

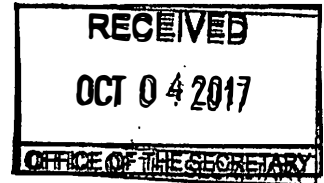
United States of America before the  
Securities and Exchange Commission  
Exchange Act Release No 80701  
Administrative Proceeding File No 3-17990

File No 3-17990

-----X  
In the matter of

Digital Brand Media & Marketing Group, Inc.

Respondent  
-----X



**POST-TRIAL MEMORANDUM**  
of Respondent's Digital Brand Media & Marketing Group, Inc.

Counsel for Respondent:  
Marshal Shichtman Esq.  
Marshal Shichtman and Associates, PC  
1 Old Country Rd.  
Suite 360  
Carle Pl., New York 11514  
Tel (516) 741-5222

## Table of Contents

<i>Item</i>		<i>Page</i>
I.	Introduction	3
II.	Statement of Case	3
III.	Arguments	4
	a. The respondent's R calamity Jane any hardship exemption should be properly given	4
IV.	Other Material	5
	a. No formal order was issued and the Commission had no formal authorization to move proceedings forward.	6
	a. The Commission did not disclose material in violation of Brady	7
	i. The commission violated its own rules by failing to provide material mandated to be disclosed by the commission rule 230	7

## Table of Authorities & Cases

<i>Authorities</i>	<i>Page</i>
17 CFR §201.340	3
Securities and Exchange Commission, Division of Enforcement, Enforcement Manual, 2.5 Enforcement Recommendation, 2.5.1, the action memo process	6
Securities and Exchange Commission, Rules of Practice, rule 230	7
Brady v. Maryland 373 US 83 (1963)	

## I. Introduction

1. Hon. Jason S. Patil, ALJ, on or about August 10, 2017 ordered a post-trial brief (see 17 CFR §201.340 (A), (B)) resulting from a hearing held on August 9, 2017 by and between the securities and exchange commission and Digital Brand Media & Marketing Group, Inc., as Respondents. ("Respondents") This port-trial brief is submitted pursuant thereto.

## II. Statement of Case

2. This is a case of bad luck. Not just the run of the mill bad luck, but epic bad luck. First, Respondent's original auditor, Sherb & Co., LLP, was barred to practice before the Commission, which barring had nothing to do with the Respondent.<sup>1</sup> As a consequence of the bar, Respondent had to reaudit the prior three years<sup>2</sup>, which involved locating and paying a new auditor, and the ensuing process of reauditing. Then, in order to get the capital required to re-audit the prior three years, the Respondent took out a loan from Asher Enterprises Inc. and retained RBSM, LLP as the Respondent's new certifying accountant and pays them. Then, the Depository Trust and Clearing Company ("Cede") the instituted a deposit chill against the Respondent, ostensibly from the aggressive conversions of Asher Enterprises Inc., which was eventually removed because the Respondent had the correct records and was found to have followed procedure<sup>3</sup>. Then, RBSM, LLP quits as the Respondent's certifying accountant; without refunding any of the money paid. Then, Asher Enterprises Inc. sues the respondent for being delinquent in

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<sup>1</sup> Tr. 42:1

<sup>2</sup> See Respondent's Exhibit C

<sup>3</sup> See Respondent's Exhibit E

their filings, and eventually obtained a judgment.<sup>4</sup> Then, Respondent retains a new certifying accountant of D'Arelli Pruzansky, who disbands. Then, the Commission institutes the instant proceeding revoke the registration of the Respondent. Then, as hopefully the final insult to injury, the Respondent's new certifying accountant Assurance Dimensions disclaims any relationship with Respondent for the first time on stand testifying at the hearing, after working on an 8K with the Respondent stating that Assurance Dimensions was the new certifying accountant for the Respondent.<sup>5</sup> If the aforementioned thread of events does not qualify as a hardship exemption, which the Respondent previously requested, then there is no such thing as a hardship exemption.

### III. Arguments

a. *The Respondents are Calamity Jane and a hardship exemption should be properly given.*

3. The hardship exemption is put in place for relief from extraordinary circumstances. The Respondent has gone through four auditors<sup>6</sup> and paid over \$80,000 to prior accounting firms who did not deliver final products.<sup>7</sup> The Respondent has been sued and victimized<sup>8</sup> by its lender, Asher Enterprises, Inc.<sup>9</sup>; who has been designated as a bad actor by FINRA and entered into multiple consent decrees with the Commission<sup>10</sup> and it has not curbed their behavior. Cede had put a chill on the Respondent's stock and the Respondent had

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<sup>4</sup> See Respondent's Exhibit F, G, and H

