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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3713/March 16, 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 DENYING MOTION TO SET ASIDE DEFAULT AND SETTING MOTION FOR SANCTIONS SCHEDULE

Respondent Edward M. Daspin moves to reconsider and "open" the order of default I entered on March 8, 2016. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3683, 2016 SEC LEXIS 886. I construe Daspin's motion as a motion to set aside the default. *See* 17 C.F.R. § 201.155(b). So construed, the motion is denied.

A respondent's motion to set aside a default must meet three requirements. It must "be made within a reasonable time, state the reasons for the failure to appear or defend, *and* specify the nature of the proposed defense in the proceeding." 17 C.F.R. § 201.155(b) (emphasis added). "In order to prevent injustice," an administrative law judge "may" set aside a default "for good cause shown." *Id*. Because they are written in the conjunctive, a respondent is required to show good cause with respect to each of the three requirements in Rule 155(b); failure to show good cause as to any requirement "is a sufficient basis to deny" a motion to set aside a default. *David Mura*, Exchange Act Release No. 72080, 2014 WL 1744129, at *4, *6 (May 2, 2014).

With respect to the second requirement, a respondent "must establish a sufficient 'reason[] for the failure to appear or defend' that led to the default, *i.e., that the respondent did not intentionally default*." *David Mura*, 2014 WL 1744129, at *5 (emphasis added). It is therefore the case that "a party's willful default justifies denying a motion to vacate." *Id*.

As is detailed more fully in the order finding Daspin in default, he failed to appear for the hearing in this matter on January 4, 2016, and then failed to appear for a hearing on February 11, 2016, which was scheduled to investigate the reason for his absence at the January 4 hearing. *See Edward M. Daspin*, 2016 SEC LEXIS 886, at *1, *9-11, *13. I later ordered Daspin to show cause why he should not be found in default. *See id*. at *1, *16. Daspin answered but failed to show cause. *Id*. at *19-22. As a result, I found him in default for voluntarily failing to appear at two hearings. *Id*. at *22. I found that he concocted a medical reason for missing the January 4 hearing and had no valid reason to miss the February 11 hearing. *Id*. at *18-22.

In his current motion,[1] a filing which sprawls in excess of 14,000 words—twice the prescribed limit, 17 C.F.R. § 201.154(c)—Daspin does very little to show that he "did not intentionally default." Indeed, his motion chiefly addresses the merits of his case. To the extent he addresses why he failed to appear on January 4, Daspin claims that his medical evidence is genuine and that he did not invent the reason for his absence. Mot. at 2, 6-9, 20, 22. In light of the unrebutted evidence that Daspin concocted the reason for his absence on January 4, *see Edward M. Daspin*, 2016 SEC LEXIS 886 at *13-16, *18, Daspin's assertion that his medical evidence is genuine carries little weight. Indeed, even if his medical evidence were valid—and I determined that it is not—that fact would not change the determination that Daspin was voluntarily absent. *See id*. at *20-21.

As to the February 11 hearing, Daspin simply reasserts his previously stated reasons for failing to appear. *See* Mot. at 20. As previously explained, neither of these reasons presents a valid basis to excuse Daspin's failure to appear. *See Edward M. Daspin*, 2016 SEC LEXIS 886, at *21-22.

Daspin complains that in finding him in default on March 8, I did not give him sufficient time to respond to the Division's March 4 opposition to his response to the order to show cause. Mot. at 1, 18, 22. He is mistaken.

I found Daspin in default after he failed to appear at two hearings and then failed to carry *his* burden to show cause. As I stated in the order finding him in default, because Daspin failed at the threshold to carry his burden, I did not consider the Division's opposition to his response to the show cause order. *Edward M. Daspin*, 2016 SEC LEXIS 886, at *22 n.10. Because Daspin had already failed to show cause, there was no need to consider or address the Division's position. There was therefore no need to wait for Daspin's reply to the Division's opposition.

The balance of Daspin's motion is devoted to matters that do not demonstrate good cause for failing to appear. He claims he would appear for a hearing if given a chance. Mot. at 3; *see id*. at 20 (asking for "the opportunity to go to trial"). Daspin's past actions, however, belie this claim. *See Alra Labs., Inc. v. DEA*, 54 F.3d 450, 452 (7th Cir. 1995) ("An agency rationally may conclude that past performance is the best predictor of future performance."). Daspin seeks to blame his default on others, pointing to the fact that his counsel withdrew in September, Mot. at

[1] Because he often submitted multiple versions of his filings, supplemented several times, I ordered that all of Daspin's filings "must be entirely self-contained in a single submission made on a single date. Multiple versions of filings, continuously amended and filed over an extended period, will not be considered." *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3606, 2016 SEC LEXIS 562, at *3-4 (ALJ Feb. 16, 2016). I also stated that "my office will no longer accept or consider *any* e-mails or attachments thereto sent by Daspin." *Id*. at *3; *see also Edward M. Daspin*, 2016 SEC LEXIS 886 at *10 n.4 (noting Daspin's repeated and consistent violations of my orders concerning e-mails). Despite these orders, Daspin e-mailed my office an 11,000-word "supplemental motion to set aside default." Given my February 16, 2016, order and the fact that Daspin is already well over the Commission's word limit for motions, I have not considered Daspin's supplemental motion.

1, and then pinning his absence on me, *id*. at 21 ("It was your honor[']s fault"). Neither former counsel nor I prevented Daspin from appearing at the hearings. Finally, Daspin attempts to relitigate issues already decided and misstates facts. Mot. at 11, 17-18 . Neither effort provides a "reason[] for [Daspin's] failure to appear or defend." *David Mura*, 2014 WL 1744129, at *5 (internal quotation marks omitted).

Daspin has failed to present a reason for his failure to appear at two hearings. As a result, he has failed to show good cause sufficient to warrant setting aside the default. *David Mura*, 2014 WL 1744129, at *4 ("if a defaulting respondent fails to make a sufficient showing on any one of the three identified elements, we will not consider whether the other two elements are established"). His motion is therefore DENIED.

Further, I ORDER the following:

- The Division shall file its motion for sanctions by April 6, 2016.

- Daspin may file an opposition by April 27, 2016. Daspin's opposition shall comply with the filing instructions set forth in my February 16 order, *supra* note 1, and shall only address the appropriateness of the sanctions sought by the Division. Attempts to refute the factual allegations of the order instituting proceedings will not be considered. The opposition may include rebuttal evidence and affirmative defenses related to sanctions, such as inability to pay. An inability to pay defense should be accompanied by a Disclosure of Assets and Financial Information Form, which the Division shall provide to Daspin. *See* 17 C.F.R. § 201.630(a)-(b).

- The Division may file a reply by May 9, 2016.

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James E. Grimes
Administrative Law Judge