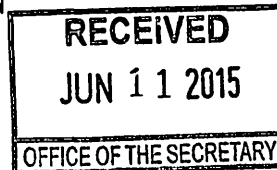


UNITED STATES OF AMERICA
 Before the
 SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16463

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In the Matter of :
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AEGIS CAPITAL, LLC :
CIRCLE ONE WEALTH :
MANAGEMENT, LLC :
DIANE W. LAMM :
STRATEGIC CONSULTING :
ADVISORS, LLC and :
DAVID I. OSUNKWO :
 :
Respondents. :
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RESPONDENTS STRATEGIC CONSULTING ADVISORS, LLC AND DAVID I. OSUNKWO'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S REPLY TO THE MOTION TO STAY

The cases cited by the Division in its Reply do not support its argument that a stay should be granted because virtually every one of the cases involves a situation where the respondent in the administrative proceeding was also the defendant in the related criminal case. In this matter, in contrast, Osunkwo and Strategic Consulting Advisors are *not* defendants in the criminal case. Therefore, the correct and most equitable way to address the concerns of the Division and the US Attorney's Office would be to dismiss the administrative proceeding without prejudice against the Moving Respondents. (See *In the Matter of Jeffrey Trenk* (Administrative Proceeding File No. 3-9148, January 22, 2003).¹ In addition, the arguments made by the Division concerning the

¹ The Division also argues in its Reply that the Moving Respondents' waiver of their right to a cease-and-desist proceeding within 60 days' of service of the OIP should be held to remain



Moving Respondents contained in its Reply to the Moving Respondents' Opposition to the Motion to Stay (the "Reply") are contrary to the arguments and positions it took in its Response to the Moving Respondent's Motion for a More Definitive Statement (the "Response"). The constantly shifting position of the Division regarding the allegations it is making against the Moving Respondents is highly prejudicial to the respondents and their ability to adequately defend themselves in this proceeding. Finally, the Division's Reply – like the motion to stay filed by the US Attorney's Office – provides no specifics as to how the criminal case would be prejudiced if this administrative proceeding is allowed to proceed.

I. The Division's Reply is Entirely Inconsistent With the Positions it Took in Its Response to the Respondents' Motion for a More Definite Statement

In its Reply to the Respondents' Opposition to the Motion to Stay (the "Reply") the Division of Enforcement reverts to the improper group pleading that it purportedly abandoned and clarified when the Division filed its Response to the Moving Respondent's Motion for a More Definitive Statement (the "Response"). The Division's Reply now says that "between 2009 and 2011, Respondents *Lamm and Osunkwo* worked together to cause violations by, among other entities, Aegis Capital, LLC" (emphasis added)(Reply at page 1). However, in its Response, which was filed just a few weeks before the Reply, the Division took a completely different position, namely that the claims against the Moving Respondents were "straightforward" and the OIP claims against the Respondents related only to: (i) the 2010 Form ADV for Circle One Wealth Management, LLC ("Circle One") allegedly overstating the firm's

effective. However, the Respondents' waiver was made without knowing that the US Attorney's Office would seek an indefinite stay of the proceedings and after the Division proposed a joint scheduling order to the Moving Respondents that set the commencement of the hearing in this matter for August 2015. (See proposed scheduling order attached as **Exhibit A**). Accordingly, the waiver was not made knowingly and given the extreme change in circumstances should not remain in effect.

assets under management (“AUM”) and advisory accounts; and (ii) the failure of Aegis Capital, LLC (“Aegis”) to file its annual update to Form ADV for the December 31, 2010 year end. (Response pages 1-2).

Based on the Division’s arguments and representations to the Court that the claims against the Moving Respondents were narrow and straightforward, the Court denied the Moving Respondents’ Motion for a More Definite Statement. The Division is simply engaging in gamesmanship by now arguing in its Reply in support of the stay that the claims against the Moving Respondents are in fact broad and complex and now involve conduct as far back as 2009 and as late as 2011 – which is entirely contradictory to the purportedly narrow and straightforward claims involving the 2010 Form ADV for Circle One and the failure to file a 2010 ADV Update for Aegis that the Division represented to the Court were at issue in this proceeding in its Response. In this respect, it is significant to note that the Moving Respondents’ initial contractual engagement with Aegis Capital, LLC or any entity connected to any of the matters at issue started in March 2010, thus negating any inference of them being involved in conducts dating back to 2009, as inaccurately referenced by the Division in its Reply. In fact, Strategic Consulting Advisors and Osunkwo started their consulting relationship to Aegis Capital and its affiliates in early 2010.

