

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

Administrative Proceedings Rulings
Release No. 5619 / February 20, 2018

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**

**PUBLIC REDACTED
Order on Ratification**

The Securities and Exchange Commission remanded this case and directed me to take certain actions.¹ Consistent with the Commission's remand order, I gave the parties an opportunity "to submit any new evidence [they] deem relevant to [my] reexamination of the record."² The Division of Enforcement has asked me to ratify my previous decisions in this case. Respondent Edward M. Daspin disagrees.

¹ The Commission instructed me to reconsider the record and all prior actions by an administrative law judge, allow the parties to submit any new, relevant evidence, and issue an order ratifying or revising all prior actions. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 WL 5969234, at *1-2 (Nov. 30, 2017).

² *Edward M. Daspin*, Admin. Proc. Rulings Release No. 5307, 2017 SEC LEXIS 3917, at *1 (ALJ Dec. 7, 2017). In that order, I instructed the parties that I would only consider papers filed in compliance with the Commission's Rules of Practice. *Id.* at *3 ("No e-mail filings will be accepted or considered."). I also directed that, absent leave, all filings must be entirely self-contained; serial supplementation of filings would not be permitted. *Id.*

I have considered the parties' properly filed submissions and reconsidered the record. The short of this case is that Daspin failed to appear at the merits hearing and then failed to appear at a hearing held solely to allow him to show why he missed the merits hearing. Daspin also prevented a witness—his wife—from testifying at the second hearing. A default order followed Daspin's failure to attend both hearings. I deemed true the facts alleged against Daspin and imposed sanctions.

In a series of post-remand filings, Daspin has raised a host of factual and legal arguments. A fair number of his factual assertions lack any evidentiary support. And his legal arguments proceed as if he legitimately missed two hearings and is the innocent victim of a vast conspiracy. None of Daspin's arguments have merit. For the reasons discussed below, I revise portions of two orders and otherwise ratify all actions I have taken in this proceeding and nearly all actions taken by my predecessor.

Procedural history

1.1 Daspin's proceeding is assigned to my predecessor, who entered an indefinite postponement.

To place this order and the parties' positions in perspective, it is necessary to review the history of this case. The Commission initiated this proceeding in 2015 against Daspin and two other respondents, Luigi Agostini and Lawrence R. Lux.³ Chief Judge Brenda Murray, the Commission's chief administrative law judge, initially assigned it to my colleague, Judge Carol Fox Foelak.⁴

In short order, Daspin moved to dismiss based on his "extremely serious medical condition."⁵ Daspin supported his motion with a May 11, 2015 declaration executed by his physician, Alan V. Puzino (First Puzino Decl.). According to Dr. Puzino, Daspin "likely . . . suffer[ed] a [REDACTED]" in February 2014 during his investigative deposition.⁶ Based on this incident,

³ *Edward M. Daspin*, Securities Act of 1933 Release No. 9755, 2015 WL 1843839 (Apr. 23, 2015).

⁴ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2581, 2015 SEC LEXIS 1537, at *1 (ALJ Apr. 24, 2015).

⁵ Mot. to Dismiss at 15.

⁶ First Puzino Decl. at 3–4.

Dr. Puzino opined that Daspin would have a serious [REDACTED] if forced to participate in this proceeding.⁷

In May 2015, Judge Foelak scheduled the merits hearing as to all respondents for November 2015.⁸ In mid-June, she indefinitely postponed the proceeding as to Daspin due to his alleged medical condition.⁹ Judge Foelak explicitly based the stay decision on seven factors discussed in Daspin's motion.¹⁰ She ordered Daspin to file periodic medical status reports.¹¹

Daspin submitted medical records by e-mail on July 31, 2015.¹² Among these records was a three-page letter from Dr. Puzino (Puzino Letter), which Daspin apparently drafted.¹³ Dr. Puzino's letter explained that Daspin was expected to have a [REDACTED] test in August 2015, and would need follow-up appointments with "three of the top 10 rated doctors and hospitals in the world," which would "require several months" to schedule.¹⁴ After discussing possible treatments, Dr. Puzino stated, "[t]here is no known remedy that exists that can stop the risk [to Daspin's health] at this time."¹⁵

⁷ *Id.* at 4.

⁸ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2699, 2015 SEC LEXIS 1985, at *1 (ALJ May 20, 2015).

⁹ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2810, 2015 SEC LEXIS 2387, at *2 (ALJ June 15, 2015). Judge Foelak postponed the hearing "sine die." *Id.* By definition, a postponement sine die is a postponement for an indefinite period. *See Sine Die*, Black's Law Dictionary (10th ed. 2014) ("With no day being assigned (as for resumption of a . . . hearing).").

¹⁰ *Daspin*, 2015 SEC LEXIS 2387, at *1–2.

¹¹ *Id.*; *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2939, 2015 SEC LEXIS 2933, at *2 (ALJ July 17, 2015).

¹² *See* Letter from David M. Rosenfield (July 31, 2015).

¹³ The letter is consistent with Daspin's writings.

¹⁴ Puzino Letter at 1–2.

¹⁵ *Id.* at 1.

In late July 2015, Judge Foelak stayed the case as to Lux, who had reached a tentative settlement.¹⁶

1.2 Judge Murray reassigns this case to me; the postponement is lifted.

Chief Judge Murray then reassigned this case to me.¹⁷ I held a telephonic prehearing conference with the parties in mid-August 2015. During the conference, we discussed whether to delay the scheduled November 2015 merits hearing to avoid separate administrative trials for Daspin and Agostini.¹⁸ I asked the parties to explain how an indefinite postponement could be squared with Commission Rule of Practice 360, which then required me to issue an initial decision within 300 days of service of the order instituting proceedings (OIP), and Rule 161, which codifies the Commission's policy of strongly disfavoring continuances.¹⁹ The parties suggested that I could immediately ask Judge Murray to petition the Commission under Rule 360(a)(3) for an extension.²⁰

Two days after the conference, I issued a scheduling order in which I lifted the postponement as to Daspin.²¹ I reasoned that Rule 360 did not permit indefinite postponements or allow me to seek an extension from the Commission on the front end without trying in good faith to comply with the 300-day deadline.²² Because Daspin's postponement had been in effect for

¹⁶ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2991, 2015 SEC LEXIS 3107 (ALJ July 30, 2015). The commission later accepted Lux's offer. *See Edward M. Daspin*, Securities Act Release No. 9963, 2015 WL 6086849 (Oct. 16, 2015).

¹⁷ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2999, 2015 SEC LEXIS 3137 (ALJ July 31, 2015).

¹⁸ Prehearing Tr. 22–24.

¹⁹ Prehearing Tr. at 31–32; *see* 17 C.F.R. §§ 201.161(b)(1), .360(a)(2) (2015).

²⁰ Prehearing Tr. at 32–34. At the time, the 300-day deadline was subject to extension by the Commission on application by the chief administrative law judge. *See* 17 C.F.R. § 201.360(a)(3) (2015).

²¹ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3041, 2015 SEC LEXIS 3348 (ALJ Aug. 14, 2015).

²² *Id.* at *4–9; *see Richard Cannistraro*, Exchange Act Release No. 39521, 1998 WL 2614, at *1 (Jan. 7, 1998) (holding that under Rule 161, “any postponement must be for a definite period of time and cannot be open-ended”).

about two months, I rescheduled the merits hearing from November 2015 to January 4, 2016, to avoid prejudice to him.²³

Daspin and Agostini were jointly represented by counsel, who withdrew effective September 28, 2015.²⁴ Over the next week, Daspin, or others acting on his behalf, sent “dozens of e-mails” asserting that illness and a lack of computer literacy made it impossible for him to participate in this proceeding.²⁵ On October 6, 2015, I directed him to stop sending e-mails to my office except when responding to an e-mail from my office or providing courtesy copies of documents properly filed with the Office of the Secretary.²⁶

By e-mail sent on October 1, 2015, Daspin submitted a declaration signed by Dr. Puzino (Second Puzino Decl.), in support of motions to continue or dismiss, which, given its content and style, was also written by Daspin. The declaration asserted that I:

put[] Mr. Daspin in the incomprehensible position that regardless of his medical circumstances he must either default or die trying to save his reputation. The man cannot defend himself and the dissolution of the protections puts our legal system at risk, as unless something is done to restore the postponement Mr. Daspin will be facing a death penalty, for a crime that he advises he did not commit.²⁷

In support of its opposition to Daspin’s motions, the Division submitted a letter from Dr. Stanley J. Schneller, M.D., a professor of cardiology at

²³ *Daspin*, 2015 SEC LEXIS 3348, at *8.

