UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
FILED: March 28, 2019

IN THE MATTER OF
TIMOTHY W. CARNAHAN,
AND CYIOS CORPORATION
RESPONDENTS

ADMINISTRATIVE PROCEEDING
File No. 3-16386
8 Page : Response to Order:
Release No. 6510 / March 18, 2019

Judge James E. Grimes

RESPONSE TO ORDER FOR REVISED ANSWER, IN ALTERNATIVE, MOTION TO DISMISS THIS CASE

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **March 28th 2019,** THE RESPONDENTS file brief and motion to **the Release No. 6510 / March 18, 2019** ("Order"), request to dismiss this case pursuant to Rules and Practices of the Securities and Exchange Commission's Rules of Practice, 17 C.F.R. § 201.100. The order of our brief intentionally is presented OIP B, D, E and C for better understanding.

OIP B. SARBANES-OXLEY VIOLATION

This was dismissed with initial decision dated **December 15th, 2015.**
--excerpt from initial decision:
"I therefore dismiss this proceeding as to Anderson and find no Section 105(c)(7)(B) violations by Carnahan or CYIOS.".

OIP D. INTERNAL CONTROLS ALLEGATION

(DOE FAILED to provide PROOF – DOE statements are arbitrary and capricious)

In a telephone conference call Tuesday, March 17, 2015 @1100, Chris Davis stated "I would not have a case if it was not for the alleged Sarbanes-Oxley violation". The respondents continued the discussion to ask the simple question *"how did you determine our internal controls were not*

assessed". Chris stated that how could they be if you didn't document the Sarbanes-Oxley violation. In the OIP, the DOE have stated that not only there is not documentation but the statements are false on the 10K.

RESPONDENTS REPLY:

The OIP " ITEM D." Failed to Access Internal Controls allegation is arbitrary and capricious as there never was any Sarbanes-Oxley violation – see ID: December 15th, 2015. **The respondents demand proof of the DOE alleged Internal Controls violation. In alternate, this case should be dismissed immediately with relief given to the respondents.**

Moreover, The SEC's alleged violation of "Internal Controls" claims are untimely filed **February 13, 2015.** Specifically, the **action occurred in 2009** as defined in the case *Gabelli v. Securities and Exchange Commission, No. 11-1274* ***the United States Supreme Court clarified that the 5-year statute of limitations applicable to SEC enforcement actions*** *that seek financial penalties begins to accrue when the alleged violation occurs, not when the SEC discovers the violation.*

1. The SEC alleged violation was filed February 13, 2015 - Release No. 6223/October 18, 2018 ORDER by ALJ - Judge Carol Fox Foelak.
2. The SEC – Division of Enforcement "DOE" responded in a motion dated October 30th, 2018 p.1 second paragraph - (2) failing to properly assess CYIOS's internal controls over financial reporting and filing false statements regarding them beginning with its 2009 Form 10-K, which was filed on February 26, 2010. See OIP at ,m 10-20.

As the respondents have pointed out over and over again – yet the ALJ and the DOE attempt to steer away from the obvious that being that the alleged violation could have ONLY occurred from January 1st, 2009 until the latest date of December 31st 2009; NOT when the SEC discovers the violation – and Audit Report 10K is just that – **a report of events that took place in the year 2009.**

Summary assessment under 28 U.S.C. § 2462:

1. The SEC Filed claim on the date of **February 13th 2015.**
2. The alleged violation occurred at the latest date **December 31st 2009.**

DIFFERENCE IS OVER FIVE YEARS.

The SEC's alleged violation of "Internal Controls" claims are untimely – the United States Supreme Court has already ordered the SEC to adhere to this statute.

3. The **SEC has violated our Sixth Amendment right of the Constitution** – the right to face our accuser. In this case, who is the accuser – a computer algorithm dubbed "RoboCop" which we were denied questions about in the prior proceeding with the found "Unconstitutional Judge".

