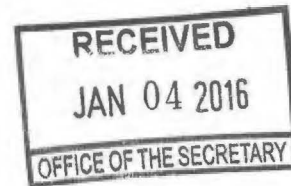


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-17020**



**In the Matter of

DIANE DALMY, ESQ.,

Respondent.**

DIANE DALMY'S MOTION TO LIFT TEMPORARY SUSPENSION

In accordance with the Commission's December 22, 2015 Order, Diane Dalmy ("Dalmy"), through counsel, moves that the Commission lift its order of temporary suspension, stating as follows:

INTRODUCTION

On September 30, 2015, a court granted the SEC's partial summary judgment motion on the issue of liability only, finding that Dalmy violated Section 5 of the Securities Act of 1933. On the basis of that order, the Commission suspended Dalmy pursuant to Rule 102(e)(3)(i)(B).

A temporary suspension pursuant to Rule 102(e)(3)(i)(B) is permitted where two factors are met: 1) a finding of a violation; and 2) no finding that the violation was not willful. The court found that Dalmy had violated Section 5 but said nothing about willfulness. While the factors appear satisfied at first glance, in reality Dalmy could not have obtained a finding of no willfulness because such a finding was irrelevant to the court's liability determination. Because Section 5 liability is strict liability, the court did not—in fact it would not—opine on Dalmy's mental state, i.e., willfulness. Accordingly, until such time as the court determines willfulness, it is premature for the Commission to suspend her on the basis that the court has not opined that she did not act willfully. The temporary suspension should be lifted.

DISCUSSION

In 2013, the SEC charged various actors (not Dalmy) with fraud for executing a pump-and-dump scheme and charged Dalmy, an attorney, with violating Section 5 for opining that certain shares could be sold without registration. *SEC v. Zenergy International, Inc., et al.*, 13-cv-5511 (N.D. IL). Section 5 is a strict liability violation.

The SEC sought summary judgment only on the issue of Dalmy's Section 5 liability. In her summary judgment response brief, Dalmy discussed her mental state in connection with her actions. In its reply brief the SEC argued unequivocally that because Section 5 has a strict liability standard, Dalmy's mental state was "irrelevant" to the court's determination on liability.

On September 30, 2015, the court found that Dalmy violated Section 5. The court agreed with the SEC, and did not consider Dalmy's mental state in making the determination, stating:

Dalmy argues that she sold her shares and issued her advisory opinions in good faith, but scienter is not an element of a violation of Section 5. [Citations omitted.] Dalmy's purported good faith belief that the Zenergy shares were exempt from registration is thus not a defense to liability under Section 5.

Zenergy, 13-cv-5511, Summary Judgment Order, Dkt. No. 84, p. 9, n. 6. (N.D. IL Sep. 30, 2015.)

A temporary suspension pursuant to Rule 102(e)(3)(i)(B) is permitted where two factors are met: 1) a finding of a violation; and 2) no finding that the violation was not willful. Based on the court's September 30 summary judgment decision, on December 22, 2015, the Commission ordered that Dalmy be temporarily suspended.

The suspension should be lifted. With the issue of Dalmy's mental state irrelevant to the court's analysis and findings regarding Section 5 liability, a finding that Dalmy did not act willfully was not possible. A suspension based on the lack of a finding that, by definition, never could be found, is unjust and should be lifted. Right now, Dalmy finds herself suspended while she awaits a court finding

regarding willfulness. A suspension in this scenario, where a “no willfulness” finding is not possible because the issue is not yet before the court, cannot possibly be the intent of Rule 102(e)(3)(i)(B). The request for suspension is premature given that Dalmy’s mental state was irrelevant to the court’s liability determination.

With liability determined, the *Zenergy* court now turns to the remedies phase. In the remedies phase, the court will consider whether Dalmy acted willfully. In fact, the briefing on the SEC’s remedies motion (motion and response have been filed, reply to be filed by January 8, 2016) focuses primarily on Dalmy’s mental state as it is a key consideration in the court’s determination whether to impose the injunction, the penny-stock bar and the civil penalty that the SEC seeks. It is, therefore, appropriate, reasonable and justified for the SEC to consider a suspension after the court makes a remedies determination where willfulness is an issue. It is not appropriate, reasonable or justified for the Commission to impose a suspension at this point in the case.

CONCLUSION

A suspension at this time is premature. Dalmy asks that the decision on suspension be deferred until the *Zenergy* court has an opportunity to make a finding regarding willfulness in its remedies determination.

Respectfully submitted,



Howard J. Rosenberg
Attorney for Respondent
Diane Dalmy

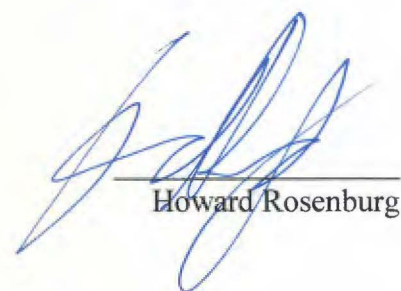
Howard J. Rosenberg
Kopecky Schumacher Bleakley Rosenberg PC
203 N. LaSalle St. Suite 1620
Chicago, Illinois 60601
(312) 380-6631
hrosenberg@ksblegal.com

CERTIFICATE OF SERVICE

I certify that on December 28, 2015, I caused the preceding document to be served upon the following persons in the manner stated below:

Office of the Secretary
Securities & Exchange Commission
100 F Street NE
Mail Stop 1090-Room 10915
Washington, D.C. 20549
(By U.S. Mail and Facsimile, 202-772-9324)

Eric A. Reicher
Office of the General Counsel
U.S. Securities and Exchange Commission
100 F Street, NE, Mailstop 9612
Washington, DC 20549
(via email reichere@sec.gov)



Howard Rosenberg



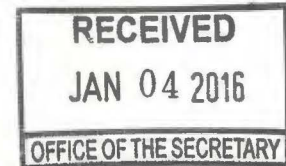
**KOPECKY
SCHUMACHER
BLEAKLEY
ROSENBERG PC**

Howard J. Rosenberg
312-380-6631 Direct Dial
hrosenberg@ksblegal.com

December 28, 2015

Via U.S. Mail and Facsimile (202-772-9324)

Office of the Secretary
U.S. Securities and Exchange Commission
Office of the Secretary
100 F Street, N.E. Mail Stop 1090
Washington, D.C. 20549



Re: *In the Matter of Diane Dalmy, Esq.*
Admin Proc. File No. 3-17020

To whom it may concern:

Enclosed please find an appearance on behalf of Respondent Diane Dalmy, and a motion to lift the SEC's temporary suspension of Diane Dalmy

Very truly yours,

Kopecky Schumacher Bleakley
Rosenburg, PC


Howard J. Rosenberg

cc: Service List