

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 3183/September 30, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-16509

In the Matter of

EDWARD M. DASPIN, a/k/a “EDWARD (ED) MICHAEL,”  
LUIGI AGOSTINI, and  
LAWRENCE R. LUX

ORDER DENYING  
STAY REQUEST

A hearing in this matter is currently scheduled to begin on Monday, January 4, 2016. On September 22, 2015, Herrick, Feinstein LLP, submitted a notice stating that, effective September 28, it would be withdrawing as counsel for Respondents Edward M. Daspin and Luigi Agostini and asking that I stay all existing deadlines, including the currently scheduled hearing. For the reasons stated below, Respondents’ request to stay all existing deadlines is DENIED.

*Background*

The Securities and Exchange Commission instituted this proceeding on April 23, 2015. During a prehearing conference held in May 2015, the administrative law judge previously assigned to this proceeding scheduled the hearing in this matter to commence on November 2, 2015. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3041, 2015 SEC LEXIS 3348, at \*1 (Aug. 14, 2015). Also in May, Daspin moved to alternatively dismiss or stay the proceeding based on evidence that he suffers from serious medical problems. *See id.* On June 15, 2015, the administrative law judge previously assigned to this proceeding issued an order postponing *sine die* the hearing as to Daspin.<sup>1</sup> *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2810, 2015 SEC LEXIS 2387, at \*2. A later order stayed this matter as to Respondent Lawrence R. Lux, who represented that he and the Division of Enforcement had reached an agreement in principle to settle. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2991, 2015 SEC LEXIS 3107 (July 30, 2015).

This matter was reassigned to me on July 31, 2015, and I directed the parties to “submit a proposed prehearing schedule.” *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2999,

<sup>1</sup> *Sine die* means without day. A hearing postponed *sine die* is postponed without setting a new hearing date, *i.e.*, indefinitely.

2015 SEC LEXIS 3137 (July 31, 2015); Admin. Proc. Rulings Release No. 3003 (Aug. 3, 2015). This prompted the Division, Daspin, and Agostini to jointly propose delaying the proceeding as to Agostini until Daspin is in better health so as to avoid the need to hold two hearings. *See Edward M. Daspin*, 2015 SEC LEXIS 3348, at \*3.

On August 14, 2015, I issued an order lifting the postponement as to Daspin. *Id.* at \*4-8. I concluded that in light of Rules of Practice 161 and 360, I lacked the authority to indefinitely continue this matter. *Id.*; *see* 17 C.F.R. §§ 201.161, 201.360. Because it would have been unfair to make Daspin suddenly prepare for a hearing then scheduled to begin on November 2, 2015, I delayed the hearing and scheduled it to begin on January 4, 2016. *Edward M. Daspin*, 2015 SEC LEXIS 3348, at \*8. I also issued a prehearing schedule. *Id.* at \*10-11.

On September 22, 2015, Herrick, Feinstein LLP, submitted a notice of withdrawal as counsel for Daspin and Agostini. Notice at 2. The notice states that the withdrawal of counsel is effective September 28, 2015.<sup>2</sup> *Id.* In the notice, Respondents request that I “stay . . . all deadlines set forth in the . . . Scheduling Order, including the January 4, 2016 hearing date.” *Id.*

#### *Discussion*

Respondents’ continuance request implicates Rules of Practice 161 and 360. *See* 17 C.F.R. §§ 201.161, 201.360. Rule 161(a) provides that I may grant a continuance “for good cause shown.” 17 C.F.R. § 201.161(a). Rule 161(b)(1), however, cautions that unless Respondents “make[] a strong showing that the denial of the request or motion would substantially prejudice their case,” I must “adhere to a policy of strongly disfavoring [continuance] requests.” 17 C.F.R. § 201.161(b)(1). In deciding whether to grant motion for a continuance, I am required to consider:

- (i) the length of the proceeding to date;
- (ii) the number of postponements, adjournments or extensions already granted;
- (iii) the stage of the proceedings at the time of the request;
- (iv) the impact of the request on the hearing officer’s ability to complete the proceeding in the time specified by the Commission; and
- (v) any other such matters as justice may require.

