

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
DENNIS J. MALOUF,
Respondent.

ADMINISTRATIVE PROCEEDING

File No. 3-15918

REPLY IN SUPPORT OF REQUEST FOR RECONSIDERATION

COMES NOW, UASNM, Inc., by and through its counsel, and in support of its request for reconsideration states as follows:

1. The response of Mr. Malouf can only be described as another attempt by Mr. Malouf to harass UASNM, Inc. as he has done in the past in this matter. Additionally, Mr. Malouf's attorneys never negotiated, contrary to this Honorable Administrative Law Judge's prior order, any resolution of this matter, let alone in good faith, and have elected to reveal known confidential settlement negotiations in an effort to avoid the costs and expenses of subpoenaed documents of which they were solely responsible.

2. Mr. Malouf and his counsel set this whole process in motion by demanding unreasonable and irrelevant materials through the use of a subpoena that they created which was designed to create great harassment and expense to UASNM, Inc. Solely because of their actions it was necessary for UASNM, Inc. to hire the undersigned firm to obtain appropriate limitations to this subpoena. By order dated September 22, 2014, then presiding Administrative Law Judge Cameron Elliot agreed when he struck 12 of 26 requests and substantially modified 5 other categories. Thus

almost two-thirds of the various categories of voluminous documents demanded by Mr. Malouf were either quashed or modified.

3. Despite having had the subpoena issued in the first place, and despite their knowledge of the order of September 22, 2014, as to what was to be produced, Mr. Malouf and his counsel now complain that they should not be responsible for the attorney's fees and costs incurred by UASNM, Inc. Incredibly, Mr. Malouf and his counsel now seek, with knowledge that it is without any basis in law or fact, an offset for his alleged fees and costs incurred (without the benefit of any time records or affidavit, of course) in opposing UASNM, Inc.'s legitimate and required efforts to defend against the original unreasonable subpoena they created and which resulted in the September 22, 2014, order. Furthermore, Mr. Malouf and his counsel subsequently took the frivolous position that no attorney's fees were required to be paid, and sought and obtained an *ex parte* Order to Show Cause which resulted in an order that again reaffirmed that "... given the uncharacteristically large scope of the subpoena with respect to UASNM, Respondent will be required to bear reasonable costs and expenses associated with UASNM's production, including select costs of attorney's time."

4. The Revised Order on Subpoena to UASNM, Inc., dated October 28, 2014, states that UASNM, Inc. shall "... file and serve final, itemized billing records of the costs and time spent in complying with the subpoena . . ." That is exactly what was filed with the Secretary. UASNM, Inc. attached all billing records for time incurred from the time it first received the unreasonable and harassing subpoena until the time the documents were produced. While Mr. Malouf and his counsel may not like the amount of time that is provided in such records, this was the time that was incurred and which was incurred solely as a result of their actions and demands. Contrary to Mr. Malouf and

his attorney's arguments, there is nothing in the Revised Order directing UASNM, Inc. to guess at and limit the time records that were to be filed.

5. Mr. Malouf's attorneys have never stated in any of the numerous e-mails to the undersigned that they agreed to any of the time expended by UASNM, Inc. in complying with Mr. Maoul's subpoena. Rather they repeatedly argue before this Court in numerous pleadings that they should not be required to pay any attorney's fees and costs. As can be seen by the e-mails attached to their opposition, the only thing Mr. Malouf's attorneys have done is demand UASNM, Inc. bid against itself, refuse to make any firm offer on their own, and threaten the undersigned individually with a motion for contempt. This occurred after the undersigned requested a simple straight forward statement from Mr. Malouf to comply with this Honorable Administrative Law Judge's order instead of using semantics.

6. Mr. Malouf has never made an offer to pay any of the costs and fees incurred by UASNM, Inc. Contrary to the unfounded allegations of Mr. Malouf, it is he who failed to negotiate in good faith. After receiving the bills of UASNM, Inc.'s counsel, Mr. Malouf's counsel demanded that UASNM, Inc. agree to an amount less than \$20,000 despite their actual knowledge of the fees and costs incurred. Mr. Malouf's counsel never made a single offer to pay anything toward the attorney's fees and costs of UASNM, Inc., let alone any amount between 0 and \$20,000.

7. Mr. Malouf's counsel has also revealed what was plainly stated in capital letters as a confidential settlement proposal. Despite their knowledge of this restriction, Mr. Malouf's attorneys attempt to use this communication to justify their refusal to pay a single dime toward the fees and costs incurred by UASNM, Inc. as a result of their actions. First, the e-mail dated November 10, 2014, states that no consent for the proposal being made had been obtained from UASNM, Inc.

“(and I do not have our client’s consent for this so I cannot make this a formal offer of settlement).”