<sup>5</sup> Tr. 66:1-25, 67:1-24; and 69:8-15

<sup>6</sup> Tr. 42:13

<sup>7</sup> Tr. 158:20

<sup>8</sup> Tr. 176:2-4

<sup>9</sup> See Respondent's Exhibits F-H

<sup>10</sup> See Respondent's Exhibits I, and M

it removed<sup>11</sup>, going through three attorneys and an additional \$25,000 in the process.<sup>12</sup>

All the while, the Respondent has never stopped their efforts to fill in back periods of delinquent filings<sup>13</sup> and never lost sight of their goal of becoming current,<sup>14</sup> and fully intends to become current,<sup>15</sup> and has obeyed all Commission orders in the past.<sup>16</sup>

4. Everyone has their breaking point, everyone has a point that is just beyond reach at the moment, and the whole raison d'être of the hardship exemption is to make sure issuers, particularly small issuers, aren't swallowed whole by government regulations. The Respondent submitted a request for a hardship exemption<sup>17</sup> before things started to snowball, and then came the avalanche. Draconian rules benefit no one. Draconian governmental regulations are an ever springing well spring for legislative relief to ease the burden for smaller companies. That is why the hardship exemption exists; for relief from extraordinary circumstances. In the instant, Respondent has had a Calamity Jane like string of extraordinary circumstances that more than merit a hardship exemption.
5. In light of the constant string of extraordinary hardships, which even occurred during the hearing with Assurance Dimensions disclaiming a relationship with the Respondent for the very first time, the Respondent respectfully requests this Court not revoke the Respondent's registration.

#### IV. Other Material

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<sup>11</sup> Tr. 159:18-25, 160:

<sup>12</sup> Tr. 161:12-19

<sup>13</sup> Tr. 180:14-25, 181:1-5

<sup>14</sup> Tr. 181:6-25, 182:1-2

<sup>15</sup> Tr. 182:3-5

<sup>16</sup> Tr. 184:19-20

<sup>17</sup> Tr. 122:17-19, *See Respondent's Exhibit D*

- a. No formal order was issued and the Commission had no formal authorization to move proceedings forward.

6. The Securities and Exchange Commission's Division of Enforcement, Enforcement Manual, item 2.5, Enforcement Recommendation, 2.5.1, the action memo process, states, "The filing or instituting of any enforcement action must be authorized by the Commission."<sup>18</sup> The instant action was brought by the Enforcement Division, is an enforcement action, and there is no authorizing instrument, or any evidence of authorization submitted into the record, in direct violation of the Commission's own policies. Furthermore, the Commission offered no such evidence of authority into the record, and stated, "...there was no formal order of investigation issued in this case."<sup>19</sup> Therefore, as there is no evidence of authorization from the Commission, there is no authorization from the Commission and the whole matter is without legitimate authority. Please distinguish an OIP where the Commission's authorization must have been acquired and present to even present a proposed OIP to an ALJ by Commission staff. The language reads quite clearly, "instituting of any enforcement action must be authorized by the Commission." It does not say or an Administrative Law Judge with an otherwise proper Order Instituting Proceedings. In order for Commission staff to appear before a Judge to institute an enforcement action there must be authorization by the Commission; which there is not. The whole proceeding was unlawful as without Commission authorization.

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<sup>18</sup> SEC Division of Enforcement, Enforcement Manual, 2.5.1, p. 23, October 16, 2016

<sup>19</sup> Tr. 141:9-10

7. The Commission admitted that there was no formal order issued.<sup>20</sup> Therefore, the Commission either had to hold an ex-parte hearing before an Administrative Law Judge which was not disclosed to the Respondent which is a judicial anathema in any non-criminal proceeding violating due process rights, or the Commission issued unlawful subpoenas. In either event, the Commission unlawfully garnered evidence and witnesses, which should be lawfully disregarded as fruit from a poisonous tree, and the matter should be dismissed as violating Respondent's rights and basing material points of the Commission's case upon unlawfully procured evidence.

*b. The Commission did not disclose material in violation of Brady*

*i. The Commission violated its own rules by failing to provide material mandated to be disclosed by the Commission Rule 230*

8. The commission failed to disclose any subpoenas issued, other than the subpoenas issued directly to the respondent, specifically including Marc-Andre Boisseau, Mitchell Pruzansky, and Michael Naparstek, who were witnesses called by the commission, and it it unknown how many subpoenas were actually issued on this matter. The Commission's Rule 230 (a) (1) (i) specifically states that the commission must disclose each subpoena issued, on Exhibit A (Respondent's request for discovery and inspection, item 2) specifically requests disclosure of each subpoena issued. The commission failed to disclose any subpoenas issued for at least the three mentioned witnesses in direct

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<sup>20</sup> Tr. 141:9

violation of their own rules and prejudicing Respondent. That much is uncontestable and incontrovertible.

