obtain financing from a Swiss firm called HOPE Finance S.A." (Division Motion in Limine No. 3). On January 20, 2015, Respondents submitted an offer of proof indicating why the thirty-one documents may be relevant. The parties appear to have a good faith dispute as to the import of the documents on the claims in this case, and, as such, the presumption is that they should be admitted and argued accordingly. *See City of Anaheim*, Securities Exchange Act of 1934 Release No. 42140, 1999 SEC LEXIS 2421, at *4 & n.7 (Nov. 16, 1999). In addition, there is no real prejudice imposed on the Division by the admission of HOPE-related documents, which it has long known about.

I GRANTED the parties' request for an extension of the deadline to file any written stipulations; such stipulations are now due by January 27, 2015.

The parties are commended for their ongoing settlement discussions, and encouraged to continue to negotiate in good faith to resolve this proceeding by mutually agreeable means, with the expectation that the parties shall file any joint motion under Commission Rule of Practice 161(c)(2) as soon as practicable.

In the event that settlement efforts are unsuccessful, the hearing will commence on February 2, 2015,[2] and continue until February 13, 2015, in New York. The hearing will then resume on February 18, 2015, in Washington, DC, for the final witness's testimony followed by closing arguments.

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Jason S. Patil
Administrative Law Judge

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[1] Further, I do not read *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), or *Montford and Co.*, Investment Advisers Act of 1940 Release No. 3829, 2014 SEC LEXIS 1529 (May 2, 2014), as holding as much.

[2] I granted the parties' request to negotiate mutually agreeable terms for any opening statements.