

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-15918

In the Matter of

DENNIS J. MALOUF,

Respondent.

DIVISION OF ENFORCEMENT'S  
MOTION TO STRIKE RESPONDENT'S  
IMPROPER PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW,  
AND UNTIMELY AFFIDAVIT

The Division of Enforcement ("Division") moves to strike Respondent Dennis J. Malouf's Proposed Findings of Fact and Conclusions of Law, which fail to comply with the Administrative Law Judge's November 28, 2014 Post-Hearing Order ("Post-Hearing Order"), and Respondent's untimely Affidavit, both filed January 12, 2015.

The Post-Hearing Order required that the parties submit proposed findings of fact and conclusions of law, and specifically required as follows:

Proposed findings of fact shall be numbered and must be supported by citations to specific portions of the record. **Each citation shall be accompanied by quotation(s) of the key language that best supports the proposed finding.**

Post-Hearing Order ¶ 5.a (emphasis supplied).

Respondent failed to comply with the Post-Hearing Order by failing to include supporting quotations in his Proposed Findings of Fact and Conclusions of Law. Thus, the Administrative Law Judge should strike the document, or alternatively require Respondent to supplement the document immediately to make it compliant with the Post-Hearing Order.

Additionally, in connection with his Post-Hearing Brief, Respondent filed an Affidavit (as Exhibit B thereto) making certain claims regarding his current financial condition. However, Respondent provided no such testimony or other evidence during the hearing in this matter, despite having seven hearing days to do so. Rule 326 of the Commission's Rules of Practice require that:

[A] party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as in the discretion of the Commission or the hearing officer, may be required for a full and true disclosure of the facts.

Commission Rule of Practice 326.

Because Respondent has put forward new evidence in a post-hearing Affidavit, the Division had neither the opportunity to cross examine Respondent as to this new evidence or submit rebuttal evidence. The untimely Affidavit is therefore improper, prejudicial, and should be stricken.

Dated this 13th day of January, 2015.



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