²⁴ *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3183, 2015 SEC LEXIS 4001, at *3 (ALJ Sept. 30, 2015).

²⁵ *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3683, 2016 SEC LEXIS 886, at *4 (ALJ Mar. 8, 2016). Among other requests, Daspin moved (1) to dismiss; (2) for reconsideration of the August 14 scheduling order; (3) for a continuance; and (4) for my withdrawal. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3263, 2015 SEC LEXIS 4435, at *2–3 (ALJ Oct. 28, 2015).

²⁶ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3202, 2015 SEC LEXIS 4103, at *3 (ALJ Oct. 6, 2015).

²⁷ Second Puzino Decl. at 3.

Columbia University since 1985.²⁸ Dr. Schneller refuted Dr. Puzino's assertions about Daspin's health and asserted that Daspin's then-recent [REDACTED] test showed "no evidence that Mr. Daspin is at risk of a [REDACTED] or other adverse outcome from stress."²⁹ Dr. Schneller further stated that there was no evidence Daspin [REDACTED] during his deposition and characterized Dr. Puzino's opinions as "without medical foundation," "medically unfounded," and "inconsistent with Dr. Puzino's failure to take medical steps to diagnose and treat Mr. Daspin's condition."³⁰ Indeed, he was struck by the contrast between Dr. Puzino's dire warning about Daspin's health and "the leisurely pace with which he has addressed" Daspin's alleged problem, given that patients in Daspin's supposed circumstance would normally be seen within days.³¹ He also stated that Dr. Puzino misleadingly omitted certain test results, "misrepresented the key finding" of Daspin's [REDACTED] test, and misinterpreted another test.³² In conclusion, Dr. Schneller opined that there is no reason Daspin could not participate in this proceeding.³³

Despite my admonition, Daspin continued to e-mail my office, including on October 20, 2015, when he asked for an extension of his expired deadline to reply to the Division's opposition to his motions.³⁴ The next day, Daspin e-mailed another declaration that he drafted and Dr. Puzino signed (Third Puzino Decl.). Among other assertions, Dr. Puzino, who is not a cardiologist, stated that he was the only doctor qualified to opine about Daspin's health because he had "special insight" resulting from his time as Daspin's personal physician.³⁵ And after opining that my order lifting Daspin's postponement was "intolerable and completely unacceptable," Dr. Puzino observed that because there had been settlement discussions, the "matter should not even

²⁸ Schneller Letter at 1 (Oct. 14, 2015).

²⁹ *Id.* at 2.

³⁰ *Id.* at 2–3, 10; *see id.* at 11 (stating that one of Dr. Puzino's claims was "not medically valid").

³¹ *Id.* at 11.

³² *Id.* at 6, 10.

³³ *Id.* at 13.

³⁴ *Daspin*, 2015 SEC LEXIS 4435, at *6.

³⁵ Third Puzino Decl. at 6.

be in this court”; Daspin “is ill [and] the Sec has bigger fry to go after and the man, as if and when he can defend himself will be able to be sued in federal court.”³⁶

Between October 20 and 27, 2015, Daspin e-mailed my office nine times, serially supplementing and amending his submissions. On October 28, 2015, I denied Daspin’s motions, and stated that except to dispel confusion, I would not address Daspin’s improperly submitted materials.³⁷

Daspin continued to ignore my order in November 2015, e-mailing my office eighteen times. In his e-mails, Daspin began to lay the foundation for what I would later determine was an invented medical basis for his subsequent absence from the merits hearing. In a November 13 e-mail, Daspin forwarded a letter to Division counsel in which he claimed he was “making it impossible to focus on a defense except when I take” medication.³⁸ In a letter e-mailed the next day, he mentioned “ ” seven times.³⁹ He mentioned “ ” in several other e-mails sent between November 14 and November 30.⁴⁰ On December 1, 2015, Daspin copied my office on an e-mail to Division counsel in which he said, “[a]s if and when the Inspector general requests the record please redact my medical history including my “ ”!”⁴¹

Also in November, Daspin submitted a motion to postpone the January 2016 hearing by six months, which I denied.⁴²

³⁶ *Id.* at 2, 5. Daspin has repeatedly argued that the Division should have pursued its case against him in federal court. *See* Div. Feb. 11, 2016, Hr’g Ex. 6 at 64, 67, 69, 87, 134. Daspin’s writing style is idiosyncratic. Except where indicated, I have not corrected his e-mails and filings quoted in this order and have instead left them as written.

³⁷ *Daspin*, 2015 SEC LEXIS 4435, at *7–18.

³⁸ Div. Ex. 6 at 34.

³⁹ Div. Ex. 6 at 37–45; *see also* Div. Ex. 6 at 55.

⁴⁰ *See* Div. Ex. 6 at 61, 67, 69, 75, 77.

⁴¹ Div. Ex. 6 at 93.

⁴² *See* Div. Ex. 6 at 36; *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3328, 2015 SEC LEXIS 4758 (ALJ Nov. 18, 2015).

Daspin submitted a host of e-mails and motions during December 2015 requiring me to issue a number of orders. In light of Daspin's persistent failure to comply with my order regarding e-mails "and the increasingly discourteous and unprofessional nature of his e-mails," I directed that my office would not consider any e-mail from Daspin that went beyond simply forwarding a courtesy copy of a submission properly filed with the Office of the Secretary.⁴³

Without seeking leave, Daspin submitted an eighteen-page motion for summary disposition, more than six weeks after the deadline for such motions.⁴⁴ Daspin repeatedly supplemented his motion with additional arguments submitted in the guise of supplemental declarations.⁴⁵ I denied Daspin's motion.⁴⁶

Also in December, the Division moved to strike several witnesses from Daspin's witness list, including the Commission's administrative law judges.⁴⁷ In opposition, Daspin speculatively asserted that Judge Murray pressured me to "violate [his] constitutional rights by dissolving the postponement sine die."⁴⁸

⁴³ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3393, 2015 SEC LEXIS 5071, at *2 (ALJ Dec. 14, 2015). Samples of Daspin's e-mails were attached to the December 14, 2015, order as an appendix. See <https://www.sec.gov/alj/aljorders/2015/ap-3393.pdf>.

⁴⁴ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3409, 2015 SEC LEXIS 5125, at *2–3 (ALJ Dec. 17, 2015).

⁴⁵ Daspin first submitted a thirty-one page document described as a "declaration with respect to a motion for summary judgment" and as a "brief [that] represents my motion for summary judgment." *Daspin*, 2015 SEC LEXIS 5125, at *2. Two days later, he took "the liberty of supplementing [his] motion" with five additional pages of argument. *Id.* Later that same day, he forwarded a separate, six-page "supplemental declaration in further support of [his] motion." *Id.* Finally, on December 14, Daspin submitted a forty-page document that he described as a "declaration in support of my motion for summary judgement." See E-mail from Edward M. Daspin (Dec. 14, 2015).

⁴⁶ *Daspin*, 2015 SEC LEXIS 5125, at *4.

⁴⁷ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3416, 2015 SEC LEXIS 5164, at *1 (ALJ Dec. 18, 2015).

⁴⁸ Letter from Edward M. Daspin (Dec. 10, 2015).

On December 18, 2015, I granted the Division's motion to strike. In the order, I explained that Daspin's speculation was unfounded; his case was reassigned to rebalance office caseloads and was set for a hearing for no reason other than what I stated in the order dissolving the postponement.⁴⁹ I informed Daspin that in light of my factual observations in the order, I would "briefly entertain his questions about [those] observations" at the January 2016 hearing.⁵⁰

Throughout December, Daspin sent e-mails claiming to be ill, arguing that he was not liable, and decrying the Division's efforts to bring a case against him.⁵¹

1.3 Daspin fails to appear at the merits hearing and fails to attend a second hearing held to determine why he missed the first hearing.

Daspin did not appear at the merits hearing on January 4, 2016.⁵² At the Division's request, I adjourned the hearing to allow time to investigate the reason for Daspin's absence.⁵³ Daspin's absence and the resulting delay associated with determining why he failed to appear meant that unless I were prepared to immediately find Daspin in default and rule against him, it would be impossible to issue an initial decision within the original timeframe required under Rule 360(a). As a result, Chief Judge Murray moved the Commission for a six-month extension of the deadline for issuing an initial decision.⁵⁴

⁴⁹ *Daspin*, 2015 SEC LEXIS 5164, at *9.

⁵⁰ *Id.* at *13.

