



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16386

HARD COPY

In the Matter of

TIMOTHY W. CARNAHAN
AND CYIOS CORPORATION,

Respondents.

DIVISION OF ENFORCEMENT'S REPLY
TO RESPONDENTS' OPENING BRIEF IN
SUPPORT OF PETITION FOR REVIEW

Pursuant to the Commission's February 8, 2018 Supplemental Briefing Order, the Division files its reply brief.¹ The Commission should reject the Respondents' Petition for Review (the "Petition"). Their March 12, 2018 opening brief provides no basis for the Commission to disturb the initial decision. It makes no showing that any prejudicial error was made in the proceeding. Nor does it claim that the initial decision embodies: (1) a clearly erroneous finding of fact, (2) an erroneous conclusion of law, or (3) an exercise of discretion or decision of law or policy that is important for the Commission to review. Instead, the opening brief argues only that the Commission should grant "dismissal of the Administrative Proceeding" due to the Commission's "CYBERWAR" against them that was carried out using a "ROBOCOP" program. The Commission should thus reject the Petition.

¹ *Timothy W. Carnahan, et al*, Exchange Act Rel. No. 10457.

Argument

The Respondents have not met the relevant standard for review of the initial decision. Under Rule of Practice 411(b)(2), which governs discretionary review,² the Commission shall consider whether the petition for review makes a reasonable showing that:

- (i) A prejudicial error was committed in the conduct of the proceeding; or
- (ii) The decision embodies:
 - (A) A finding or conclusion of material fact that is clearly erroneous; or
 - (B) A conclusion of law that is erroneous; or
 - (C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

The Petition makes no such showing. Instead, it alleges—with no support whatsoever—that the Respondents are victims of a "CYBERWAR" against them. It goes on to state—again, with no support—that the "SEC has made this a personal issue, a marketing issue and one that should have never took [sic] place." Finally, completely ignoring the extensive evidentiary record, the brief wrongly states that there was "ZERO FRAUD [found] in the[] Initial Decision."

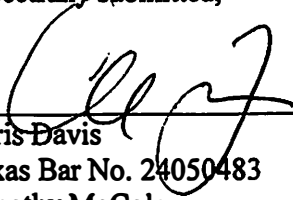
What the Respondents do not do—and what Rule 411(b)(2) requires them to do—is articulate an error fact, law, or procedure, or an important law or policy that the Commission should review.³ As a result, the Commission should reject the Petition.⁴

² This proceeding does not fall into any of the categories outlined in Rule of Practice 411(b)(1)—which covers mandatory review by the Commission.

³ The Petition also fails to "set forth a statement of the issues presented for review under Rule 411(b)," as required by Rule of Practice 410(b).

⁴ It is true that summary affirmance is rare. *See, e.g., Theodore W. Urban*, Exchange Act Rel. No. 63456, 2010 SEC LEXIS 4054, *6 (Dec. 7, 2010). But it is appropriate here, where: (1) The Petition does not articulate any valid basis for disturbing the initial decision; (2) it is defective, since it does not present issues for review; and (3) the Respondents have received an exceptionally fair process—having had two opportunities to present evidence and argument to the ALJ.

Respectfully submitted,



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SERVICE LIST

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the *Division of Enforcement's Response to Respondents Timothy Carnahan's and CYIOS Corporation's Motion to Correct Manifest Errors* was served on the following on March 26, 2018 via United Parcel Service, Overnight Mail:

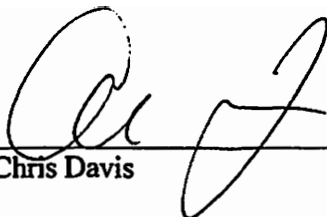
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