17 C.F.R. § 201.161(b)(1).

The Commission directed in the Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) that I issue a decision in this matter within 300 days of service of the OIP. OIP at 15. Rule of Practice 360(a)(2) provides that in cases involving a 300-day deadline, I

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<sup>2</sup> An attorney may withdraw an appearance simply by filing a notice of withdrawal. 17 C.F.R. § 201.102(d)(4); *see BDO China Dahua CPA Co., LTD.*, Exchange Act Release No. 72134, 2014 SEC LEXIS 1611, at \*4-5 (May 9, 2014). The notice must be filed at least five days before the proposed effective date of the withdrawal. 17 C.F.R. § 201.102(d)(4).

should adhere to a timeline in which the hearing shall take place approximately four months after service of the OIP, the parties shall have approximately two months after the hearing to submit briefs, and I shall have approximately four months after briefing to issue an initial decision. 17 C.F.R. § 201.360(a)(2).

Administrative law judges have discretion in deciding whether to grant a continuance. *Gregory M. Dearlove*, Exchange Act Release No. 57244, 2008 SEC LEXIS 223, at \*132 (Jan. 31, 2008). It is “rare” for the Commission to determine that the denial of a continuance amounts to an abuse of discretion. *Id.* at \*134. A circumstance in which a “respondent [is] left without assistance of counsel at or near the hearing date,” would qualify as a rare case in which denying a continuance would amount to an abuse of discretion.<sup>3</sup> *Id.* at \*134 & n.157.

Considering the foregoing, I deny Respondents’ request for a continuance. Respondents have not attempted to “make[] a strong showing that the denial of” their “request . . . would substantially prejudice their case.” 17 C.F.R. § 201.161(b)(1). Respondents’ failure to attempt to meet their burden is, under the plain language of Rule 161(b)(1), a sufficient basis to deny their request. *Id.*

Furthermore, the factors under Rule 161(b)(1) do not support granting a continuance. The hearing is currently scheduled to occur over eight months after the OIP was served, well outside the schedule contemplated by Rule 360. *See* 17 C.F.R. § 201.360(a)(2). Respondents have thus already benefited from what is effectively a four-month continuance. Even with their counsel’s withdrawal, they still have over three months to prepare for the hearing. Given the current schedule, it will likely be impossible for me to issue an Initial Decision within the timeframe directed by the Commission in the OIP. Delaying the hearing again will only further exacerbate this circumstance.

Finally, denying a continuance does not leave Respondents “without assistance of counsel *at or near the hearing date.*” *Gregory M. Dearlove*, 2008 SEC LEXIS 223, at \*134 (emphasis added). Given that Respondents will have over three months to prepare for the hearing, this is not the “rare” circumstance contemplated in *Dearlove*. *See id.* at \*134 & n.157.

In sum, Respondents have not shown that a continuance is warranted. Their one-sentence request for a continuance is therefore DENIED. All current deadlines remain in effect.

Respondents should review the scheduling order entered on August 14, 2015, as they will be expected to comply with it and the guidelines discussed in it. Respondents are encouraged to retain new counsel at their earliest opportunity. Given the delays that have already occurred in this proceeding, I will not entertain additional continuance requests based on Respondents’ need

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<sup>3</sup> In *Dearlove*, the Commission relied on its previous decision in *Philip L. Pascale, CPA*, Order Granting Postponement of Administrative Hearing, File No. 3-11194 (Nov. 24, 2003). *See Dearlove*, 2008 SEC LEXIS 223 at \*134 n.157. In *Pascale*, the Commission held, on interlocutory review, that the denial of a continuance was an abuse of discretion where Pascale’s counsel was incapacitated shortly before the hearing such that Pascale could not obtain substitute counsel. *See id.*

to retain new counsel or on counsel's need to prepare for the hearing in this matter. In the event Respondents do not retain new counsel, they should be prepared to represent themselves.

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James E. Grimes  
Administrative Law Judge