⁵¹ Div. Ex. 6 at 95-97, 99-106, 111, 118. I encouraged the parties to find a way for Daspin to appear at the hearing via video. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3372, 2015 SEC LEXIS 4956, at *7 (ALJ Dec. 4, 2015); *Daspin*, 2015 SEC LEXIS 3348, at *10. By late December, it was clear that the parties would be unable to find a reliable method for Daspin to appear via video. *See Prehearing Tr.* 50.

⁵² *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3465, 2016 SEC LEXIS 21 (ALJ Jan. 5, 2016).

⁵³ *Id.*

⁵⁴ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3470, 2016 SEC LEXIS 41 (ALJ Jan. 6, 2016). The Commission granted Chief Judge Murray's request. *Edward M. Daspin*, Securities Act Release No. 77177, 2016 WL 683421 (Feb. 18, 2016).

On January 8, 2016, I held a telephonic prehearing conference, which Daspin did not attend.⁵⁵ The Division reported that Daspin had been hospitalized after an alleged [REDACTED].⁵⁶ After more discussion, I agreed to schedule a hearing to give Daspin an opportunity to explain why he was absent from the January hearing, and to order Daspin to submit to an evaluation by a psychiatrist hired by the Division.⁵⁷ Following the conference, I ordered that the separate hearing take place on February 11, 2016.⁵⁸ I also ordered Daspin to “make himself available” by February 3, 2016, “for an in-person medical evaluation by an expert provided by the Division.”⁵⁹

Daspin was released from the hospital by January 13, 2016.⁶⁰ Between then and February 16, 2016, he peppered my office with forty e-mails, characterized by an increasingly obnoxious and combative tone.⁶¹ Despite being the cause and beneficiary of Judge Murray’s extension request to the Commission, Daspin attacked the request as evidence of fraud, bias, and a double standard.⁶² Daspin also resisted attending the hearing on February 11.⁶³

Meanwhile, on January 12, 2016, the Second Circuit Court of Appeals stayed this proceeding *as to Agostini*.⁶⁴ This led Daspin to argue that despite the fact that he was not a party to Agostini’s district court action or his appeal, this proceeding should be stayed as to him, as well.⁶⁵ I disagreed.⁶⁶

⁵⁵ See *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3481, 2016 SEC LEXIS 72, at *1 (ALJ Jan. 8, 2016).

⁵⁶ Jan. 8, 2016, Prehearing Tr. at 4–5, 10–11.

⁵⁷ Jan. 8, 2016, Prehearing Tr. at 10–15.

⁵⁸ *Daspin*, 2016 SEC LEXIS 72, at *2.

⁵⁹ *Id.*

⁶⁰ See Div. Ex. 6 at 127.

⁶¹ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3606, 2016 SEC LEXIS 562, at *1 n.1 (ALJ Feb. 16, 2016).

⁶² Div. Ex. 6 at 127, 129.

⁶³ See Div. Ex. 6 at 129, 131–32, 136.

⁶⁴ *Agostini v. SEC*, No. 15-4114, ECF No. 49.

⁶⁵ Jan. 29, 2016, Prehearing Tr. 99–101.

The Commission later denied an interlocutory bid to stay the proceeding as to Daspin⁶⁷ and the Second Circuit rejected his bid to benefit from Agostini's stay.⁶⁸

Consistent with the order I issued on January 8, the Division attempted to schedule Daspin's interview with its expert. Because Daspin did not cooperate, the Division scheduled the interview and notified Daspin of the time and place.⁶⁹ Instead of appearing for the interview, Daspin sent an e-mail saying that he was ill and confined to his home.⁷⁰

During the evening of February 10, 2016, Daspin sent an e-mail informing my office and the Division that he had taken affirmative steps to prevent his wife from testifying at the next day's hearing.⁷¹ And in fact, neither Daspin nor his wife appeared.⁷²

Because Daspin failed to appear, the Division's evidence about the reason for his absence from the January hearing was un rebutted. That evidence, including the report and testimony of Dr. Harold J. Bursztajn, M.D., who has practiced clinical and forensic neuropsychiatry since 1982, demonstrated that Daspin concocted his alleged [REDACTED].⁷³ In short,

⁶⁶ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3564, 2016 SEC LEXIS 332, at *2 (ALJ Feb. 1, 2016). I also noted that the February hearing would be "held solely to address why Daspin failed to appear on January 4," and would provide him with an "opportunity to explain his [previous] absence." *Id.* at *3.

⁶⁷ *See Edward M. Daspin*, Securities Act Release No. 10038, 2016 WL 492228 (Feb. 9, 2016).

⁶⁸ *See SEC v. Daspin*, No. 13-4622 (2d Cir. Feb. 23, 2016), ECF No. 83.

⁶⁹ *See* Letter from Barry O'Connell, Ex. A (Feb. 3, 2016); Div. Feb. 11, 2016, Hr'g Ex. 9 at 1-2; Div. Ex. 10 at 1.

⁷⁰ Letter from Barry O'Connell, Ex. B.

⁷¹ Div. Ex. 12 at 1; *see Daspin*, 2016 SEC LEXIS 562, at *1. Daspin stated: "I took her car keys, credit cards and wallet. she was ready to try to drive to New York when she hasn't driven there in 30 years and is now afraid to drive.... I am a very sick man but am willing to die trying to protect her as I tried before !" Div. Ex. 12 at 1.

⁷² Tr. 16-17.

⁷³ *See Daspin*, 2016 SEC LEXIS 886, at *13-21.

Dr. Bursztajn explained that Daspin staged his [REDACTED] to manipulate this proceeding to obtain a narcissistic benefit.⁷⁴ Dr. Bursztajn also opined that Daspin engages in a “pattern of grandiosity” that involves humiliating others and portraying himself as a hero.⁷⁵

Like Dr. Schneller, Dr. Bursztajn was unimpressed with Dr. Puzino’s treatment of Daspin, which Dr. Bursztajn testified was inconsistent with Daspin’s reported condition.⁷⁶ He observed that Dr. Puzino had “over identified with [Daspin’s] wishes and desires to the point that he cannot be considered to be an objective reporter.”⁷⁷ Dr. Bursztajn concluded that there is no medical reason Daspin could not participate in this proceeding and opined that Daspin’s alleged [REDACTED] was “consistent with a life-long pattern of manipulation and conning people in order to be able to avoid the foreseeable consequences of his actions.”⁷⁸

Following the February hearing, I ordered Daspin to show cause why he should not be found in default.⁷⁹ I also provided Daspin with specific filing instructions. 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,

⁷⁴ Tr. 40–41; Div. Ex. 1 at 2.

⁷⁵ Tr. 41–42, 45–48. Dr. Bursztajn explained that Daspin exhibited [REDACTED] traits,” which were “consistent with someone who is . . . quite likely [to] use the stated [REDACTED] in order to avoid legal proceedings to protect his own [REDACTED] his own sense of grandiosity, his own sense of self-esteem, his own sense of omnipotence.” Tr. 46–47.

⁷⁶ Tr. 57–58.

⁷⁷ Tr. 59; *see* Tr. 58 (“Dr. Puzino seems to lean over backwards to be subjective rather than objective” and “basically tak[es] the patient’s reports and . . . desires as being his . . . overriding mandate”).

⁷⁸ Tr. 64–65; *see Daspin*, 2016 SEC LEXIS 886, at *13–19 (discussing Dr. Bursztajn’s testimony and conclusions).

⁷⁹ *Daspin*, 2016 SEC LEXIS 562, at *3.

will not be considered.”⁸⁰ I also stated that “my office will no longer accept or consider any e-mails or attachments thereto sent by Daspin.”⁸¹

On March 8, 2016, I determined that the Division had shown that Daspin was voluntarily absent from the January hearing.⁸² I also found that he staged a [REDACTED] to avoid the hearing and manipulate this proceeding.⁸³ Among other factors, I noted that Daspin had previously relied on questionable medical evidence, had not availed himself of the opportunity to present his side of the story on February 11, despite being told that that hearing was being held solely for his benefit, and admittedly prevented his wife from attending the February 11 second hearing.⁸⁴ As a result, I found Daspin in default and deemed true the allegations in the OIP.⁸⁵

In mid-March, I denied Daspin’s motion to set aside the default and directed the Division to file a motion for sanctions.⁸⁶ I also told Daspin that his opposition would be governed by the filing instructions in the order to show cause and that I would not consider attempts to refute the factual allegations in the OIP.⁸⁷ Daspin ignored my instructions. Over the next few months he sent numerous e-mails and attachments seeking various forms of relief.⁸⁸

1.4 The initial decision and Daspin’s new [REDACTED] excuse.

In his 22,000-word opposition to the Division’s sanctions motion, Daspin ignored my instructions and focused on the merits. Most relevantly, he said

⁸⁰ *Id.* at *3–4.