The statements that the Division put forth in writing in its Response to the Motion for a More Definite Statement clarifying that the OIP claims against the Moving Respondents involved only the 2010 Form ADV for Circle One and Form ADV update for Aegis are judicial admissions that are binding on the Division. The Division may not now argue the opposite position that the OIP claims involve a significantly broader scope of time (2009 to 2011) or claims that Osunkwo worked together with Lamm to cause violations of the federal securities

laws (other than the issues related to the 2010 Form ADV the 2010 update. (See McCaskill v. SCI Mgm't Corp., 298 F.3d 677, 680 (7th Cir. 2002)(judicial admissions are binding on the party who made them and may not be controverted); Soo Line Ry., Co. v. St. Louis Southwestern Ry. Co., 125 F.3d 481, 483 (7th Cir. 1997) (judicial efficiency demands that a party not be allowed to controvert what it has already unequivocally told a court by the most formal and considered means possible).

These shifting positions by the Division are highly prejudicial to the Moving Respondents and should not be tolerated by the Court. The Division cannot have it both ways. This Court has already accepted the Division's representations that the OIP's allegations against the Moving Respondents involve only the overstatement of AUM and the number of accounts in the 2010 Form ADV for Circle One and the failure to file a 2010 Form ADV update for Aegis. The Division cannot now take a contradictory position in its motion in support of the stay and argue that there is a substantially greater period of time at issue in the administrative proceedings and a broader set of facts beyond the 2010 Form ADV filings. The OIP's allegations, as clarified by the Division in its Response, do not overlap with the criminal case against Lamm because none of the allegations in the OIP are related to the criminal case against Lamm as described in the indictment.

II. The Division Does Not Offer any Plausible Argument that the Criminal Case Would be Harmed or Interfered With if the Administrative Proceeding Were Allowed to Proceed.

Moreover, the Division's Reply – like the motion to stay from the US Attorney's Office – provides no specifics as to how the criminal case would be prejudiced if this administrative proceeding is allowed to proceed. While the Division argues that Diane Lamm and John Lakian may be called as witnesses in the administrative proceeding the mere act of calling somebody as

a witness in an administrative proceeding, even if the person may also be a defendant or witness in a criminal case, does not in any way support the assertion that the criminal case would be harmed or interfered with – particularly in this matter where the topics that the witnesses would testify about would only involve the completion and filing of the 2010 Form ADV for Circle One and the lack of an ADV update filing by Aegis. Neither of these issues relate to the purported offering fraud that Lamm is charged with in the criminal case.

III. Conclusion

Based upon the foregoing, Respondents SC Advisors and Osunkwo respectfully request that the Motion to Stay be denied or, in the alternative, that the OIP be dismissed.

Dated: New York, New York
June 9, 2015

Respectfully submitted,

MEYERS & HEIM LLP

By:



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*Attorneys for Strategic Consulting Advisors, LLC
and David I. Osunkwo.*

EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16463

In the Matter of

AEGIS CAPITAL, LLC,
CIRCLE ONE WEALTH
MANAGEMENT, LLC,
DIANE W. LAMM,
STRATEGIC CONSULTING
ADVISORS, LLC, and
DAVID I. OSUNKWO,

Respondents.

PROPOSED SCHEDULING ORDER

Counsel for the Division of Enforcement and Respondents Strategic Consulting Advisors, LLC and David I. Osunkwo hereby respectfully submit the following Proposed Scheduling Order:

July 24, 2015	Parties to exchange, file and provide Judge Grimes with witness lists and a copy of disclosures for any expert witnesses;
July 31, 2015	Parties to exchange, file and provide Judge Grimes with exhibit lists, and exchange (but not file) a complete set of proposed, pre-marked exhibits;

- August 7, 2015 Parties to exchange and file prehearing briefs and any objections to exhibits or witnesses;
- August 12, 2015 Telephonic prehearing conference at 10:30 a.m. EST; parties to file stipulations, if any; and
- August 17, 2015 Hearing to commence at 9:00 a.m. at Commission Headquarters Offices, 100 F Street, NE, Washington, D.C. 20549.

Dated: April 27, 2015

Respectfully submitted,

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W. Shawn Murnahan
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Robert Heim
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Fax: (212) 355-7190

CERTIFICATE OF SERVICE

Undersigned Counsel for the Division of Enforcement hereby certifies that he has served a copy of this PROPOSED SCHEDULING ORDER by electronic mail and by United Parcel Service addressed as follows:

Office of the Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Hon. James E. Grimes
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Robert Heim, Esq.
Meyers & Heim LLP
444 Madison Ave., 30th Floor
New York, NY 10022

W. Shawn Murnahan
Senior Trial Counsel

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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CERTIFICATE OF SERVICE

I, Robert G. Heim, certify that on the 9th day of June, 2015 I caused a true and correct copy of the Opposition to the Division of Enforcement's Reply to the Motion to Stay to be filed and served in the manner indicated on the following:

Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E. Mail Stop 20549
Washington, DC 20549
(By overnight delivery – original and three copies)

W. Shawn Murnahan, Esq.
Senior Trial Counsel
U.S. Securities and Exchange Commission
950 East Paces Ferry Road, N.E., Suite 900
Atlanta, Georgia 30326-1382
(By email and overnight delivery)

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Whitman G.S. Knapp, Esq.
Assistant United States Attorney
Eastern district of New York
271 Cadman Plaza East
Brooklyn, NY 11201



Robert Heim