

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15918

In the Matter of

DENNIS J. MALOUF,

Respondent.

**ENFORCEMENT DIVISION'S
OPPOSITION TO MOTION TO PERMIT
RESPONDENT'S EXPERT ALAN
WOLPER TO TESTIFY ON OR BEFORE
NOVEMBER 21, 2014**

The Division of Enforcement ("Division") opposes the Motion to Permit Respondent's Expert Alan Wolper to Testify On or Before November 21, 2014, for the reasons stated below.

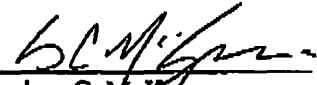
At the initial telephonic pre-hearing conference held before Judge Elliot on July 21, 2014, the parties discussed that they expected the hearing in the matter to last more than one week. This matter was subsequently reassigned to Judge Patil and the hearing was moved from November 7 to November 17. On September 24, 2014, the Division filed an Objection to New Hearing Date and Request for Scheduling Conference explaining that "counsel for the Division, Dugan Bliss, will be out of the country in Australia and New Zealand on a long-planned vacation with his spouse from November 15 through 29, 2014." In an e-mail dated September 26, 2014 the parties were advised by Judge Patil's Attorney-Advisor, Jess Neiterman, to confer and advise her of mutually agreeable December 2014 dates for the hearing. Counsel for the Division called counsel for Respondent and offered various dates in December they were available for the hearing, including non-consecutive dates if that was Respondent's preference. Respondent's counsel was unwilling to agree to *any* December dates for the hearing.

Respondent knew when he refused to accommodate any December dates that the hearing was expected to go into Thanksgiving week and, presumably, that Mr. Wolper would not be available that week.

Mr. Wolper is an expert, retained and paid by Respondent. The Division was happy to accommodate Mr. Johnson, a lay witness that is not paid for her participation, to testify in the first three hearing days – and in the Division’s case-in-chief – due to a previously scheduled medical procedure. But it should not be forced to allow Respondent to put on its expert witness during its case-in-chief.

Mr. Bliss is a paid professional that was forced to cancel a long-ago planned vacation to Australia and New Zealand to accommodate this hearing, at no small expense and inconvenience. Mr. Wolper is also a paid professional who should be expected to do the same.¹

Dated this 7th day of November, 2014.


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Denver, CO 80294-1961
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¹ The Division anticipates it will conclude its presentation by July 20 or 21, assuming Respondent’s cross-examinations or not overlong. Thus, it is not unlikely that Mr. Wolper will be able to testify by July 21 and not have to change his Thanksgiving travel plans.

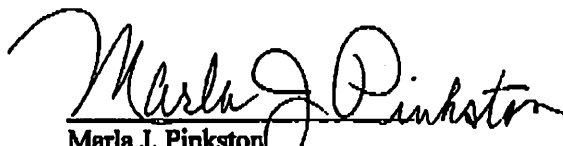
CERTIFICATE OF SERVICE

On November 7, 2014, the foregoing Notice was sent to the following parties and other persons entitled to notice as follows:

**Brent Fields, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
(Original and three copies by UPS)**

**Honorable Jason S. Patil
Administrative Law Judge
100 F Street, N.E., Mail Stop 2582
Washington, D.C. 20549
(Courtesy copy by e-mail)**

**Burt Wiand, Esq.
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Wiand Guerra King
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Attorneys for Respondent
(By UPS)**


**Marla J. Pinkston
Senior Trial Paralegal**