⁸¹ *Id.* at *3; *see also Daspin*, 2016 SEC LEXIS 886, at *10 n.4 (noting Daspin’s repeated and consistent violations of my orders concerning e-mails).

⁸² *Daspin*, 2016 SEC LEXIS 886, at *18.

⁸³ *Id.*

⁸⁴ *Id.* at *19–21.

⁸⁵ *Id.* at *22.

⁸⁶ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3713, 2016 SEC LEXIS 1000, at *5–6 (ALJ Mar. 16, 2016).

⁸⁷ *Id.*

⁸⁸ *See, e.g.*, E-mail from Edward M. Daspin (Apr. 6, 2016) (arguing that he should be provided “with an order of innocence”).

that he did not appear at the merits hearing because he was afraid of various possible outcomes.⁸⁹

On August 23, 2016, I issued an initial decision finding Daspin liable and imposing sanctions.⁹⁰ Over the next month, Daspin filed several motions, including one on September 1, 2016, “to either dissolve and or vacate the finding on March 8, 2016 finding [Daspin] guilty.” In what appeared to be a cover letter of his motion, Daspin asserted for the first time that his allegedly ██████████ in January 2016 resulted from the fact that his doctor had given him samples of ██████████ which he began taking in December 2015. Daspin did not submit evidence to support his new assertion. Daspin supplemented this motion with an argumentative declaration filed September 12, 2016. Because Daspin’s motion was untimely as to the March 8, 2016 default order to which it was directed and because he did not seek “to correct any error in the initial decision,” I denied Daspin’s motion.⁹¹

The same day I denied Daspin’s motion, he filed with the Commission a motion to set aside default judgment. Daspin proclaimed that he is “innocent of the allegations” and asserted that ██████████ was the cause of his ██████████ in January 2016 when he missed the merits hearing.⁹² He added that it was not “until recently” that *he* realized that ██████████ was responsible for his behavior.⁹³ Daspin did not mention his failure to attend the February hearing.

The Division’s opposition to Daspin’s motion to set aside the default was supported by copies of Daspin’s medical records. Those records contained no

⁸⁹ Opp’n at 4.

⁹⁰ See *Edward M. Daspin*, Initial Decision Release No. 1051, 2016 WL 4437545. The decision did not deal with Agostini, for whom the proceeding had been stayed. In July 2016, the Second Circuit vacated the stay it entered as to Agostini. *Agostini v. SEC*, No. 15-4114 (July 11, 2016), ECF No. 72. On November 1, 2016, the Commission accepted Agostini’s offer of settlement. *Edward M. Daspin*, Securities Act Release No. 10243, 2016 WL 6441564.

⁹¹ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 4184, 2016 SEC LEXIS 3554, at *2 (ALJ Sept. 21, 2016). The remainder of Daspin’s motions pertained to requests he attempted to make on behalf of Agostini. See *id.* at *2 n.1.

⁹² Mot. at 2–3.

⁹³ *Id.* at 3.

mention of ██████ until late January 2016—three weeks after the January 4, 2016 hearing that Daspin failed to attend.⁹⁴

Next, Daspin sent the Commission a five-page letter in which he speculatively declared that “Judge Murray is the puppeteer,” and that she and I conspired to deprive him of his rights.⁹⁵ Among other things, Daspin again said ██████ caused his “████████████████████.”⁹⁶

The next day, Daspin filed a fifteen-page document that he captioned as a “motion under Rule 111, to correct a manifest error.” Ignoring the fact that he failed to appear or present evidence at the February hearing, Daspin argued that the determination that he faked his ██████ “flew in the face of 2 prima facia witness.”⁹⁷ After complaining about my rulings and asserting that he is not liable,⁹⁸ Daspin stated that he stopped taking ██████ when he was hospitalized in January 2016.⁹⁹ Among a host of other complaints, he also asserted that I am biased, as evidenced by my decisions, and that ██████ caused his ████████████████████.¹⁰⁰ And Daspin admitted that he prevented his wife from attending the February hearing.¹⁰¹

On October 3, 2016, Daspin filed an “opposition to Enforcement Division[']s opposition.” In addition to restating many of his previous arguments, Daspin asserted that I “violated” Judge Foelak’s postponement order and then violated his “human rights to life” when I lifted the postponement.¹⁰² Daspin attached to his motion a declaration signed by Dr. Puzino (Fourth Puzino Decl.). Like the other Puzino declarations, it was

⁹⁴ Opp’n at 16–17 & n.9 (Sept. 26, 2016); see Barry O’Connell Decl. at Ex. H (Jan. 27, 2017); Barry O’Connell Decl. at Ex. B (Jan. 23, 2018).

⁹⁵ Letter from Edward M. Daspin at 2 (Sept. 29, 2016).

⁹⁶ *Id.* at 2–3.

⁹⁷ Mot. Under Rule 111 at 2.

⁹⁸ *Id.* at 3–7, 9–11.

⁹⁹ *Id.* at 7.

¹⁰⁰ Mot. at 3–4, 9, 14–15

¹⁰¹ *Id.* at 13.

¹⁰² Opp’n to Opp’n at 4.

drafted by Daspin. The declaration stated that Daspin suffered from [REDACTED] and that in December 2015:

I happened to have samples of [REDACTED] given by the pharmaceutical manufacturer to my medical practice. I gave Mr. Daspin the 4 pack Samples on December 15,2015, to try to see if it would provide him the relief, for his [REDACTED] and he informed me he took 3 times the dose he should have taken during the rest of that month as the pain as he remembered it, was so great and he had [REDACTED] left as well.

....

It was not until May 2016 that *Mr. Daspin realized* that his [REDACTED] and actions were not tied to the [REDACTED] which was associated with the SEC complaint, but that it was the side effects of the [REDACTED] samples, instead of his [REDACTED] [REDACTED] [REDACTED] for which St Claire's Wellness center were treating him. In fact, I continued to prescribe the medication with the daily dosage clear.¹⁰³

Dr. Puzino offered his "medical opinion knowing Mr. Daspin for over 20 years" that because Daspin had not previously "taken such action and or had [REDACTED]," taking [REDACTED] caused Daspin's [REDACTED].¹⁰⁴ Dr. Puzino added that he reached this conclusion only after recently conferring with Daspin.¹⁰⁵

In light of Dr. Puzino's fourth declaration, the Division moved to file a sur-reply to Daspin's motion to set aside the default. The Division argued that despite "detailed dosage instructions for" other medications, Dr. Puzino's records contained no mention of [REDACTED] before January 24, 2016.¹⁰⁶ The Division also argued that Dr. Puzino's conclusion that [REDACTED] caused Daspin's [REDACTED] was flawed because Daspin expressed [REDACTED] in

¹⁰³ Fourth Puzino Decl. at 1 (emphasis added).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 1.

¹⁰⁶ Sur-reply Mem. of Law at 3; Barry O'Connell Decl. at Exs. A, O (Oct. 12, 2016).

several letters and e-mails in November 2015, before he was allegedly given [REDACTED]¹⁰⁷

Daspin soon responded. On October 19, 2016, he submitted a five-page motion for leave to file a motion to oppose the Division's opposition and to correct a mistaken date in Dr. Puzino's declaration and a six-page opposition to the Division's motion to file a sur-reply. As to Dr. Puzino's declaration, Daspin admitted that he prepared Dr. Puzino's previous declaration and said that he (Daspin) made an error when he prepared it.¹⁰⁸

In the opposition, Daspin attempted to explain why he thought his medical records did not contain a reference to the [REDACTED] samples he claimed Dr. Puzino had given him.¹⁰⁹ Daspin's explanation was based on his personal observations of how medical records are produced at Dr. Puzino's office;¹¹⁰ no one from Dr. Puzino's office offered an informed explanation.

Daspin attached three documents to his two motions. First, he included what purported to be an e-mail from Dr. Puzino concerning when he prescribed [REDACTED] and [REDACTED] to Daspin.¹¹¹ Second, he attached two new declarations from Dr. Puzino (Fifth Puzino Decl. and Sixth Puzino Decl.). Daspin drafted both of these declarations. In the fifth declaration, which is one page in length, Dr. Puzino asked the Commission to "accept this correction of my prior declaration with respect to the date only."¹¹² Dr. Puzino discussed more than the date, however. He declared that "[s]ince I had prescribed [REDACTED] in November of 2015 it is my medical opinion that the [REDACTED] gave Mr. Daspin the side effects [REDACTED]."¹¹³ Dr. Puzino added that, knowing that [REDACTED] "could cause such side effects," he "was careful to watch" Daspin during his office

¹⁰⁷ Sur-reply Mem. of Law at 5–7.