Yet Mr. Malouf’s attorneys imply that somehow the undersigned engaged in an underhanded manner by making a settlement offer (“Instead, UASNM’s counsel attempted to leverage the purported \$65,000 in costs and fees being claimed against Respondent’s pending claims to approximately \$250,000 held in escrow.”) to resolve all pending issues between UASNM, Inc. and Mr. Malouf. Despite their Response at page 3, which indicates Mr. Malouf’s attorneys have specific knowledge of the state court action and its issues (in fact, Mr. Malouf is owed nothing in the state court action in accordance with an agreement he signed), their answer e-mail of November 11 in effect claims the state court litigation would not be considered in any settlement discussion. No further attempt at settlement was made in this regard and no offer of any amount of money was ever made by Mr. Malouf’s attorneys.

8. Mr. Malouf attempts to further justify his opposition by attempting to re-litigate the order of September 22, 2014, which was never asked to be reconsidered or appealed by Mr. Malouf or his attorneys. The order states in appropriate part, “In view of the estimated costs cited in the Affidavit of Kirk Hudson (Hudson), which is attached to the UASNM application as Exhibit 4, Malouf will be required to pay UASNM’s costs” and in the order section, “Respondent shall pay UASNM, Inc.’s expenses incurred in its production.” The affidavit of Mr. Hudson contained, at that point, attorney’s fees and other expenses either incurred or to be incurred. The order further required production of the documents to the SEC. Thus, there is no cap on the amount of attorney’s fees or costs contained in this Order which is why reconsideration was requested of the artificial cap of \$20,000. Even in their opposition, Mr. Malouf’s attorneys make no specific dollar amount they are willing to pay.

9. There is no dispute as to the amount of the hourly rates of any member of the undersigned law firm. Furthermore, there is no affidavit of any person submitted by Mr. Malouf and his attorneys contesting the hours expended by the undersigned law firm and opining as to a reasonable fee. The only thing presented to this Honorable Administrative Law Judge is the same unsuccessful arguments made by Mr. Malouf and his counsel which resulted in the two prior orders cited above. Consequently this Honorable Administrative Law Judge is requested to accept such hourly rates of this law firm as agreed to by Mr. Malouf and his attorneys. It is up to this Honorable Administrative Law Judge to determine the reasonable number of hours incurred by this law firm multiplied by the appropriate hourly rates to determine the lodestar, or reasonable fees to be paid by Mr. Malouf to UASNM, Inc.

10. The extent to which Mr. Malouf will go to avoid paying for fees and costs he and his attorneys caused can be seen in the extract of fees cited by Mr. Malouf and his counsel. They point out the time for October 6 and October 10 should not be paid by Mr. Malouf when fees and costs were incurred for defending against the *ex-parte* Motion to Compel and Order to Show Cause, concerning their unfounded positions regarding document production and their requirement to pay for the same, including attorney's fees. This again resulted in an adverse decision against Mr. Malouf.

11. Mr. Malouf also seeks to avoid paying for documents that he now claims are "duplicative" of other documents he received. First, Mr. Malouf and his attorneys controlled the subpoena since they prepared it. Both of the Honorable Administrative Law Judges recognized the enormous amounts of documents requested by Mr. Malouf and his attorneys. Second, UASNM, Inc. is not a party to the proceedings involving Mr. Malouf so it would have no idea what documents

were produced by the SEC to him, nor did Mr. Malouf ever advise specifically what he had already received. Based upon the litigious nature of Mr. Malouf and his attorneys, UASNM, Inc. should not be penalized for fully complying with the September 22, 2014, order. In fact there is no claim, nor could there be, that there was not full compliance. Third, UASNM, Inc. would have no idea what other third parties produced to Mr. Malouf. Again, Mr. Malouf and his attorneys prepared the subpoenas and still complain, for example, that he received some of the same documents from ACA that he received from UASNM, Inc. If Mr. Malouf and his attorneys requested the same information from different parties, which happens quite frequently in litigation since no one knows who has certain documents, they should not be heard to complain they received the same documents from different sources.

12. Mr. Malouf and his attorneys next complain that Mr. Hudson and Mr. Kopczynski spent too much time compiling the enormous amounts of documents requested and that nothing should be paid. Mr. Malouf and his attorneys then complain that a “staff member” could have produced the documents. Given that Mr. Hudson and Mr. Kopczynski were both subpoenaed individually by Mr. Malouf and his attorneys for documents other than those sought in the UASNM subpoena as amended by order, it should be expected that Mr. Hudson and Mr. Kopczynski should be not penalized for spending their time (which could not be productively spent on their normal work for which they receive \$250 per hour) in compiling and making sure all documents responsive to the subpoena, as amended by order, were produced.

