



ADMINISTRATIVE PROCEEDING
File No. 3-16509

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

EDWARD M. DASPIN, A/K/A
“EDWARD (ED) MICHAEL,”

Respondent.

DIVISION OF ENFORCEMENT’S RESPONSE TO RESPONDENT DASPIN’S
FEBRUARY 15, 2019 FILING REGARDING “DOCUMENTS FROM THE DIVISION”

PRELIMINARY STATEMENT

The Division of Enforcement respectfully submits this memorandum of law in response to that portion of Respondent Edward Daspin’s February 15, 2019 filing to the Commission that contains various requests for documents. The majority of Daspin’s February 15 brief appears to be directed to, and seeking relief from, the Commission and the Division has submitted a memorandum to the Commission addressing those aspects of Daspin’s brief. This memorandum addresses the portion of Daspin’s February 15 brief, at 7-9, entitled “Documents from the Division,” which appears to be addressed to the Chief ALJ and/or the Division.

Daspin’s document requests generally fall into three categories: (1) documents to which he is automatically entitled under the Commission’s Rules of Practice; (2) documents that are subject to production, if at all, only by subpoena; and (3) information regarding the timing of witnesses and the evidence that will be introduced at the hearing and other trial management issues.

As discussed below, the Division has already produced all documents that Daspin is automatically entitled to under the Rules of Practice. Second, Daspin has failed to comply with the Court's clear instructions to request subpoenas for any other documents and his request for such documents should be denied, both for that reason and because most of what he seeks is beyond the scope of documents authorized by the Rules of Practice. Finally, we respectfully submit that Daspin's requests for information concerning trial management issues should be raised in a prehearing conference or in a prehearing motion at a time to be designated by the Court, not in a document request.

INTRODUCTION

The Commission's Rules of Practice identify certain categories of documents to which a Respondent is automatically entitled. For example, Commission Rule of Practice 230(a) requires the production of all documents obtained by the Division pursuant to its investigation; investigative transcripts and exhibits; and final examination and inspection reports by other SEC Divisions or Offices if the Division intends to introduce or use such reports at the hearing. Rule of Practice 230(b)(3) requires the production of documents that contain material exculpatory information ("Brady material"); and Rule of Practice 231(a) requires the production, upon motion, of witness statements that would be subject to production pursuant to the Jencks Act, 18 U.S.C. § 3500.

A. The Division Has Already Produced All Documents Subject to Automatic Disclosure

Certain of Daspin's document requests fall into the first category – documents to which he is automatically entitled. For example, Request A seeks, in part, deposition transcripts of all witnesses;¹ Request C seeks, in part, "doctors' opinions," presumably a request for the Division's

¹ A number of Daspin's requests seek multiple categories of documents, each of which are addressed separately herein.

medical expert reports; Request D seeks, in part, Brady disclosures; Request I seeks, in part, witness produced documents; Request O seeks, in part, Brady material;² Request P seeks, in part, various private placement memorandum and subscription agreements sent to investors and Brady material.

Because the Division has already produced all such responsive documents to Daspin, these Requests are moot and should be denied.

B. Daspin’s Additional Document Requests Have Not Been Properly Brought and Are Beyond the Scope of Authorized Discovery

Rule of Practice 230(a)(2) provides that, to the extent a Respondent seeks documents beyond those specified in Rule 230(a)(1), he should “seek access to or production pursuant to subpoena....” In addition, Rule 232(b) provides, in part, that:

Where it appears to the person asked to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought.

Daspin has failed to timely request issuance of a subpoena for those documents referenced in his requests. Moreover, aside from those documents to which he is automatically entitled, Daspin seeks documents that are irrelevant, unreasonable, unduly burdensome and/or obviously privileged.

The Court’s procedural schedule set a February 15, 2019 deadline for requests for depositions and documents under Rules of Practice 232 and 233. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 6441, 2019 SEC LEXIS 114, at *5 (ALJ Feb. 6, 2019). In addition, on February 14, 2019, the Court specifically reminded Daspin that subpoenas for documents and depositions should be requested using the forms available on the Commission’s website, for

² A second Request O appears to add Division attorneys McGrath, Kolodny, O’Connell and Kazan to Daspin’s witness list.

which the Court provided the link, and that those requests were due on February 15, 2019.

Edward M. Daspin, Admin. Proc. Rulings Release No. 6459, 2019 SEC LEXIS 183 at *2 (ALJ Feb. 14, 2019). To the Division's knowledge, Daspin did not submit requests for subpoenas for the production of the documents referenced in his requests. Accordingly, Daspin's requests for any documents to which he is not automatically entitled, as discussed above, should be denied.

In addition, most of these requests seek documents that are, on their face, irrelevant, unreasonable, unduly burdensome, and/or privileged, and therefore not subject to production. *See, e.g.*, Request A seeking, in part, attorney witness interview notes and documents relating to Chief ALJ Murray's scheduling and assignment of cases in 2015, 2016 and 2017; Request D seeking, in part, attorney witness interview notes; Request H seeking, in part, internal Commission whistleblower documents; Request K seeking, in part, internal documents in the files of ALJs Grimes, Foelak and Elliot concerning the assignment of cases and settlements for 2015, 2016 and 2017; Request O seeking, in part, attorney witness interview notes; and Request Q seeking, in part, internal documents from ALJs Foelak, Grimes, Elliot and Murray concerning the scheduling of cases in 2015 through 2019.

Accordingly, to the extent that Daspin has not already waived his right to seek these or any additional documents (not subject to automatic production), the Division respectfully requests that the Court require Daspin to make a showing, pursuant of Rule of Practice 232(b) why he is entitled to such documents and provide the Division the opportunity to respond more fully to any properly brought motion.

C. Daspin's Remaining Requests Seek Information Regarding the Presentation of Witnesses and Exhibits at Hearing That Should More Properly Be Raised in a Prehearing Motion

A number of Daspin's requests seek information regarding the Division's order of witnesses and which documents and questions will be used with each witness. *See, e.g.*, Request

B; Request D in part; Request I; and Request M. In addition, Request C seeks, in part, to exclude all “expert witnesses from the Grimes era ... as that would be contempt of the US Supreme Court as its’ [sic] part of the Grimes case file.” These requests are not the proper subject of a document request. We respectfully submit that these requests should therefore be denied without prejudice to Daspin’s right to raise these requests in a properly filed prehearing motion or motion *in limine*, at a time to be designated by the Court, and with an opportunity for the Division to respond more substantively to any properly brought motion.³

CONCLUSION

For the foregoing reasons, the Division respectfully requests that Daspin’s document requests be denied in their entirety on the grounds that the requested documents have either already been provided to Daspin or that he has not properly requested them and/or is not otherwise entitled to them.

Dated: February 22, 2019
New York, New York

Respectfully submitted,



Kevin P. McGrath
Senior Trial Counsel
Nathaniel I. Kolodny
Barry O’Connell
Senior Counsel
Securities and Exchange Commission
New York Regional Office
200 Vesey Street – Suite 400
New York, NY 10281-1022

³ Request F seeks an unredacted copy of Judge Grimes’ order dissolving the postponement of the hearing. There is no redacted version of that order, only the unredacted August 14, 2015 Scheduling Order, which is accessible online at <https://www.sec.gov/alj/aljorders/2015/ap-3041.pdf>. Finally, Request J seeks: “As discussed and with reference to the judge witness previously called by me.” The Division is unable to discern what Daspin seeks in this request.

Ph: 212.336.0533
Fax: 703-813-9544
mcgrathk@sec.gov