

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 6293/November 5, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-16386

In the Matter of

TRACI J. ANDERSON, CPA, :
TIMOTHY W. CARNAHAN, and : ORDER
CYIOS CORPORATION :

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice on February 13, 2015. Only Timothy W. Carnahan and CYIOS Corporation (Respondents) remain in the proceeding. On December 21, 2015, an Initial Decision (ID) dismissed the proceeding as to Traci J. Anderson, CPA, and imposed various sanctions on Respondents; the ID became the final decision of the Commission as to Anderson. *Traci J. Anderson, CPA*, Initial Decision Release No. 930, 2015 SEC LEXIS 5189 (A.L.J.), *finality order as to Anderson*, Securities Act Release No. 10032, 2016 SEC LEXIS 380 (Feb. 2, 2016). As a result of the Supreme Court's decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), the Commission ordered that respondents in pending proceedings, including this one, "be provided with the opportunity for a new hearing before an ALJ who did not previously participate in the matter," and that "the ALJ shall issue an order directing the parties to submit proposals for the conduct of further proceedings"; the proceeding was reassigned to the undersigned. *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 SEC LEXIS 2058, at *2-4 (Aug. 22, 2018) (August 22 Order); Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018). The undersigned issued the required order on October 1, 2018. *Traci J. Anderson, CPA*, Admin. Proc. Rulings Release No. 6126, 2018 SEC LEXIS 2705 (October 1 Order).

The October 1 Order recounted the foregoing procedural history and, as required by the Commission's August 22 Order, ordered the parties "to submit proposals for the conduct of further proceedings" by November 16, 2018.¹ On October 9, 2018, Respondents Carnahan and CYIOS filed a motion for certification of the October 1 Order for appeal. On October 18, 2018, the undersigned denied the motion as patently failing to meet the standards of 17 C.F.R. § 201.400(c)(2) (Rule

¹ The ordering clause reads in full: "Respondents and the Division of Enforcement should submit a joint proposal for the conduct of further proceedings by November 16, 2018. A party who is unable to agree should submit a separate proposal by that date."

400(c)(2)).² *Traci J. Anderson, CPA*, Admin. Proc. Rulings Release No. 6223, 2018 SEC LEXIS 2894 (October 18 Order).

Under consideration is Respondents Carnahan and CYIOS's motion, dated October 25, 2018, for reconsideration of the October 18 Order; the Division of Enforcement's opposition; and Respondents' motion to strike the opposition.

Respondents reiterate their contention that this proceeding runs afoul of 28 U.S.C. § 2462, which provides a five year statute of limitations that applies to this proceeding. As stated in the October 18 Order, this contention is incorrect. This proceeding – Administrative Proceeding No. 3-16386 – was instituted on February 13, 2015, and the OIP alleges violations occurring within five years of that date. The proceeding has been pending continuously since February 13, 2015. The Commission's August 22 Order did not dismiss or otherwise terminate it, but, rather, provided respondents in this and any other pending proceeding "with the opportunity for a new hearing before an ALJ who did not previously participate in the matter." *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 SEC LEXIS 2058, at *2-3.

Respondents' motion to strike cites Rule 470: "No response to a motion for reconsideration shall be filed unless requested by the Commission." As Respondents note, there has been no request by the Commission. However, Rule 470 is inapplicable. It applies to "a motion for reconsideration of a *final order issued by the Commission*,"³ while Respondents moved for reconsideration of a *nonfinal order issued by the undersigned*.

In light of the above, Respondents motion for reconsideration will be denied.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

² The provisions of Rule 400(c)(2) apply to petitions for interlocutory review by the Commission in its administrative proceedings.

³ See 17 C.F.R. § 201.470(a), which reads in full: "*Scope of Rule*. A party or any person aggrieved by a determination in a proceeding may file a motion for reconsideration of a *final order issued by the Commission*." (emphasis added)).