

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4140/September 8, 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 FOLLOWING
PREHEARING
CONFERENCE

Yesterday, I held a telephonic prehearing conference in this matter concerning a number of requests made by Luigi Agostini, which are detailed in prior orders. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 4107, 2016 SEC LEXIS 3156 (ALJ Aug. 31, 2016); *Edward M. Daspin*, Admin. Proc. Rulings Release No. 4067, 2016 SEC LEXIS 2806 (ALJ Aug. 16, 2016). For reasons stated during the conference, Agostini's requests are DENIED except as detailed below.

Agostini requested access to the Division of Enforcement's notes from the interview its attorneys conducted with Beryl Wolk, who is now deceased. *See Edward M. Daspin*, 2016 SEC LEXIS 3156, at *2-3. During yesterday's conference, I directed the Division to submit its interview notes for *in camera* review.

The Division submitted four pages of handwritten notes and two typed pages compiling the handwritten notes. Having reviewed these materials, I reach the following conclusions. The Division's interview notes were prepared in anticipation of litigation. As a result, they constitute attorney work-product. *See United States v. Adlman*, 134 F.3d 1194, 1197-1203 (2d Cir. 1998); *SEC v. Goldstone*, 301 F.R.D. 593, 665 (D.N.M. 2014). Because Mr. Wolk passed away in 2014, and because of the passage of time since the events about which he would testify were he alive, Agostini has shown a substantial need for the Division's interview notes and an inability, without undue hardship, to obtain the substantial equivalent of the notes elsewhere. *See In re Grand Jury Investigation*, 599 F.2d 1224, 1231-32 (3d Cir. 1979); *Hamilton v. Canal Barge Co.*, 395 F.Supp. 975, 976-78 (E.D. La. 1974); *see also Adlman*, 134 F.3d at 1197 (enunciating the standard for requiring disclosure of work product). I further conclude that the withheld notes related to Wolk's interview do not contain exculpatory evidence or Jencks Act material, and therefore the Division complied with its disclosure obligations under 17 C.F.R. §§ 201.230(b)(2) and 201.231(a).

Accordingly, the Division shall disclose to Agostini the last two paragraphs on the first page of its typed notes and everything on the second page. In other words, it should disclose the six paragraphs of its typed summary that are not in italics.

James E. Grimes
Administrative Law Judge