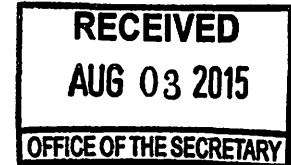


HARD COPY

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-15918**



In the Matter of

DENNIS J. MALOUF,

Respondent.

**AMENDED DIVISION OF
ENFORCEMENT'S MOTION TO DISMISS
PETITIONS FOR REVIEW**

The Division of Enforcement ("Division") respectfully requests that the Securities and Exchange Commission ("Commission") dismiss Respondent Dennis Malouf's Petition for Review for failure to timely file an opening brief in support of that appeal and, in that event, dismiss the Division's Cross-Petition for Review as well.

On April 7, 2015, Administrative Law Judge Patil issued his Initial Decision ("Initial Decision") in this matter. On April 27, 2015, Respondent Dennis J. Malouf ("Malouf") filed a Petition for Review asking the Commission to review the Initial Decision with respect to numerous aspects of that decision. (*See Malouf's Petition for Review*). On May 7, 2015, the Division filed a Cross-Petition for Review seeking review of the Initial Decision's failure to order disgorgement and its associational bar that was limited to seven-and-one-half years. (*See Division's Cross-Petition for Review*). On May 15, 2015, the Commission issued an Order Granting Review and Scheduling Briefs requiring Respondent to file an opening brief by June 17, 2015, the Division to file a principal and response brief by July 17, 2015, Respondent to file a response and reply brief by July 31, 2015, and the Division to file a reply brief by August 14, 2015. That order provided

that: “Pursuant to Rule of Practice 180(c), failure to file a brief in support of the petition or cross-petition may result in dismissal of this review proceeding as to that party.”

On June 16, 2015, Respondent filed an Unopposed Motion to Extend Time for Filing Briefs in Support of Petition and Cross-Petition for Review. On June 18, the Commission granted the Motion and ordered briefing contemplated by the May 15, 2015 Order to be filed by July 1, 2015, August 3, 2015, August 17, 2015, and August 31, 2015, respectively. (Order Extending Time in Which to File Briefs).

Respondent Malouf failed to file an opening brief on July 1, 2015, as directed by the Commission’s June 18, 2015 Order Extending Time In Which To File Briefs. Thereafter, the Division spoke with Malouf’s counsel who acknowledged that Malouf had not filed a brief and that the deadline to do so had passed. The Division proposed a Joint Motion to Dismiss Petitions for Review to Malouf, but despite repeated inquiries to Malouf’s counsel via e-mail and telephone, Malouf did not provide his position on this proposal. (*See Ex. A*). On July 30, 2015, Malouf’s counsel sent the Secretary’s Office a Notice of Withdrawal of Counsel, citing “irreconcilable differences in the attorney-client relationship” and seeking to withdraw as of August 4, 2015.

Respondent has not filed an opening brief and, assuming that Respondent’s Petition for Review is dismissed, the Division has determined to forgo its limited cross-petition in order to have Judge Patil’s Initial Decision, and the seven-and-one-half-year bar and other remedies afforded therein, made final at this time. The Division thus requests that:

1. Respondent’s Petition for Review be dismissed under Rule of Practice 180(c);

2. The Commission accept the Division's request that, in the event Respondent's Petition for Review is dismissed, the Division's Cross-Petition for Review also be dismissed;
and
3. Under Rule of Practice 360(d), the Petition and Cross-Petition being dismissed, the Commission issue an order that the Initial Decision shall become final as to both Respondent and the Division.

Because Malouf did not file an opening brief, and because the Division is moving to dismiss Malouf's Petition for Review, and then its Cross-Petition, the Division does not plan on filing a principal and response brief on August 3, 2015, as contemplated in the Commission's June 18, 2015 Order Extending Time in Which to File Briefs. The Division, however, reserves its right to file a brief if Respondent's Petition for Review is not dismissed.

Malouf's Counsel's Notice of Withdrawal of Counsel states that "Mr. Malouf requests that this matter be stayed for thirty days to allow time to retain new counsel." Malouf is already 30 days past the extended deadline set by the Commission to file an opening brief. Thus, a thirty-day stay will not remedy his failure to timely pursue his appeal. Indeed, Respondent failed to timely pursue his appeal for a month while represented by his current counsel. Accordingly, the Division opposes the requested stay.

Respectfully submitted and dated this 31st day of July, 2015.



Stephen C. McKenna

Dugan Bliss

Attorneys for the Division of Enforcement

Securities and Exchange Commission

Byron G. Rodgers Federal Building

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Denver, CO 80294-1961

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blissd@sec.gov

CERTIFICATE OF SERVICE

On July 31, 2015, the foregoing 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)

Burton W. Wiand
Peter B. King
Robert K. Jamieson
WIAND BUERRA KING P.L.
Attorneys for Respondent Dennis J. Malouf
5505 West Gray St.
Tampa, FL 33609
Ph: (813) 347-5104

Email: pking@wiandlaw.com
rjamieson@wiandlaw.com



Nora Blomgren
Contract Paralegal

McKenna, Stephen C.

From: Robert Jamieson <RJamieson@wiandlaw.com>
Sent: Tuesday, July 21, 2015 4:05 PM
To: McKenna, Stephen C.
Cc: Bliss, Dugan; Peter King
Subject: RE: Joint Motion to Dismiss Petitions for Review

Steve,

I have contacted Mr. Malouf to discuss your proposal and am waiting to hear back. I will reach out to him again tomorrow and try to get you an answer shortly.

Regards,
Rob Jamieson

Robert K. Jamieson
5505 W. Gray Street
Tampa, FL 33609
Phone: 813.347.5110
Fax: 813.347.5160
rjamieson@wiandlaw.com
www.wiandlaw.com



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If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

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From: McKenna, Stephen C. [<mailto:McKennaS@sec.gov>]
Sent: Tuesday, July 21, 2015 5:52 PM
To: Robert Jamieson
Cc: Bliss, Dugan
Subject: FW: Joint Motion to Dismiss Petitions for Review

Rob,

Is something like this going to work for Mr. Malouf? Please let us know.

Thanks,

Steve



From: McKenna, Stephen C.
Sent: Friday, July 17, 2015 10:04 AM
To: rjamieson@wiandlaw.com
Cc: Bliss, Dugan
Subject: Joint Motion to Dismiss Petitions for Review

Rob,

Here is what I came up with. Let me know what you think.

Thanks,

Steve



Stephen C. McKenna
Trial Attorney
U.S. Securities and Exchange Commission
Denver Regional Office
1961 Stout St., Suite 1700, Denver CO 80294
tel: 303.844.1036 email: McKennaS@sec.gov

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