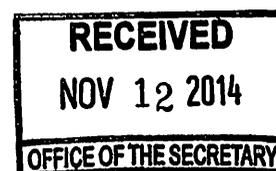


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of _____)
)
DENNIS J. MALOUF,)
)
Respondent.)
_____)

ADMINISTRATIVE PROCEEDING
File No. 3-15918

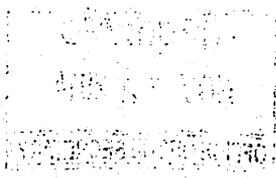
**RESPONDENT DENNIS MALOUF'S OPPOSITION TO DIVISION
OF ENFORCEMENT'S MOTION TO QUASH SUBPOENAS
ISSUED TO SECURITIES AND EXCHANGE COMMISSION
ATTORNEYS AND TO ISSUE A PROTECTIVE ORDER**

Respondent, Dennis Malouf, by and through the undersigned counsel, hereby files this Opposition to The Division of Enforcement's Motion to Quash Subpoenas Issued to Securities and Exchange Commission Attorneys and to Issue a Protective Order (the "Motion to Quash"). The Division objects to Respondent's subpoenas requiring the appearance and testimony of John H. Mulhern and Kurt L. Gottschall at the hearing in this case.¹ For the reasons stated below, the Motion to Quash should be denied because it fails to assert a compelling reason why Respondent should not be able to seek testimony from Mr. Mulhern

I. Mr. Mulhern's testimony will be relevant, material, and crucial to the case

The Division objects to Mr. Mulhern testifying because it asserts that any testimony he could give would be immaterial to any fact at issue and because he has no personal knowledge of the conduct at issue. However, as admitted by the Division, Mr. Mulhern was the attorney who led the investigation that led to this action. Therefore, he does have personal knowledge of facts and events that led to this action being instituted, and which are relevant to Respondent's defense.

¹ Respondent is willing to release Mr. Gottschall from the subpoena issued to him and only seek testimony from Mr. Mulhern in light of the fact that their testimony would likely be duplicative.



THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

WHEREAS, certain lands owned by the United States are being offered for sale to the highest bidder; and
WHEREAS, it is the policy of the United States to sell such lands to the highest bidder for cash; and
WHEREAS, the lands described in the accompanying plat are suitable for sale; and
WHEREAS, the lands described in the accompanying plat are being offered for sale to the highest bidder for cash;

Therefore, the Secretary of the Interior, acting under authority conferred by law, has caused this notice to be published in the Federal Register, and the lands described in the accompanying plat are being offered for sale to the highest bidder for cash on the date and at the place hereinafter specified.

The lands described in the accompanying plat are being offered for sale to the highest bidder for cash on the date and at the place hereinafter specified. The lands described in the accompanying plat are being offered for sale to the highest bidder for cash on the date and at the place hereinafter specified.

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A. Mr. LaMonde's testimony

Mr. Mulhern was the lead attorney who questioned Mr. LaMonde during the course of his sworn testimony. Mr. Mulhern also interviewed Mr. LaMonde prior to taking his testimony. Respondent was not given an opportunity to attend Mr. LaMonde's testimony nor was he able to cross-examine Mr. LaMonde, and Mr. LaMonde was unrepresented by counsel while giving his testimony. Mr. LaMonde is now deceased and the Division seeks to use portions of his testimony to prove its case. Mr. Mulhern is one of only two people (the other being Mr. Gottschall) who can testify regarding the substance of his telephone interview with Mr. LaMonde or provide any context for Mr. LaMonde's sworn testimony. Respondent has already questioned the admissibility and reliability of Mr. LaMonde's testimony in light of the circumstances under which it was given, and he should be allowed to elicit testimony from Mr. Mulhern which would impact the weight, if any, that Mr. LaMonde's testimony is to be given.

B. Discussions with counsel for UASNM, Kopczynski, and Hudson

A separate administrative proceeding was brought against UASNM based upon the same purported conduct at issue here. UASNM provided an offer of settlement to the Division which was accepted and led to an agreed order being entered against UASNM. Mr. Mulhern had multiple discussions with counsel for UASNM, Joseph Kopczynski, and Kirk Hudson (collectively "counsel") in the course of agreeing to the offer of settlement and the agreed order. Though Respondent has been provided with e-mails related to these discussions as part of the Division's investigative file, the e-mails indicate that there were also numerous related telephone calls between Mr. Mulhern and counsel. Based upon the multiple revisions to the offer of settlement and agreed order, and the terms contained in the final documents, it is likely that Mr. Mulhern's telephone conversations with counsel involved discussions regarding: (1) the

The first part of the document discusses the general principles of the law of contract, which are based on the idea of voluntary exchange between parties. It is essential that the parties to a contract have the legal capacity to enter into such an agreement, and that the contract itself is not void or voidable under the law. The document then proceeds to discuss the various elements of a contract, such as offer, acceptance, and consideration, and the legal consequences of a breach of contract. It also touches upon the remedies available to a party who has been wronged by a breach, including damages and specific performance.