13. In their last complaint, Mr. Malouf and his counsel state that no costs of overnight services to ensure that they received the documents they demanded in a timely manner should be paid. Again given the litigious nature of Mr. Malouf and his counsel against the undersigned and

UASNМ, Inc., it was essential that documents be delivered by express service to them so that delivery could be proven. Additionally, given the lack of electronic filing with the SEC it is a recognized practice to use express services to ensure documents were received at the SEC. Finally, Mr. Malouf and his attorneys complain that because all of the documents were put on a hard drive to ensure their ease of use in a searchable format, as they demanded in their instructions to the subpoena, they should not have to pay. It should be obvious from the response of Mr. Malouf and his counsel that they will use any argument, even those with no basis, to avoid paying anything for fees and costs.

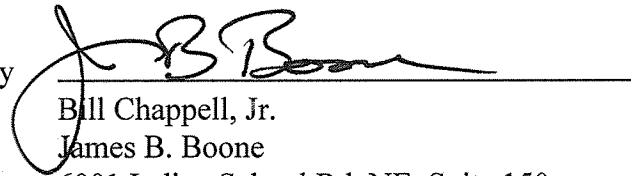
14. The complete lack of good faith in making their arguments in opposition can be shown by the final opposition of Mr. Malouf and his counsel. They recommend in a footnote that a "reasonable" fee is \$5,583.00 (and nothing stated that Mr. Malouf would pay this amount in any event) and that it should be offset against fees and costs that allegedly were incurred, with no supporting documentation, of \$12,475.50, meaning UASNМ, Inc. should pay Mr. Malouf \$6,892.50 for the privilege of having to respond to his unreasonable subpoena and the other baseless demands made by he and his counsel which resulted in three adverse orders to Mr. Malouf and his counsel. This Honorable Administrative Law Judge can plainly see that Mr. Malouf has no intent to pay UASNМ, Inc. anything and he and his counsel have never acted in any manner close to good faith. This alone should cause this Honorable Administrative Law Judge to completely disregard the alleged "opposition" to UASNМ, Inc.'s amount of attorney's fees and costs incurred in responding to the subpoena prepared by Mr. Malouf and his counsel and complying with the subpoena as amended by the September 22, 2014, order as well as defending against the baseless attacks made upon UASNМ, Inc. and its counsel.

WHEREFORE, based upon the foregoing UASNM, Inc. requests that the Administrative Law Judge remove the \$20,000 cap contained in its order of October 28, 2014, and order the Respondent to pay to UASNM, Inc., by a date certain, an amount to be determined reasonable by this Honorable Administrative Law Judge based upon the total fees and costs incurred by UASNM, Inc.

Respectfully submitted,

CHAPPELL LAW FIRM, P.A.

By

A handwritten signature in black ink, appearing to read "Bill Chappell, Jr.", is written over a horizontal line. The signature is stylized and cursive.

Bill Chappell, Jr.

James B. Boone

6001 Indian School Rd. NE, Suite 150

Albuquerque, New Mexico 87110

(505) 878-9600

(505) 878-9696 - FAX

Attorneys for UASNM, Inc.

Chappell Law Firm, P.A.

Attorneys at Law

*Bill Chappell, Jr.
James B. Boone*

*Albuquerque Centre, Suite 150
6001 Indian School Rd. NE
Albuquerque, New Mexico 87110*

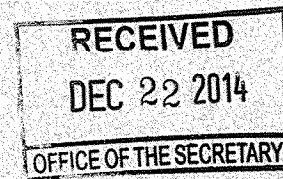
*Telephone
(505) 878-9600*

*Telecopier
(505) 878-9696*

December 17, 2014

Via U.S. Mail

Securities and Exchange Commission
Lynn M. Powalski, Deputy Secretary
100 F Street, NE
Mail Stop 1090
Washington, D.C. 20549



**Re: In re: Dennis J. Malouf
SEC File No. 3-15918**

Dear Ms. Powalski:

Please find enclosed an original and three copies of a *Reply in Support of Request for Reconsideration* in the above referenced matter.

Please do not hesitate to contact our office should you have any questions or concerns.

Very truly yours,

A handwritten signature in cursive script that reads "Erin L. Dingman".

Erin L. Dingman
Legal Assistant

:eld

Encl. a/s

cc: The Honorable Jason S. Patil, w/encl. (via email: alj@sec.gov)
Stephen C. McKenna, Esq., w/encl. (via U.S. Mail & email: McKennaS@sec.gov)
Burton W. Wiand, Esq./Robert Jamieson, Esq., w/encl. (via U.S. Mail & email)
Mr. Kirk Hudson, w/encl. (via email)
Mr. Joe Kopczynski, w/encl. (via email)
Bill Chappell, Jr., w/o encl.