¹⁰⁸ Mot. for Leave at 1; Opp'n at 1.

¹⁰⁹ Opp'n at 1–2.

¹¹⁰ *See id.* at 1–2.

¹¹¹ According to the e-mail, Dr. Puzino prescribed [REDACTED] on November 23, 2015, and March 31, 2016, and [REDACTED] on January 25, 2016, and July 27, 2016.

¹¹² Fifth Puzino Decl.

¹¹³ *Id.*

visits.¹¹⁴ Daspin did not “demonstrate any [REDACTED]” during those visits.¹¹⁵

Dr. Puzino’s sixth declaration offered an error-filled discussion of the procedural history of this case.¹¹⁶ And, after discussing Daspin’s health problems, Dr. Puzino asserted that Daspin’s memory is no longer accurate, as evidenced by Daspin’s alleged inability to remember that Denzel Washington—one of his favorite actors—was in a movie he had seen two weeks earlier.¹¹⁷

Dr. Puzino also offered a critique of my decision to dissolve the postponement Judge Foelak entered—Dr. Puzino said the decision was “incomprehensible”—before adding that “[a] manifest error has occurred which requires being vacated.”¹¹⁸ He then contradicted his fifth declaration, saying that “it is clear that Mr. Daspin’s [REDACTED] . . . commenced [on] November, 23,2015 when I prescribed [REDACTED] and then he started [REDACTED] using the sample I gave him On Dec 15,2015.”¹¹⁹

1.5 The Commission grants Daspin’s petition.

On November 28, 2016, the Commission construed Daspin’s September 21, 2016 motion to set aside the default judgment as a petition for review, which it then granted; the Commission also set a briefing schedule.¹²⁰

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Sixth Puzino Decl. at 1. In drafting Dr. Puzino’s sixth declaration, Daspin had apparently confused the Division’s subpoena enforcement action filed in district court with Judge Foelak’s later order during this proceeding. Oddly, Daspin now says that because he did not discuss this case with him, “Dr. Puzino would have no way of knowing” anything about what Daspin filed during this proceeding. *See* Opp’n and Request to Include Portions of Record Filed with Commission at 7 (filed Jan. 31, 2018).

¹¹⁷ *Id.* at 2.

¹¹⁸ *Id.* at 3. The combination of this legal critique and the ridiculous nature of the Denzel Washington anecdote lead me to question whether Dr. Puzino ever read Daspin’s declarations, assuming he actually signed them.

¹¹⁹ *Id.*

¹²⁰ *Edward M. Daspin*, Securities Act Release No. 10260, 2016 SEC LEXIS 4421, at *2.

In opposition to Daspin’s brief, the Division submitted, among other things, a supplemental declaration from Dr. Bursztajn.¹²¹ Dr. Bursztajn doubted Daspin’s claim that █████ excused Daspin’s absence from the January hearing, noting that there was no record that Dr. Puzino actually gave Daspin █████ at any time before the hearing.¹²² Dr. Bursztajn added that either (a) Dr. Puzino failed to (1) document that he dispensed █████ (2) assess Daspin’s risk level for abuse, and (3) inform Daspin of the side effects of █████ thereby “act[ing] in an extraordinarily haphazard manner . . . fall[ing] well below the standard of care”; or (b) given “the improbability” that a doctor would act in this manner, one had to question the truth of what Dr. Puzino and Daspin claimed.¹²³ If Daspin were actually █████, Dr. Puzino would have violated the standard of care by giving Daspin █████ on January 24, 2016.¹²⁴

Moreover, there is no reason to believe that, even if Daspin had █████ caused by █████ he could not have appeared at the hearing.¹²⁵ Dr. Bursztajn remarked that no professional who treated Daspin—aside from possibly Dr. Puzino—thought he posed a █████.¹²⁶

1.6 The Commission remands this case.

As noted, the Commission remanded this and every other pending proceeding on November 30, 2017, after ratifying the appointments of its administrative law judges.¹²⁷ The next week, I gave the parties an opportunity to address whether I should ratify or revise any action taken during the pendency of this case.¹²⁸ On December 14, 2017, Daspin filed a five-page cover letter, which is effectively a motion, an eleven-page motion, and a five-page argumentative declaration. In these filings, he asked the

¹²¹ Barry O’Connell Decl. at Ex. I (Jan. 27, 2017). I refer to this declaration as the Bursztajn supplemental declaration (Bursztajn Suppl. Decl.).

¹²² Bursztajn Suppl. Decl. at 3.

¹²³ *Id.*

¹²⁴ *Id.* at 5.

¹²⁵ *Id.* at 3–4.

¹²⁶ *Id.* at 5–6.

¹²⁷ *Pending Admin. Proc.*, 2017 WL 5969234, at *1–2.

¹²⁸ *Daspin*, 2017 SEC LEXIS 3917, at *1.

Commission to reconsider its remand order and dismiss or transfer his case to federal court. I refer to these filings as the reconsideration cover letter (Recons. Cover Letter), the reconsideration motion (Recons. Mot.), and the reconsideration declaration (Recons. Decl.).

On December 26, 2017, after the Division filed an opposition to reconsideration, Daspin filed an “opposition” to the Division’s opposition. I refer to this filing as the reconsideration reply (Recons. Reply). The next day, the Commission received Daspin’s thirteen-page supplemental declaration in support of his reconsideration motion (Recons. Suppl. Decl.). Attached to this filing was a three-page letter to President Trump, informing him “of issues of great importance,” *i.e.*, this proceeding.

On December 29, 2017, Daspin filed a four-page motion to the Commission for a continuance so that he could retain counsel. Attached to this motion, was a motion asking me to grant him 60 additional days to submit evidence.

On January 11, 2018, Daspin filed a brief and declaration asking the Commission to issue an order restraining me from further involvement in this case.¹²⁹ He followed those filings the next day with a ten-page supplemental declaration supporting his motion for a restraining order.¹³⁰

Including his argumentative cover letters and letter to the President, Daspin has given the Commission over 80 single-spaced pages to work with following remand. The gist of Daspin’s post-remand filings, discussed more fully below, is that he is not liable, ██████ caused his ██████ and absence from the January hearing, I am biased, and Judge Murray orchestrated a plot to violate his rights.

In extending to January 12, 2018, the parties’ deadline to submit briefing and evidence regarding ratification, I instructed them that the filing requirements in my earlier order, *e.g.*, that “[n]o e-mail filings will be accepted or considered,” would continue to apply.¹³¹ I also stated that I would

¹²⁹ I refer to these filings as the restraining order motion (Restraining Order Mot.) and the restraining order declaration (Restraining Order Decl.).

¹³⁰ I refer to this filing as the restraining order supplemental declaration (Restraining Order Suppl. Decl.).

¹³¹ *Daspin*, 2017 SEC LEXIS 4216, at *3.

not give them another extension unless they demonstrated “extraordinary circumstances.”¹³²

Daspin ignored my orders. He attempted to submit papers by e-mail after the deadline. After reading the Division’s filings, he attempted to substitute other papers for his initial filings. Daspin did not attempt to show extraordinary circumstances for his late filings or cause to allow him to substitute his filings. He also failed to properly file many of his papers with the Commission.

In the course of attempting to determine whether Daspin had filed some of the matters that he sent by e-mail, my office forwarded Daspin’s e-mails to the Office of the Secretary, which placed some of them in the record. Although these submissions are now in the record, I issued an order stating that because they were submitted in violation of my orders, I have not considered the matters Daspin submitted by e-mail which, in any event, were submitted after the deadline for their submission.¹³³ I also reminded Daspin that “[e]-mails will not be considered.”¹³⁴ Within a few hours, Daspin sent my office two more e-mails, one of which included a motion for relief. The next day, he sent another e-mail forwarding two motions.

Since I issued an order on January 22, 2018, concerning Daspin’s filings, he has sent at least 20 e-mails to my office. Daspin has filed with the Commission some of the documents attached to those e-mails. The arguments in the documents he has filed largely repeat the arguments he made in his earlier filings described above. As result, there is no need to describe Daspin’s more recent filings.

