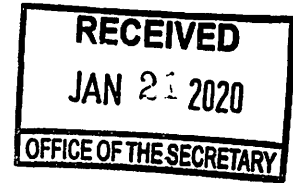


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16386

In the Matter of

**TIMOTHY W. CARNAHAN
AND CYIOS CORPORATION,**

Respondents.

**DIVISION OF ENFORCEMENT'S
OPPOSITION TO RESPONDENTS'
MOTION FOR RECUSAL and MOTION
TO STRIKE/DISMISS ORDER (INITIAL
DECISION) AND DISMISS CASE**

The Court should deny Respondents' January 13, 2020 "Motion to Strike/Dismiss Order (Initial Decision) and Dismiss Case" (the "Motion to Strike") and "Motion for Recusal: Under SEC Rule 111(f) Hearing Officer: Authority of Judge James E. Grimes" (the "Recusal Motion")¹. These motions: (a) ask the Court to reconsider prior orders that deny Respondents' requests to dismiss this proceeding on statute of limitations grounds, and (b) make baseless allegations of judicial bias, incompetence, and neglect of facts.

First, this Court—and Judge Foelak before it—has rejected the limitations arguments on multiple occasions. *See, e.g.*, A.P. Rulings Rel. No. 6223 at 3 (October 18, 2018), Rel. No. 6293 at 2 (November 5, 2018), Rel. No. 6549 at 9 (Apr. 24, 2019), Rel. No. 6613 at 3 (June 24, 2019), Rel. No. 6620 at 2 (July 2, 2019), and Rel. No. 6626 at 2 (July 11, 2019). This Court should similarly deny Respondents' Motion to Strike, because they offer no valid reason for the Court to reconsider these rulings. In context, Respondents argue that dismissal is warranted because of "the due process violation based on the Commission's procedural timelines." *See* Motion to

¹ Respondents' service lists and emails indicated that they had not provided a copy of the two motions to the Office of the Secretary. On January 16, 2020, counsel for the Division of Enforcement caused the Respondents' motions to be forwarded to the Office of Secretary.

Strike, at p. 3. However, as the Court has previously explained, this proceeding does not run afoul of the five-year statute of limitations. This matter was instituted on February 13, 2015, has been pending continuously since then,² and all of the allegations in the OIP relate to conduct that occurred within five years of the filing date. In fact, the earliest alleged conduct occurred on February 26, 2010, when CYIOS filed its 2009 Form 10-K.³ As they have in the past, Respondents fail to provide any reason for the Court to reconsider its prior rulings, so the Court should deny this request.

Second, Respondents request the recusal of Judge Grimes, baselessly alleging judicial bias, incompetence, and neglect of facts. The hearing in this matter occurred on July 17, 2019. During the hearing, Respondent Carnahan exercised his Fifth Amendment rights against self-incrimination and declined to present any evidence or testimony. Likewise, Carnahan declined to present any evidence in defense of Cyios Corporation. Following the hearing, this Court issued a Post-Hearing Order, requiring the Division to provide exhibits and setting a schedule for the parties to submit post-hearing briefs. *See* Rel. No. 6632 (July 18, 2019). The Division filed its post-hearing brief on September 5, 2019. Respondents failed to submit either an opening brief or a brief in response to the Division's post-hearing brief.

Despite not submitting any post-hearing briefs (as ordered by the Court), and only after receiving an unfavorable Initial Decision, Carnahan now complains about unfairness in the conduct of the hearing. Rather than respond in detail to Carnahan's contrived and baseless

² The Commission's August 22, 2018, Order did not dismiss or otherwise terminate the proceeding. It gave the Respondents the opportunity for a new hearing before a different ALJ.

³ Respondents are incorrect in claiming (on page 2-3 of their filing) that the violation occurred in 2009. In fact, the misleading 2009 Form 10-K was not filed until February 26, 2010.

claims of misconduct during the hearing, judicial bias, or incompetence, the Division relies instead on the absence of any such material in the record, the transcript of the hearing, and the Court's memory of the hearing. As the Court knows, there was no "eye wink and head shake" conversation between Division counsel and the Court. As reflected by the Initial Decision, the Division provided ample evidence and testimony supporting the allegations against Respondents, and the Respondents failed to put forth any evidence in their defense and failed to file any post-hearing briefs. Thus, the Court should reject both of Respondents' pending post-Initial Decision motions.

Dated: January 17, 2020.

Respectfully submitted,



Matthew J. Gulde
Illinois Bar No. 6272325
United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 978-1410
(817) 978-4927 (facsimile)


SERVICE LIST

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the Division of Enforcement's Opposition to Respondents' Motions to Strike/Dismiss Order (Initial Decision) and Motion for Recusal was served on the following on January 17, 2019, via electronic mail and United Parcel Service, Overnight Mail:

Honorable Carol Fox Foelak
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Honorable James Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Timothy W. Carnahan, President/CEO Chairman for Cyios Corporation
And Cyios Corporation by and through Timothy W. Carnahan
carnahan@cyios.com
2885 Sanford Ave. SW #28464
Grandville, MI, 49418-1342



Matthew J. Gulde