

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING
File No. 3-16339

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In the Matter of :
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JOHN BRINER, ESQ., et al. :
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**DIVISION OF ENFORCEMENT’S SUPPLEMENTAL BRIEF IN OPPOSITION
TO RESPONDENT DIANE DALMY’S APPEAL OF INITIAL DECISION**

Pursuant to the April 5, 2018 Order of the Securities and Exchange Commission (“SEC”) inviting the parties to file supplemental briefs in this matter, the SEC Division of Enforcement (“Division”) respectfully submits this brief to notify the SEC of a decision in another Commission proceeding against respondent Diane Dalmy (“Dalmy”). That decision – *In re Diane D. Dalmy, Esq.*, AP File No. 3-17020, 2016 WL 4088747 (Initial Decision, July 29, 2016) – was issued after the Division’s last brief in this case, and became a final SEC Order on September 29, 2016, *Id.* (SEC Finality Order, Sept. 29, 2016). The SEC instituted that separate proceeding pursuant to SEC Rule 102(e), based on a prior Federal District Court decision finding Dalmy liable for selling unregistered securities in violation of Section 5 of the Securities Act of 1933, *SEC v. Zenergy Int’l, Inc.*, 141 F. Supp. 3d 846 (N.D. Ill. 2015). Based on that District Court decision and other findings, the Law Judge ordered that Dalmy “be permanently disqualified from appearing or practicing before the Securities and Exchange Commission as an attorney pursuant to Rule 102(e)(3)(iii) of the Commission’s Rules of Practice.” *In re Diane D. Dalmy, Esq.*, 2016 WL 4088747, *10.

At pages 26-27 of the Division's December 23, 2015 opposition brief, the Division cites Dalmy's prior regulatory history (including *Zenergy, supra*) as one factor supporting strong sanctions against her. The Law Judge's related 2016 decision in *In re Diane D. Dalmy, Esq.* (and the SEC Finality Order) – which bars Dalmy from appearing before the SEC as an attorney – further bolsters the Division's argument. Indeed, the Law Judge expressly found that Dalmy did not merely violate Section 5 but did so either knowingly or recklessly; that “her conduct was egregious”; and that Dalmy “fail[ed] to recognize the wrongful extent of her conduct.” *In re Diane D. Dalmy, Esq.*, 2016 WL 4088747, *8-9.

In opposing Dalmy's appeal, the Division otherwise relies on its December 2015 opposition brief. Pursuant to the SEC's April 5, 2018 Order, the Division reserves the right to submit a response to any supplemental brief that Dalmy might file.

Respectfully submitted,



Jack Kaufman, Esq.
Jason W. Sunshine, Esq.
Securities and Exchange Commission
Division of Enforcement
200 Vesey Street, Suite 400
New York, N.Y. 10281-1022
212-336-0106
kaufmanja@sec.gov

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