

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3594/February 10, 2016

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

In advance of a hearing scheduled to take place on February 11, 2016, the Division of Enforcement requested—and I issued—a number of subpoenas, including one directed to Joan B. Daspin, who is married to Respondent Edward M. Daspin. Mrs. Daspin has moved to quash the subpoena directed to her.

Her motion is based on (i) an assertion of “marital privilege law,” (ii) the fact of the Second Circuit’s stay of this proceeding as to Respondent Luigi Agostini, (iii) the claim that I was not properly appointed under the Constitution, and (iv) the method by which she was served with the subpoena. The first three arguments fail for reasons I have already explained. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3564, 2016 SEC LEXIS 332, at *2 (ALJ Feb. 1, 2016) (addressing Second Circuit stay); Admin. Proc. Rulings Release No. 3372, 2015 SEC LEXIS 4956, at *5-6 (ALJ Dec. 4, 2015) (addressing marital privilege); Admin. Proc. Rulings Release No. 3263, 2015 SEC LEXIS 4435, at *8 (ALJ Oct. 28, 2015) (addressing constitutional arguments).¹ The final argument fails because Mrs. Daspin does not argue that the subpoena (which she admits receiving by mail at her home) was served improperly under Commission rules; those rules do not require personal service of subpoenas. *See* 17 C.F.R. 201.232(c); *see also* 17 C.F.R. § 201.150(c). Therefore, Mrs. Daspin’s motion is DENIED.

¹ Concerning the Appointments Clause argument, I further note that Section 21(b) of the Exchange Act grants the Commission the authority to designate “any officer” to issue subpoenas. 15 U.S.C. § 78u(b). Given that it is this authority which empowers Division attorneys to issue subpoenas during investigations, it follows that the term “any officer,” as used in Section 21(b), does not refer to one’s status as a constitutional officer, but rather to one’s status as a designated Commission employee. Thus, my authority to issue subpoenas is independent of whether I am a constitutional officer or not. *See* 17 C.F.R. § 201.111(b); *SEC v. Pac. Bell*, 704 F. Supp. 11, 14 (D.D.C. 1989).

Additionally, to the extent that Mr. Daspin has separately moved to quash subpoenas in connection with the upcoming February 11 hearing, his arguments lack merit. Accordingly, any such motion is DENIED.

James E. Grimes
Administrative Law Judge