THE LAW OF CONTRACTS AND THE LAW OF TORTS

The second part of the document discusses the relationship between the law of contracts and the law of torts. It explains how a breach of contract can also constitute a tort, and how the two areas of law overlap. The document also discusses the distinction between contract and tort, and the different remedies available in each area. It concludes by discussing the importance of understanding the relationship between these two areas of law in order to effectively litigate a dispute.

cooperation that Kopczynski, Hudson, and UASNM provided to the Division in the course of its investigation; (2) favorable treatment afforded to Kopczynski, Hudson, and UASNM due to their cooperation; (3) what remedial efforts would be required from UASNM; and (4) the calculation of purported “excess commissions” that were to be paid back to UASNM customers. Respondent should be allowed to elicit testimony from Mr. Mulhern regarding these conversations because it will bear on the credibility of Kopczynski and Hudson as witnesses. It will also bear on the propriety of remedies the Division is expected to seek against Respondent that are based upon purported commissions received and their alleged excessiveness. These issues are relevant and crucial to Respondent’s defense in this action.

C. Exculpatory evidence not disclosed

The Division asserts that it has already disclosed exculpatory information in its August 27, 2014 *Brady* letter to Respondent. However, based upon Respondent’s review of the Division’s investigatory file, Respondent believes that the file contains additional exculpatory information that was not disclosed in the *Brady* letter. Respondent should be able to elicit testimony from Mr. Mulhern regarding additional exculpatory evidence in the Division’s file and whether, as lead investigative attorney, he was aware of or considered such documents before this action was instituted. Testimony regarding such exculpatory evidence is relevant and crucial to Respondent’s defense in this action.

II. Respondent does not intend to seek testimony regarding any matters protected by attorney-client privilege or work product doctrine

None of the subject matters referenced above would require Mr. Mulhern to provide testimony regarding any matters protected by attorney-client privilege or work product doctrine. Although Respondent is still preparing for the hearing and may determine that he wishes to elicit testimony from Mr. Mulhern regarding other subject matters not addressed here, Respondent

The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for the efficient operation of the organization and for the timely preparation of financial statements.

The second part of the document outlines the specific responsibilities of the accounting department. It states that the department is responsible for recording all financial transactions, maintaining the general ledger, and preparing the financial statements. It also mentions that the department is responsible for ensuring that all transactions are properly classified and recorded in the appropriate accounts.

The third part of the document discusses the importance of internal controls. It states that internal controls are essential for preventing and detecting errors and fraud. It mentions that the accounting department plays a key role in the design and implementation of internal controls.

The fourth part of the document discusses the importance of budgeting. It states that budgeting is essential for planning and controlling the organization's resources. It mentions that the accounting department is responsible for preparing the budget and for monitoring the organization's performance against the budget.

The fifth part of the document discusses the importance of cost accounting. It states that cost accounting is essential for determining the cost of goods sold and for identifying areas of cost savings. It mentions that the accounting department is responsible for recording and analyzing costs.

The sixth part of the document discusses the importance of tax accounting. It states that tax accounting is essential for determining the organization's tax liability and for preparing the tax returns. It mentions that the accounting department is responsible for recording and analyzing tax-related transactions.

The seventh part of the document discusses the importance of financial reporting. It states that financial reporting is essential for providing information to the organization's management and to its stakeholders. It mentions that the accounting department is responsible for preparing the financial statements and for providing information to management.

The eighth part of the document discusses the importance of the accounting profession. It states that the accounting profession is a noble and important profession. It mentions that accountants play a key role in the economy and in society.

The ninth part of the document discusses the importance of ethics in the accounting profession. It states that ethics is essential for the accounting profession. It mentions that accountants must adhere to a code of ethics and must act in the best interests of the public.

The tenth part of the document discusses the importance of continuing education in the accounting profession. It states that continuing education is essential for accountants to stay current in their field. It mentions that accountants should pursue continuing education opportunities throughout their careers.

does not anticipate or intend to seek any testimony that would be protected by attorney-client privilege, work product doctrine, or as intra-governmental communications.

