

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15918

In the Matter of

DENNIS J. MALOUF,

Respondent.

**DIVISION OF ENFORCEMENT'S REPLY
 IN SUPPORT OF AMENDED MOTION TO
 DISMISS PETITIONS FOR REVIEW AND
 OPPOSITION TO RESPONDENT'S
 REQUEST FOR EXTENSION OF TIME TO
 SUBMIT OPENING BRIEF IN SUPPORT**

The Division of Enforcement ("Division") submits this reply in support of its request that the Securities and Exchange Commission ("Commission") dismiss Respondent Dennis Malouf's Petition for Review for failure to timely file an opening brief in support of that appeal and, in that event, dismiss the Division's Cross-Petition for Review as well. The Division further opposes Malouf's untimely request for an extension of time to submit an opening brief.

To reiterate the timeline in this matter:

June 9, 2014	Administrative Proceeding instituted
November 17-25, 2014	Hearing held
April 7, 2015	Judge Patil issues his Initial Decision
April 27, 2015	Malouf files Petition for Review
May 7, 2015	Division files Cross-Petition for Review
May 15, 2015	Commission issues an Order Granting Review and Scheduling Briefs – Opening Brief due June 17, 2015

June 16, 2015	Malouf's files an Unopposed Motion to Extend Time for Filing Briefs in Support of Petition and Cross-Petition for Review
June 18, 2015	Commission Grants Malouf's Unopposed Motion
July 1, 2015	Opening Brief due
July 30, 2015	Malouf's counsel files Notice of Withdrawal and requests 30 day extension to file opening brief
July 31, 2015	Division files Motion to Dismiss Petitions for Review (and an Amended Motion shortly thereafter)
August 5, 2015	Malouf's expert witness from the hearing, Alan Wolper, Esq., files Notice of Appearance and Opposition to Enforcement's Motion to Dismiss Petition for Review and Request for Extension of Time to Submit Opening Brief in Support ("Opposition and Request") – seeking new due date 30 days from ruling on Opposition and Request
August 10, 2015	Division files Reply and Opposition to Request for Extension of Time

Malouf's Opposition and Request offers no reasonable basis to excuse his failure to comply with the Commission's Order to file an opening brief in support of his Petition for Review by July 1, 2015. Since May 15, 2015, Malouf and his counsel have been on notice that: "Pursuant to Rule of Practice 180(c), failure to file a brief in support of the petition or cross-petition may result in dismissal of this review proceeding as to that party." Commission's May 15, 2015 Order Granting Review and Scheduling Briefs. Yet they did nothing to comply with that Order before their brief

was due other than make one request for an extension of time. They took no other action until 30 days past the deadline to file Malouf's brief.

Malouf's Opposition and [Untimely] Request offers no more than an unsupported statement that Malouf had trouble "securing funds to cover the cost of the [sic] this proceeding" as his reason for ignoring the Commission imposed deadline for over 30 days. Opposition and Request at 3. Malouf's Opposition and Request further cites not a single instance where a Respondent's failure to timely pursue a Petition for Review, in violation of a Commission order setting a briefing schedule, was excused.

Malouf relies on *Markland Technologies, Inc.*, Release No. 34-59476, 2009 WL 586454 (Feb. 27, 2009), to support his Opposition and Request. Opposition and Request at 2. But *Markland*, like all other Rule 180 decisions the Commission was able to find, dismissed Respondent's Petition for Review for failure to comply with a Commission order setting a briefing schedule. *Markland*, Release No. 34-59476 (dismissing for failure to file a brief where order stated that pursuant to Rule 180(c) "failure to file a brief in support of the petition may result in dismissal of this review proceeding as to that petitioner"); *see, e.g., also William J. Murphy*, Release No. 34-66433, 2012 WL 8702962 (Feb. 21, 2012) (same); *Davis Accounting Group, P.C.*, Release No. 34-65581, 2011 WL 4954239 (Oct. 18, 2011) (same); *Peter C. Lybrand*, Release No. 34-48757, 2003 WL 22532748 (Nov. 7, 2003) (same); *Registration Statement of Apollo Publication Corp.*, Release No. 33-8678, 2006 WL 985307 (Apr. 13, 2006) (same).

Malouf points to *Markland* for the proposition that the Commission should look beyond the deadline and consider "whether the Respondent, for example, *sought an extension* or did 'anything

else with respect to [the] appeal.” Opposition and Request at 2 (emphasis and alteration in original). But Malouf did not seek a further extension of the opening brief deadline until well after it expired, nor did he do anything else to pursue his Petition for Review, despite having competent counsel and plenty of time to do so. Rather than seek a further extension, which the Division may not have opposed, Malouf did nothing. The Commission would be well within its discretion to dismiss Malouf’s Petition.

The Division thus respectfully requests that the Commission deny Malouf’s untimely Request for Extension of Time and Dismiss his Petition for Review.

Respectfully submitted and dated this 10th day of August, 2015.



Stephen C. McKenna

Dugan Bliss

Attorneys for the Division of Enforcement

Securities and Exchange Commission

Byron G. Rodgers Federal Building

1961 Stout Street, Suite 1700

Denver, CO 80294-1961

Ph. (303) 844-1000

Email: mckennas@sec.gov

blissd@sec.gov

CERTIFICATE OF SERVICE

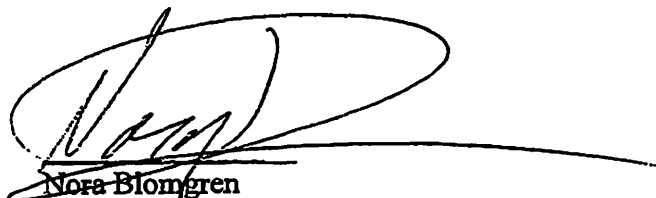
On August 10, 2015, the foregoing was sent to the following parties and other persons entitled to notice as follows:

Brent Fields, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
(Original and three copies by UPS)

Honorable Jason S. Patil
Administrative Law Judge
100 F Street, N.E., Mail Stop 2582
Washington, D.C. 20549
(Courtesy copy by e-mail)

Burton W. Wiand
Peter B. King
Robert K. Jamieson
WIAND BUERRA KING P.L.
Attorneys for Respondent Dennis J. Malouf
5505 West Gray St.
Tampa, FL 33609
Ph: (813) 347-5104

Email: pking@wiandlaw.com
rjamieson@wiandlaw.com



Nora Blomgren
Contract Paralegal