4. The SEC found there was ZERO FRAUD in their Initial Decision Release No. 930, 2015 LEXIS 5189 (DEC, 21, 2015) yet DOE continue to allege fraud – this is a preponderance of a side show to over shadow the wrong doing of the DOE – its "Contemptuous Conduct"; this has become a personal misuse of government resources by the SEC and DOE.

5. The **DOE has shown ZERO proof of their claim of the Internal Controls violation** – ZERO; even if they put something down on paper it would just be a moot point because the SEC states that there is NO SEC Guidance how a small business does its controls. DOE has FAILED TO SHOW HOW OUR INTERNAL CONTROLS FAILED. http://www.sec.gov/info/smallbus/404guide/controls.shtml

    a. ***The SEC doesn't have specific rules that tell smaller public companies how to do this. There is, however, useful guidance available from other sources. One of these is the internal control framework set out by a private sector organization called the Committee of Sponsoring Organizations of the Treadway Commission.***

OIP E. OFFERS and SALES OF SECURITIES

(T re NO Sarbanes-Oxley violations, NO false statements EVER!)

This alleged violation can NOT be valid if there was no false statement as we proved, there were NO false statements. This is another arbitrary and capricious claim based upon a false narrative! This case should be dismissed and relief given!

OIP C. LATE FILING ALLEGATION

(The filing of the Form 15 was at most an administrative error that was corrected.)

Under rule Rule 12h-3, In order to rely on Rule 12h-3, the issuer:

- e must be current in its Exchange Act reporting obligations;e
- e must have (1) fewer than 300 record holders of the class of securities offered under thee Securities Act registration statement; or (2) fewer than 500 record holders and its assetse must not have exceeded $10 million on the last day of each of the issuer's three moste recent fiscal years; ande
- e must not have had a Securities Act registration statement relating to that class ofe securities become effective in the fiscal year for which the issuer seeks to suspende reporting, or have had a registration statement that was required to be updated by Sectione 10(a)(3) of the Securities Act during the fiscal year for which the issuer seeks to suspende reporting, and, if the issuer is relying on the fewer than 500 record holder and $10 millione in assets threshold noted above, during the two preceding fiscal years.e

1.e **The respondents met the above rule** and therefore had no obligation under Sectione 15(d) to make the filings. **The filing of the Form 15 was at most an administrative errore that was corrected.** The DOE has no jurisdiction over compliance if no intent of fraud ise present; the DOE and SEC have stated there is no fraud – in fact, they explicitly notede this in the initial decision dated **December 15th, 2015**; moreover, this is a quote from thee initial decision ***"I therefore dismiss this proceeding as to Anderson and find no Section 105(c)(7)(B) violations by Carnahan or CYIOS."***.

2.e The certification of termination on Form 15 was filed immediately after speaking to thee SEC Administration and merger attorneys. **The respondents had an agreement withe the SEC to complete the merger and clean up all filings within 90 days.** If it had note been for the SEC Enforcement's frivolous case in question that started mid-June of 2014,e we would have been compliant, and the SEC would not have had an issue – which woulde have been the best for the shareholders.e

3.e The SEC Enforcement investigation has harmed our company due to arbitrary ande capricious claims. Our claim is if it was NOT for the SEC investigation, we would havee been compliant and merged. With this regard, the SEC investigation clearly causede CYIOS' filings not to be corrected.e

4.

5. EMAIL from respondents to SEC:
   Date Sent: Saturday, June 21, 2014 8:08:41 PM
   Sent From: "Timothy Carnahan"
   Sent To: kingdr@sec.gov Subject: Fwd: Letter of Cancellation of merger (see attached)
   Attachment(s): CYIO Ur6-21-14.pdf
   a. *David, Hope your investigation has some substantial reasoning --- it is the direct cause of this letter.*
      CEO CYIOS Corporation
      Ronald Reagan Building 1300 Pennsylvania Ave,700 Washington,20004

   b. *We had been told from the merger group that they could not merge due to an SEC investigation; Mr. King leading the investigation had communications with a third party about CYIOS Corporation thus leading to a cancellation of the merger.*

CONCLUSION

For the foregoing reasons and below as well, the respondents respectfully request that Your Honor grant this motion to dismiss this case.