Discussion

2.1 Daspin has invented many of the factual assertions on which he relies.

Consistent with Daspin’s request in his December 29, 2017 motion for a 60-day continuance, I have considered the documents he submitted to the Commission after I issued the initial decision in August 2016.¹³⁵ I have also considered the documents submitted by the Division.

¹³² *Id.*

¹³³ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 5508, 2018 SEC LEXIS 182, at *3 (ALJ Jan. 22, 2018).

¹³⁴ *Id.* at *4.

¹³⁵ Mot. at 1–2.

On several occasions during this proceeding, Daspin has invented facts to fit his narrative.¹³⁶ Following remand, Daspin has continued to shade the truth. In his restraining order supplemental declaration, Daspin purports to quote the initial decision, asserting that I said I “would remember the abuses[] [I] perceived [he] inflicted.”¹³⁷ He also asserts that in the order finding him in default, I “demonstrate[d] anger at [his] behavior which [I] promise[d] not to forget.”¹³⁸ But nothing in the initial decision supports the former assertion. And the default order likewise lends no support for the latter claim.

Continuing, Daspin asserts that Judge Murray manipulated this case by substituting me for Judge Foelak “immediately” after Judge Foelak stayed the matter.¹³⁹ In fact, I was assigned to this case 46 days after Judge Foelak issued the postponement order. He states that I acted at Judge Murray’s direction in lifting the postponement as part of a conspiracy in which she and I had *ex parte* conversations with Division counsel.¹⁴⁰ As with the above assertions, Daspin offers nothing to support his claims. The record shows that I was substituted for Judge Foelak to rebalance office caseloads and that

¹³⁶ See, e.g., Letter from Kevin P. McGrath (Oct. 2, 2015) (Daspin accused one of the Division’s attorneys of causing him to have a heart attack during Daspin’s deposition even though that attorney was not present); *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3564, 2016 SEC LEXIS 332, at *2 n.1 (ALJ Feb. 1, 2016) (Daspin told the Second Circuit that I personally told a district court that I did not understand the Constitution even though I did not participate in the district court litigation).

¹³⁷ Restraining Order Suppl. Decl. at 1. Although Daspin repeatedly refers to a “45[-]page default [judgment],” *see id.*, he is presumably referring to the 31-page initial decision.

¹³⁸ Recons. Decl. at 2.

¹³⁹ Recons. Cover Letter at 2; Recons. Mot. at 2; Recons. Suppl. Decl. at 2; Recons. Reply at 2, 4; Restraining Order Mot. at 4; Restraining Order Suppl. Decl. at 8.

¹⁴⁰ Recons. Mot. at 2, 4; Restraining Order Mot. at 4; *see* Recons. Mot. at 3 (“She must have leaned on him to dissolve the Postponement sine Die.”); Recons. Suppl. Decl. at 2, 6; Restraining Order Suppl. Dec. at 7 (alleging the existence of a conspiracy that began before the Commission issued the OIP).

I dissolved the postponement for no reason other than what I stated in the August 2015 scheduling order.¹⁴¹

In the same vein, Daspin claims that I found Agostini liable without a hearing and forced him to settle by telling Division counsel ex parte that I would not agree to settlement terms.¹⁴² But even if Daspin had standing to assert claims on Agostini's behalf, which he does not, Daspin's assertions are false. I told Agostini that the default findings as to Daspin had no bearing on Agostini and that I would base a decision in his case on the evidence presented at his hearing.¹⁴³ And as the fact that Daspin cites no evidence to support his claims suggests, Daspin is mistaken to assert that any administrative law judges had any role in the negotiation or acceptance of Agostini's settlement offer.¹⁴⁴

Baseless factual assertions are not a convincing basis to decline to ratify my previous actions.

2.2 Daspin's medical evidence is unreliable and irrelevant.

This brings us to Daspin's alleged medical evidence and his claim that [REDACTED] caused his [REDACTED] and his absence from the January hearing. In his declaration in support of his motion for a restraining order, Daspin says that he presented "incontrovertible evidence . . . that it was the side effects" of the medicine Dr. Puzino gave him that caused his [REDACTED].¹⁴⁵ There are a number of problems with this assertion.

For starters, Daspin's history of concocting false medical excuses, together with his penchant for inventing facts, would give anyone pause. That is particularly the case with Dr. Puzino's declarations, the last five of

¹⁴¹ *Daspin*, 2015 SEC LEXIS 5164, at *9.

¹⁴² *See* Restraining Order Mot. at 3, 5; Restraining Order Suppl. Decl. at 6.

¹⁴³ *See Daspin*, 2016 SEC LEXIS 886, at *22 n.11; Prehearing Tr. 113–15.

¹⁴⁴ Recons. Suppl. Decl. at 7; Restraining Order Mot. at 3. There is a settlement program in my office, involving the designation of a separate settlement administrative law judge for mediation discussions, but it was not used in this case. *E.g.*, *Airtouch Commc'ns, Inc.*, Admin. Proc. Rulings Release No. 2253, 2015 SEC LEXIS 271 (ALJ Jan. 23, 2015). An administrative law judge could also be asked to opine about a settlement offer, 17 C.F.R. § 201.240(c)(2), but neither party invoked this procedure.

¹⁴⁵ Restraining Order Decl. at 1.

which Daspin prepared. Daspin repeatedly used the declarations to present argument and criticism of my decisions. The invective and legal observations contained in Dr. Puzino's declarations raise doubts about their reliability or usefulness.¹⁴⁶

Moreover, Dr. Puzino's conclusion that ██████ caused Daspin's ██████ is contrary to objective evidence. Although Dr. Puzino says that he gave Daspin ██████ samples in mid-December 2015, Daspin's contemporaneous medical records contain no mention of ██████ before January 24, 2016.¹⁴⁷ As Dr. Bursztajn explained, either Dr. Puzino failed to document dispensing ██████ and the advice he gave Daspin, thereby behaving "in an extraordinarily haphazard manner . . . well below the standard of care," or there are serious reasons to think that Dr. Puzino's declarations are inaccurate.¹⁴⁸

And even if Dr. Puzino had given Daspin ██████ in December 2015, without documenting that fact, Dr. Puzino's opinion that ██████ caused Daspin's ██████ is supported by nothing more than Dr. Puzino's conclusory opinion. It establishes little if anything.¹⁴⁹

Notably, Dr. Puzino provides no medical basis for his conclusion. Instead, his conclusion rests on (1) "*Daspin*[s] realiz[ation] that his ██████ and ██████ were . . . side effects of the ██████ samples," and (2) Dr. Puzino's statement that Daspin had never ██████ before December 14, 2015.¹⁵⁰ But the former statement shows that Dr. Puzino is simply repeating Daspin's preferred diagnosis, thereby

¹⁴⁶ See, e.g., Sixth Puzino Decl. at 3 (commenting on "the merits [of the proceeding] or the lack thereof").

¹⁴⁷ Sur-reply Mot. at 3; Barry O'Connell Decl. at Exs. A, O (Oct. 12, 2016).

¹⁴⁸ Bursztajn Suppl. Decl. at 3.

¹⁴⁹ See *McMunn v. Babcock & Wilcox Power Generation Grp., Inc.*, 869 F.3d 246, 272 (3d Cir. 2017) ("conclusory opinions of medical causation, even by qualified experts, are insufficient to establish causation"); *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1286 (11th Cir. 2015) ("[t]he [district] court's gatekeeping function requires more than simply taking the expert's word for it.' And 'nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence . . . by the ipse dixit of the expert.'" (citation omitted)).

¹⁵⁰ Fourth Puzino Decl. at 1 (emphasis added).

demonstrating the accuracy of Dr. Bursztajn's observation that Dr. Puzino lacks objectivity.¹⁵¹ In other words, Dr. Puzino will sign whatever Daspin drafts for him. And the latter statement is false; Daspin started laying the groundwork for his [REDACTED] arguments in a series of e-mails in November, one month before he allegedly received [REDACTED] samples.¹⁵²

Dr. Puzino's conclusion also rests on his blind acceptance of Daspin's assertion that he actually had [REDACTED] [REDACTED] and [REDACTED]. But credible evidence—Dr. Bursztajn's report and testimony—shows that Daspin invented his [REDACTED] in an attempt to manipulate this proceeding.¹⁵³

Dr. Puzino's declarations are also contradictory. In his fourth declaration, he declared that Daspin's overuse of [REDACTED] in the latter half of December 2015 caused his [REDACTED] [REDACTED].¹⁵⁴ In the fifth declaration, he again said [REDACTED] was the cause and added that although he prescribed [REDACTED] in November 2015, he knew [REDACTED] was not the cause because he "was careful to watch [Daspin]" and noted no "[REDACTED] [REDACTED]"¹⁵⁵ In the sixth declaration—after the Division remarked on the lack of evidence that Daspin took [REDACTED] before January 2016 and showed that Daspin mentioned [REDACTED] before he was allegedly given [REDACTED]—Dr. Puzino changed his story and asserted that Daspin's [REDACTED] started November 23, 2015, when he prescribed Daspin [REDACTED].¹⁵⁶ The contradictions in

¹⁵¹ Tr. 59; *see* Tr. 58.