III. Respondent has no other means to present the relevant testimony

With respect to the subject matters discussed in sections I.A and I.C *supra*, Mr. Mulhern is one of two people who can present the testimony desired. The other is Mr. Gottschall, who the Division has also objected to and who Respondent has offered to release from his subpoena to avoid unnecessarily repetitious testimony. With respect to the subject matter discussed in section I.B *supra*, the only other people who could testify are counsel for UASNM, Kopczynski, and Hudson, and it is uncertain whether all of them participated in every conversation. On the other hand, Mr. Mulhern is believed to have participated in every conversation and would therefore have the most comprehensive knowledge of those conversations. Therefore, Mr. Mulhern is either the only witness who can present the relevant testimony, or is the most efficient way of presenting the relevant testimony.

IV. Respondent's request is not "tactical."

Respondent seeks testimony from Mr. Mulhern on substantial issues that are relevant and important to his defense. He does not seek a tactical advantage. Both Mr. Mulhern and Mr. Gottschall participated in the investigation, and the Division describes them both as having "extensive" factual familiarity with the case. Respondent has no objection to Mr. Gottschall participating in the hearing, giving the Division three lawyers who are fully familiar with the issues. There is irony in the Division's expression of concerns about any "tactical advantage" that Respondent might be gain by reducing the Division's team from four knowledgeable and experienced lawyers to three. In its mission to impose a lifetime bar on Respondent, at age 55, from the only industry he has known in his thirty-year career, the Division has had a three year

The first part of the document is a letter from the Secretary of the State to the Governor.

The second part is a report on the state of the treasury for the year 1864.

The third part is a report on the state of the public lands for the year 1864.

The fourth part is a report on the state of the public debt for the year 1864.

The fifth part is a report on the state of the public works for the year 1864.

The sixth part is a report on the state of the public education for the year 1864.

The seventh part is a report on the state of the public health for the year 1864.

The eighth part is a report on the state of the public morals for the year 1864.

The ninth part is a report on the state of the public order for the year 1864.

The tenth part is a report on the state of the public safety for the year 1864.

The eleventh part is a report on the state of the public justice for the year 1864.

The twelfth part is a report on the state of the public religion for the year 1864.

The thirteenth part is a report on the state of the public literature for the year 1864.

The fourteenth part is a report on the state of the public art for the year 1864.

The fifteenth part is a report on the state of the public science for the year 1864.

The sixteenth part is a report on the state of the public industry for the year 1864.

The seventeenth part is a report on the state of the public commerce for the year 1864.

The eighteenth part is a report on the state of the public navigation for the year 1864.

The nineteenth part is a report on the state of the public agriculture for the year 1864.

The twentieth part is a report on the state of the public stock raising for the year 1864.

The twenty-first part is a report on the state of the public fishing for the year 1864.

The twenty-second part is a report on the state of the public hunting for the year 1864.

The twenty-third part is a report on the state of the public sports for the year 1864.

The twenty-fourth part is a report on the state of the public games for the year 1864.

The twenty-fifth part is a report on the state of the public amusements for the year 1864.

head start in investigating this case, interviewing and taking unopposed depositions of unrepresented parties (some of whom were unrepresented), analyzing and refining its factual and legal theories well in advance of initiating this proceeding, and reviewing the 160,000 pages of documents at its leisure. In contrast, Respondent has had roughly 150 days to process this voluminous information, review and analyze over 2,000 pages of testimony transcript, interview witnesses, formulate its factual and legal theories, and prepare for trial, all the while fending off extreme opposition by UASNM and its affiliated parties to Respondent's reasonable discovery efforts.

Respondent is nonetheless agreeable to accommodating Mr. Mulhern's travel schedule by taking his testimony out of sequence.

WHEREFORE, because the Motion to Quash fails to assert a compelling reason why Respondent should not be able to seek testimony from Mr. Mulhern, and because the testimony sought will be relevant, crucial, and not available from any other source, the Motion to Quash should be denied and Respondent should be permitted to seek testimony from Mr. Mulhern at the hearing in this matter.

Respectfully submitted,



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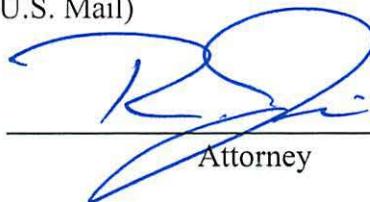
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served via E-Mail and/or U.S. Mail to the following this 6th day of November, 2014:

Securities and Exchange Commission
Lynn M. Powalski, Deputy Secretary
100 F Street, N.E. Mail
Stop 1090
Washington, D.C. 20549
Fax: 703-813-9793
(Original and three copies via U.S. Mail)

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

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Attorney