



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.

Plaintiff's Motion for Evidentiary Sanctions

This Court should impose evidentiary sanctions against Respondent Daspin based on his repeated refusals to comply with his discovery obligations, including his refusals to submit a final witness or exhibit list; and his refusal to testify and to produce a material witness, his wife Joan Daspin, to testify at a deposition. At a minimum, the Court should preclude him from offering witnesses or evidence at the hearing given his failure to provide a witness or exhibit list and preclude him from testifying on his own behalf until he first testifies at a deposition.¹

As set forth in the accompanying Declaration of Barry O'Connell, dated April 5, 2019 ("O'Connell Decl."), by failing to appear for his court-ordered depositions on both January 8, 2019 and March 11, 2019, including failing to produce subpoenaed documents, and also failing to produce his wife to appear for her court-ordered depositions on both January 9, 2019 and March 12, 2019, Daspin violated at least six Court orders: (i) the Court's Order Following Prehearing Conference (Nov. 19, 2018) (setting initial procedural and discovery schedule); (ii) the Court's Order Denying

¹ The Division is mindful of the Court's prior Order denying its Motion for an Order to Show Cause why Daspin should not be found in default based on his failure to appear for his initially ordered deposition. Accordingly, it does not seek to default Daspin at this time. However, the Division will move to default Daspin if he fails to appear at the hearing on April 15, 2019.

Motion for an Order to Show Cause and Entering Protective Order (Feb. 6, 2019) (setting second procedural and discovery schedule)²; (iii) the Court's January 8, 2019 Subpoena to Daspin to Appear and Testify at a Deposition and Produce Documents; (iv) the Court's January 9, 2019 Subpoena to Joan Daspin to Appear and Testify at a Deposition and Produce Documents; (v) the Court's March 11, 2019 Subpoena to Daspin to Appear and Testify at a Deposition and Produce Documents; and (vi) the Court's March 12, 2019 Subpoena to Joan Daspin to Appear and Testify at a Deposition and Produce Documents.³

With respect to Daspin's failure to appear for his deposition, one possible remedy would be to preclude him from testifying at the hearing. However, at a minimum, he should not be permitted to testify at the hearing until he first makes himself available for a deposition.

Finally, Daspin should not be permitted to offer any exhibits, or call any witnesses, at the hearing given his failure to produce a witness or exhibit list. To allow him to just ignore the Court's orders and prejudice the Division by surprising them at the hearing with previously unidentified documents and witnesses, without penalty, is unduly prejudicial to the Division.

CONCLUSION

For the foregoing reasons, Daspin should be precluded from testifying on his own behalf at the hearing until he first testifies at a deposition; and, for his failure to produce witness or exhibit lists, Daspin should be precluded from introducing any exhibits or calling any witnesses at the hearing.

² These orders set procedural schedules and deadlines of January 31, 2019 and March 15, 2019 for completion of discovery. Daspin's refusal to testify or produce subpoenaed documents violated those court-ordered deadlines for completing discovery.

³ When Daspin was informed that the Division planned to notice Mrs. Daspin for deposition, he replied on December 7, 2018, "Listen wise guy ... You want my wife! knowing she has [REDACTED] its obviously a s[...]bags' demented mind trying to get even, and a bully anti-feminist mind ... Tell it to the judge'." On March 10, 2019, he wrote to the Office of the Secretary and the Division "NEITHER MY WIFE NOR I CAN ATTEND ANY COURT .PROCEEDINGS." *See* O'Connell Decl. at ¶¶ 6-7.

Dated: April 5, 2019
New York, New York

Respectfully submitted,



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