¹⁵² *See* Div. Feb. 11, 2016 Hr'g Ex. 6 at 24, 29, 35, 38-39, 55, 61, 67, 75.

¹⁵³ This conclusion is supported by the fact that Dr. Puzino first prescribed [REDACTED] to Daspin in late January 2016. As Dr. Bursztajn commented, if Dr. Puzino actually thought Daspin had [REDACTED], he would not later have prescribed [REDACTED]—unless he is inept. Bursztajn Suppl. Decl. at 5. Either possibility supports the determination that Dr. Puzino's declarations are unreliable.

¹⁵⁴ Fourth Puzino Decl. at 1.

¹⁵⁵ Fifth Puzino Decl. at 1.

¹⁵⁶ Sixth Puzino Decl. at 3. Daspin contends that Dr. Bursztajn failed to consider the side effects of [REDACTED] Restraining Order Decl. at 1; Restraining Order Suppl. Decl. at 1–2. But Daspin's comments by e-mail about [REDACTED] started November 13, 2015, before he was prescribed [REDACTED] Div. Ex. 6 at 34; Sur-reply Mot. at Ex. G. And even assuming [REDACTED] caused [REDACTED] [REDACTED]—something that Dr. Puzino denied in his

(continued...)

Dr. Puzino's declarations further support the determination that they are unreliable.

Further, even if Dr. Puzino gave Daspin an unknown amount of [REDACTED] without contemporaneously documenting that fact and even if the medicine caused [REDACTED] [REDACTED] Dr. Puzino does not explain how those thoughts would have prevented Daspin from attending the hearing.¹⁵⁷ Had Daspin actually taken [REDACTED] and experienced [REDACTED] [REDACTED] as a result, his absence from the January hearing would nonetheless have been voluntary.¹⁵⁸

Given the foregoing, I discount Daspin's claim that he took [REDACTED] before the January hearing, and do not believe his assertion that it caused him [REDACTED] [REDACTED].¹⁵⁹ I therefore find that Daspin's claim that he used [REDACTED] provides no basis to revise my previous actions.

Significantly, while Daspin has tried to explain his absence from the January hearing, he has never provided a valid explanation for his absence from the February hearing, which was scheduled to give him the opportunity to explain his previous absence. If Daspin had (1) complied with my order to appear for an examination by Dr. Bursztajn; (2) appeared at the hearing on February 11; and (3) not prevented his wife from appearing at the hearing, he could have attempted to support his claims that he did not fake his [REDACTED]

fourth declaration—Daspin has no one to blame but himself for the lack of evidence on the issue. He failed to appear for an interview with Dr. Bursztajn and failed to appear at the February 11 hearing to present evidence or contest the Division's evidence. Dr. Bursztajn did not fail to consider alleged side effects caused by [REDACTED] Daspin failed to present evidence raising the issue. And he has not done so on remand.

¹⁵⁷ See Bursztajn Suppl. Decl. at 3–4.

¹⁵⁸ See *United States v. St. James*, 415 F.3d 800, 804–05 (8th Cir. 2005); see also *United States v. Yannai*, 791 F.3d 226, 242–46 (2d Cir. 2015).

¹⁵⁹ In his opposition to the Division's sanctions motion, Daspin tried another tack. There he seemed to admit that an [REDACTED] [REDACTED] was the not the reason he missed the hearing in January 2016. In his opposition, he said he missed the hearing "out of fear" of various outcomes, including being found liable. Opp'n at 4.

██████████ But Daspin did none of those things, thereby demonstrating that he knows his story would not hold up.¹⁶⁰

And by failing to appear at the February hearing after being told that it was scheduled to give him a chance to explain his previous failure to appear, Daspin forfeited the opportunities to present evidence in support of his claim that he ██████████ and to rebut Dr. Bursztajn’s report and testimony. Daspin’s medical evidence provides no basis not to ratify my previous actions.

2.3 Daspin presents no other basis to avoid ratification.

Daspin also resists ratification by claiming I am biased.¹⁶¹ The principal basis for this claim is the decisions I issued in this proceeding.¹⁶² But those decisions, without more, do not constitute evidence of bias. Because an adverse ruling is “almost ‘never’” evidence of bias, the fact that I made prior rulings adverse to Daspin does not overcome the presumption stated in *Schweiker v. McClure*¹⁶³ that I am unbiased.¹⁶⁴

¹⁶⁰ Cf. *Brophy v. Jiangbo Pharm., Inc.*, 781 F.3d 1296, 1305 (11th Cir. 2015) (“obstruction of an investigation supports an inference of scienter, particularly where defendants affirmatively make efforts to conceal fraud.”). It would be no answer for Daspin to argue that he failed to appear because he claimed I had not been appointed consistently with the Constitution. If a litigant thinks an administrative court suffers from a constitutional defect, his solution is to litigate. See *Jarkesy v. SEC*, 803 F.3d 9, 27 (D.C. Cir. 2015) (holding that there is “no inherent right to avoid an administrative proceeding at all”).

¹⁶¹ See Recons. Mot. at 2; Recons. Decl. at 2; Restraining Order Mot. at 2. Daspin also says that I have “a blatant conflict of interest” and lack “net neutrality.” Restraining Order Decl. at 1; see Restraining Order Mot. at 2 (asserting that I have a “personal vendetta against” him). Because he does not explain what the alleged conflict is, I take his arguments as another way of saying that he thinks I am biased. But insofar as he is challenging my power to ratify my own prior actions, his argument is meritless. See *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 372 (D.C. Cir. 2017); *CFPB v. Gordon*, 819 F.3d 1179, 1191–92 (9th Cir. 2016).

¹⁶² See Recons. Mot. at 2 (“The default judgement of Judge Grimes demonstrates he is prejudiced and biased against me”).

¹⁶³ 456 U.S. 188, 195 (1982).

Daspin also repeatedly references what he claims is my violation of the protective order issued in this case.¹⁶⁵ Daspin does not explain how he thinks I violated the order. I presume he is referring to the order finding him in default, in which I extensively addressed his medical evidence.¹⁶⁶ The default order, however, was issued in both a redacted and an unredacted version. The former is available to the public and the latter was issued only to the parties.¹⁶⁷ Contrary to Daspin’s claims, the default order did not publicly reveal Daspin’s protected information.¹⁶⁸

Daspin also complains that although I denied his continuance request after his lawyers withdrew in late-September 2015, I asked Judge Murray to seek a six-month extension of the Rule 360 deadline in January 2016.¹⁶⁹ Daspin says this circumstance shows that the Division received more favorable treatment than he did.¹⁷⁰ Daspin misunderstands several facts. First, when I dissolved the stay in August 2015, I delayed the start of the merits hearing by two months, to prevent prejudice to Daspin.¹⁷¹ Second,

¹⁶⁴ *Moshe Marc Cohen*, Securities Act Release No. 10205, 2016 WL 4727517, at *10 (Sept. 9, 2016) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)); see *McLaughlin v. Union Oil Co. of Cal.*, 869 F.2d 1039, 1047 (7th Cir. 1989) (finding “frivolous” the “argument that [an] administrative law judge should have disqualified himself for bias because he ruled against [a litigant] on certain . . . matters”); cf. *La. Ass’n of Indep. Producers & Royalty Owners v. FERC*, 958 F.2d 1101, 1119 (D.C. Cir. 1992) (“Although [the] presumption” that “administrative officials . . . [are] capable of judging a particular controversy fairly . . . can be rebutted, the evidence submitted must be far more compelling than a pattern of adverse but nonetheless justified discretionary decisions.”).

¹⁶⁵ Recons. Cover Letter at 2–3 (referring to a “seal the file order”); Recons. Reply at 2; Restraining Order Mot. at 5; Restraining Order Decl. at 1–2, 4.

¹⁶⁶ See *Daspin*, 2016 SEC LEXIS 886.

¹⁶⁷ See <https://www.sec.gov/alj/aljorders/2016/ap-3683.pdf>.

