

James Tagliaferri

[REDACTED]
Beaver, West Virginia [REDACTED]
October 13, 2015

Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-2557


RECEIVED
10/13/2015

Re: James S. Tagliaferri (Admin. Proc. File No. 3-15215)

Dear Mr. Fields:

Enclosed, please find an original and three copies of Respondent's Answer to the OIP, including comments related to a possible summary disposition.

Respectfully submitted,


James Tagliaferri, pro se
Respondent

cc: Nancy A. Brown, Esq.
Senior Trial Counsel
Division of Enforcement

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In the Matter of:

Answer to Division's Amended OIP

JAMES TAGLIAFERRI,

Respondent

RESPONDENT'S ANSWER TO DIVISION OF ENFORCEMENT'S AMENDED OIP AND COMMENTS
RELATED TO SUMMARY DISPOSITION



James Tagliaferri, pro se
Respondent

October 13, 2015

In accordance with the Court's Order and instructions, I respectfully submit my Answer to the Division of Enforcement's Amended OIP. I also respectfully submit my comments on a possible summary disposition of this proceeding, including my request for a hearing to determine my degree of culpability.

The Court ordered I answer the Division's Amended OIP on or before October 16, 2015. In crafting an answer, this Respondent has attempted to amalgamate the Court's Order granting the Division's Motion to Amend its OIP (undated) and the Court's subsequent Orders 1) scheduling a pre-hearing conference following the Amendment of the OIP and 2) Order On Pre-hearing Schedule (also undated).

In its Order Scheduling a Pre-hearing Conference, the Court opined it "construed the amendment of the OIP as converting this proceeding into a follow-on proceeding predicated on Tagliaferri's criminal conviction. In a follow-on proceeding, the underlying court action has collateral effect and may not be re-litigated".

This ruling should be juxtaposed against the Court's Order granting the Division's Motion to Amend the OIP. In that Order, the Court, in part, opined "The Division's allegations that he is liable based on the criminal conviction does not establish prejudice sufficient to deny the amendment. The OIP does not establish facts, it alleges them. Tagliaferri will have an opportunity to contest these allegations and their legal effect".

The opinions rendered by the Court in its a) Order Scheduling Pre-hearing Conference (in which it construed the Amended OIP as converting this proceeding into a follow-on proceeding predicated on Tagliaferri's criminal conviction, and b) its Order granting the Division's Motion to amend its OIP (in which the Court stated the OIP does not establish facts and Tagliaferri will have an opportunity to contest the allegations and their legal effect, are inherently incongruous. The Court's ruling that the Amendment of the OIP converts the proceeding into a follow-on proceeding renders any arguments Respondent may present as to the allegations expressed in the OIP as moot. (This was precisely my argument in my Opposition to the Division's Motion to Amend the OIP; that is, it would allow the Division to argue the criminal conviction is sufficient to find Respondent guilty in this proceeding even though the allegations expressed in the criminal case differ substantially from those of this proceeding. Moreover, it should be noted that neither the Court, nor the Division have addressed the differences among the allegations expressed in the Superseding Indictment and the OIP listed in my Opposition to Amended OIP memo).

It is also highly relevant that the S.E.C. has not complied fully with the Court's Order to turn over its investigative files to the Respondent. This, too, has prejudiced the Respondent and suggests any decision to move this proceeding to the Summary Disposition stage is premature and, thus, inappropriate at this time. Further, it should be noted the Respondent has an appeal (Second Circuit, 15-0536-CR) on his criminal conviction pending and intends to file a 2255 Motion).

As a remedy, the Respondent respectfully requests the Court reconsider the ruling it made in granting the Division's Motion to amend the OIP and remove the phrase "on substantially the same allegations as alleged in this case". The Respondent also respectfully requests the Court to Order the Division to immediately produce the remainder of its investigative files in "hard copy" and send them to the Respondent at his current address. In addition, the proceeding should remain with the SEC for further action with specific attention given to a reconciliation of the allegations expressed in the Superseding Indictment and the OIP.

SUMMARY DISPOSITION

The Court has also ordered the parties to submit, pursuant to Rule 250, Motions for summary disposition. Absent of an opportunity to review the Division's entire investigative files by the Respondent, despite his criminal conviction, a summary disposition of this proceeding is premature and thus, inappropriate.

However, if it is the opinion of this Court to move forward at this time with summary disposition, the Respondent respectfully requests a hearing at which evidence to determine his degree of culpability can be presented and evaluated. The *Blinder, Robinson* case referenced by this Court - *Blinder, Robinson & Co. v. SEC*, 837 F. 2d 1099, 1108-09 (D.C. Cir. 1988) - is replete with opinions by that court stating the need to determine the degree of culpability of a Respondent and a requirement of the SEC "to have before it a full set of facts necessary for reasoned consideration in order to adequately weigh all the facts necessary to determine whether sanctions should be imposed in the public interest".

At the requested hearing, the Respondent intends to call a number of witnesses, including among others, Matthew Szulik, Michael Iavarone, Jason Galanis, Jared Galanis, Richard Adelson, Susan Temkin, Ronald Gordon, Tina Capo, Donald Handel, Steven Golden, and Neil Scafuro. The Respondent reserves the right to call additional witnesses, if necessary.

Before such a hearing can be scheduled, the SEC must turn over to the Respondent those parts of its investigative files (referenced above) which it has withheld, or suggested are inconvenient to make available.

CONCLUSION

The Court's recent rulings with regard to movement to a follow-on proceeding and Respondent's ability to address the allegations presented against him are inherently incongruous. To remedy this dichotomy, Respondent respectfully requests the Court re-consider the Division's Motion to Amend its OIP and eliminate the phrase "on substantially the same allegations as alleged in this case". Moreover, the proceeding should remain with the SEC for further action with specific attention given to the reconciliation of the allegations expressed in the Superseding Indictment and the OIP.

The SEC should also be ordered to turn over the remainder of its investigative files to the Respondent without delay.

If a summary disposition is deemed appropriate by the Court at this time, the Respondent respectfully requests a hearing to determine his degree of culpability. At the requested hearing, Respondent should be permitted to call witnesses including those indicated above.

Dated: October 13, 2015

Respectfully submitted,


James Tagliaferri, pro se
Respondent

cc: Nancy A. Brown, Esq.