1. Section 706(2)(A) of the Administrative Procedure Act (APA) instructs courts reviewing regulation to invalidate any agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

2. The SEC has violated our **right to due process under the "Fifth Amendment"** in that the SEC has unconstitutionally taken the respondents of life, liberty and property while filing arbitrary and capricious statements and claims with zero proof.

3. What's more compelling than anything, when the respondents were on a three-way call with the SEC DOE attorney Chris Davis discussing the SOX violation and Chris Davie stated if it wasn't for the SOX violation he wouldn't have a case. Meaning that since the internal controls did not catch the SOX violation the internal controls must be weak. Moreover, the statement filed in Feb 2015 on the 10-K, the SEC claims CYIOS did not have or use internal controls as stated in the 10-K therefore that was a false statement. After the SOX violation was dismissed, the internal controls claims were a moot point. But no, the DOE has changed their story; basically the DOE has falsified the record as one can read below in the (a.) the DOE statement and (b.) CYIOS's 2009 10-K on sec.gov site.

    a. **DOE stated:** CYIOS management had assessed the effectiveness of its ICFR using the COSO Framework and that CYIOS' ICFR was effective.
    b. **CYIOS Filed:** We evaluated and assessed the effectiveness of our internal control over financial reporting as of December 31, 2007, using criteria set forth in the Internal Control -- Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

    One would have to turn a blind eye not to see the how the DOE has falsified the record to support its false claim. See for yourself on sec.gov – look at the 10-K filing Item 9A(T).

4. The SEC Commission failed to find for almost 2yrs a final decision. In lack of concluding the case when the SEC Commission could have, **under Rule 411 Commission Consideration of Initial Decisions by Hearing Officers part (f) the commission failed to obtain a majority.**

    a. *Failure to Obtain a Majority, in the event a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect, and an order will be issued in accordance with this result. Moreover, the absence of any action on the part of the commission for period of time as stated in the sec rules of practice makes this case abandoned or dead locked Failure to Obtain a Majority. The case did commence as we know the record shows the case was scheduled, briefs were reviewed -but no decision, no*

stay under the rules of practices Rule 401 or any other section as per relevant to stays in the regulation; most important – this case was abandoned and should be dismissed!

5. These false statements, arbitrary and capricious claims have been a financial sanction against the respondents. These sanctions have cost the respondents over $20M. The respondents request the case be dismiss and relief given.

6. The previous ALJ stated the below about prejudice in ORDER dated October 18th, 2018.

    a. the Division is not required to be "uncritical or even . . . neutral" in the investigative process and "the Supreme Court has recognized the propriety of affording Commission staff 'considerable discretion in determining when and how to investigate' potential securities law violations." Kevin Hall, CPA, Exchange Act Release No. 61162, 2009 SEC LEXIS 4165, at *78-79 (Dec. 14, 2009) (quoting SEC v. Jerry T. O'Brien, Inc., 467 U.S. 735, 744-45 (1984).

The respondent's point is that the Supreme Court did NOT give DOE the right to falsely allege fraud and defame a company and CEO. The DOE's contemptuous conduct is grounds again for immediate dismissal and relief.

Timeliness: The Order was received March 18th, 2019 with due date of March 28th, 2019, this filing is timely.

Date: March 28th, 2019
Respondents submitted,
Respectfully,

Timothy Carnahan

Timothy Carnahan, CEO and President of CYIOS

Service List

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing Reply to the Order was served on the persons listed below as per date of this document via United States Postal Service or email where indicated:

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Respectfully,
Timothy W. Carnahan