¹⁶⁸ Even if some personal information had accidentally been revealed to the public, Daspin never explains why that would be evidence of bias.

¹⁶⁹ Restraining Order Mot. at 3, 5; see Restraining Order Suppl. Decl. at 7.

¹⁷⁰ Restraining Order Mot. at 5; see Restraining Order Suppl. Decl. at 7 (“different justice for different litigants”).

¹⁷¹ *Daspin*, 2015 SEC LEXIS 3348, at *8.

Daspin was both the cause and beneficiary of the decision to seek a six-month extension; the Division had nothing to do with it. Indeed, as a result of the extension request, Daspin was given the opportunity to explain his absence and, on failing to appear a second time, the chance to show cause. This circumstance does not support a claim of bias; it is evidence that Daspin did not take advantage of the multiple opportunities he was given.

Daspin asserts that Judge Murray refused to follow a Commission requirement that his case be filed in federal court.¹⁷² This appears to be a reference to guidance the Division issued in 2015 regarding its venue recommendations.¹⁷³ As the Commission explained, the *Division's* internal guidance does not constrain the Commission.¹⁷⁴ Contrary to Daspin's argument, it also did not empower the Commission's chief administrative law judge to require the Commission to deinstitution an administrative proceeding in favor of an action in federal court. There is therefore no factual or legal basis for Daspin's assertion that Judge Murray violated Commission policy and "chose to remand [his] case to Judge Foelak."¹⁷⁵

Daspin's baseless bias allegations provide no basis to revise any decision issued or action taken in this case.

Daspin also resists ratification by arguing that he is not liable. He discusses at great length evidence he submitted during briefing on sanctions and to the Commission on appeal, *i.e.*, after he failed to appear at two hearings and was found in default. But Daspin ignores his voluntary absence from two hearings and acts as if his absences carry no consequences. By voluntarily failing to appear at two hearings, however, Daspin forfeited the opportunity to present evidence regarding liability. Daspin's claims that he is not liable are beside the point.¹⁷⁶

¹⁷² Recons. Mot. at 2–3; Recons. Decl. at 2, 6; Recons. Suppl. Decl. at 2; Restraining Order Decl. at 2.

¹⁷³ See *Charles L. Hill, Jr.*, Securities Exchange Act of 1934 Release No. 79459, 2016 WL 7032731, at *3 (Dec. 2, 2016) (discussing the guidance).

¹⁷⁴ *Id.*

¹⁷⁵ Restraining Order Decl. at 2; see Recons. Mot. at 2 (arguing Judge Murray and I knew we "could transfer [his] case" to federal district court).

¹⁷⁶ In granting review of the initial decision, the Commission ordered Daspin to confine his argument to "matters at issue," which it explained were

(continued...)

Relatedly, Daspin complains that I decided his case without a hearing.¹⁷⁷ This assertion is false. Daspin had two hearings and two opportunities to appear. He simply decided not take advantage of those opportunities.

Daspin feels aggrieved because I denied the motion he filed on September 1, 2016, “to either dissolve or vacate the finding on March 8, 2016 finding [Daspin] guilty.” According to Daspin, by denying his motion, I somehow denied him his constitutional rights¹⁷⁸ and the opportunity to submit a host of additional evidence.¹⁷⁹ He also appears to think the Commission held that I should have granted his motion. Daspin is mistaken on all counts.

Rule 111(h) allows a respondent to file a motion to correct manifest error in an initial decision.¹⁸⁰ The motion must be filed within ten days of the initial decision. To be sure, Daspin filed a motion on September 1, 2016, within ten days of the initial decision. But a motion to correct manifest error in the initial decision must show a “patent misstatement of fact in the initial decision.”¹⁸¹ And although Daspin repeated his previous arguments about the merits and why he failed to attend the January hearing, he did not mention the initial decision or point to any misstatement of fact in it.¹⁸²

Further, although the Commission held that Daspin’s motion was timely, it did not hold that Daspin’s motion should have been granted. The Commission instead construed Daspin’s motion as a motion to correct and also construed his September 21, 2016 “motion to set aside default judgment” as a petition for review. The Commission’s construction of Daspin’s motions preserved his ability to seek appellate review; the Commission did not hold that Daspin’s motion had merit or that he had identified a patent

the default order and sanctions. *Daspin*, 2016 SEC LEXIS 4421, at *4. In his supporting brief, however, Daspin focused on liability.

¹⁷⁷ Recons. Cover Letter at 1; Recons. Mot. at 2; Recons. Decl. at 4.

¹⁷⁸ Restraining Order Suppl. Decl. at 9.

¹⁷⁹ Restraining Order Decl. at 2; Recons. Suppl. Decl. at 2 (stating that his Rule 111 motion “would have included the submissions’ [he] made to this Honorable commission”).

¹⁸⁰ 17 C.F.R. § 201.111(h).

¹⁸¹ *Id.*

¹⁸² *Daspin*, 2016 SEC LEXIS 3554, at *2.

misstatement of law. Nonetheless, because the Commission held that Daspin's motion was timely, I revise my September 21, 2016 order.

Finally, contrary to Daspin's current assertions, Rule 111(h) is not a wholesale invitation to submit new evidence.¹⁸³ Instead it affords an opportunity to seek correction of misstatements about evidence already in the record.

Order

I have reconsidered the record in this proceeding. Because it is inconsistent with the order I issued on August 14, 2015, I decline to adopt as my own my predecessor's order issued on June 15, 2015, indefinitely postponing the merits hearing.¹⁸⁴ I otherwise ADOPT as my own all other orders issued by the administrative law judge previously assigned to this case.

I revise the scheduling order I issued on August 14, 2015.¹⁸⁵ From the third paragraph of the discussion section of that order, I delete the following:

Were it not for Rules 161 and 360 and the OIP, I might be inclined to agree that this matter should be postponed further.

Because it is now apparent that Dr. Puzino's declarations are unreliable, I add the following new paragraph after the sixth paragraph of the discussion section:

Even assuming I have the authority to indefinitely postpone the hearing, I decline to exercise it. I have determined that Dr. Puzino's letter and declaration are unreliable. As such, they do not provide a valid basis to indefinitely postpone the hearing.

I revise the order I issued on September 21, 2016.¹⁸⁶ In the third sentence of the second paragraph, I delete "timely filed any such motion nor."

¹⁸³ Restraining Order Decl. at 2.

¹⁸⁴ See *Edward M. Daspin*, Admin. Proc. Rulings Release No. 2810, 2015 SEC LEXIS 2387 (ALJ June 15, 2015).

¹⁸⁵ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3041, 2015 SEC LEXIS 3348 (ALJ Aug. 14, 2015).

Immediately before the second em-dash, I add “and instead repeats his previous arguments without specific reference to the initial decision.” As a result of these revisions, the third sentence of the second paragraph now states:

Because Daspin has not sought to correct any error in the initial decision—indeed he never mentions it in any of his motions and instead repeats his previous arguments without specific reference to the initial decision—his motions are all DENIED insofar as they are directed to me.

Having reconsidered the record and taken the above actions, I order the following. I RATIFY all adopted orders issued by the administrative law judge previously assigned to this proceeding. As revised, I RATIFY the orders I issued on August 14, 2015, and September 21, 2016. I RATIFY all other actions I have taken in this case. The process contemplated by the Commission’s remand order is complete.

To the extent they are inconsistent with this order, Daspin’s properly filed pending motions are DENIED.¹⁸⁷

James E. Grimes
Administrative Law Judge

¹⁸⁶ *Edward M. Daspin*, Admin. Proc. Rulings Release No. 4184, 2016 SEC LEXIS 3554 (ALJ Sept. 21, 2016).

¹⁸⁷ Given Daspin’s past practices, I instructed the parties in my December 7, 2017 order that “[a]ll filings must comply with the Commission’s filing rules” and “[n]o e-mail filings will be accepted or considered.” *Daspin*, 2017 SEC LEXIS 3917, at *3; see *Edward M. Daspin*, Admin. Proc. Ruling Release No. 5508, 2018 SEC LEXIS 182, at *4 (ALJ Jan. 22, 2018) (reiterating filing instructions); see also *Daspin*, 2016 SEC LEXIS 1000, at *3 n.1 (discussing Daspin’s filing deficiencies). As noted, since January 22, Daspin has sent at least 20 e-mails to my office. He filed with the Commission some of the documents attached to those e-mails. Given my repeated warnings and Daspin’s repeated failure to heed those warnings, I have only considered the documents Daspin properly filed with the Commission.