9. The Commission also failed to respond to item 4 on Exhibit A, "the documents turned over in response to any such subpoena or other written request." And items 5 and 8 of Exhibit A, ""all transcripts and transcript exhibits", "list of people interviewed concerning said investigation's", respectively. Respondent does not know who the commission spoke to, what they spoke of, or if any exculpatory matters arose, and the Commission seeks to have the Respondent never know by failing to disclose the presence or absence of such material, denying Respondent even an opportunity to mine material for culpable material to submit as evidence, while simultaneously egregiously violating Respondent's due process rights.

## V. Conclusion

10. The Commission presented no authority at the hearing for instituting an enforcement action in direct violation of the Commission's own rules. The Commission failed to provide material requested by the Respondent, which was incontrovertibly in their possession, in violation of the Commission's own rules and contrary to Constitutional rights bestowed by *Brady*<sup>21</sup>. And last by certainty not least, the Respondent has had a string of extraordinary hardships and requested a hardship exemption which the Respondent has certainly merited in spades. In light of all these factors, the Respondent

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<sup>21</sup> [Brady v. Maryland](#), 373 US 83 (1963)



respectfully begs the Court for its first break and request that the Court not revoke the Respondent's registration.

Dated: Friday, 29 September 2017  
Carle Place, New York

Marshal Shichtman & Associates, P.C.

*Marshal Shichtman, Esq.*

By: Marshal Shichtman, Esq.  
Counsel for Respondent  
1 Old Country Road  
Suite 360  
Carle Place, New York 11514  
Tel (516) 741-5222

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**EXHIBIT A**

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United States of America before the  
Securities and Exchange Commission  
Exchange Act Release No 80701  
Administrative Proceeding File No 3-17990

-----X  
In the Matter of

Digital Brand Media & Marketing Group, Inc.,

Respondent.  
-----X

File No 3-17990

**REQUEST FOR  
DISCOVERY AND  
INSPECTION**

Hon. Jason S. Patil, ALJ

Pursuant to rule 230 of the Commission's rules of practice respondent hereby requests the following documents:

1. The formal order of investigation, and any memoranda or transcript from oral testimony supporting the request of the formal order of investigation including an action memorandum;
2. each subpoena issued;
3. every other written request to persons not employed by the commission to provide documents or to be interviewed;
4. the documents turned over in response to any such subpoenas or other written request;
5. all transcripts and transcript exhibits;
6. any other documents obtained from persons not employed by the commission;
7. any final examination or inspection reports prepared by the office of compliance inspections and examinations, the division of market regulation, or the division of investment management, if the division of enforcement intends to either introduce any such report into evidence or to use any such report to refresh the recollection of any witness;
8. List of people interviewed concerning said investigation;
9. list of Commission staff conducting the interviews, delineating which staff conducted which interview;
10. any recordings or transcripts of any of the afore contemplated interviews;
11. any relation to a previous, parallel or other investigation, including MUIs not subject to the contemplated formal order of investigation;
12. weekly reports from the instant matter under investigation;
13. any memorandum or communication for cooperation with other civil and/or criminal agencies;
14. any investigating opening narrative;
15. the document index;
16. all background questionnaires concerning this formal order;
17. any evidence in the Commissions actual or constructive knowledge or possession that is material to the guilt or punishment of the respondent, inclusive of favorable evidence that

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is directly exculpatory or otherwise favorable to the respondent, and impeachment evidence. Said Brady disclosures must be received no less than five business days prior to the hearing;

18. All evidence within the custody or knowledge of commission which might adversely affect the credibility of any witness that the commission intends to call at trial;
19. anything required to be disclosed, prior to trial, to the respondent by the prosecutor pursuant to the Constitution of the United States, including but not limited to all property, evidence, information, or leads to information, which are exculpatory or which could reasonably be expected to weaken or affect any evidence proposed to be introduced against the respondent or which would in any manner a the respondent in the preparation of an adequate and proper defense or which are otherwise favorable to the respondent or which may lead to exculpatory or arguably exculpatory property, evidence, or leads, regardless of any statute, rule, or regulation otherwise governing the time of disclosure of such items on a continuing basis, regardless of whether admissible at trial or not.

Dated: Friday, July 14, 2017  
Carle Place, New York

MARSHAL SHICHTMAN & ASSOCIATES, P.C.

*Marshal Shichtman, Esq.*

By: Marshal Shichtman, Esq.  
Counsel for Respondent  
1 Old Country Road  
Suite 360  
Carle Place, New York 11514  
Tel (516) 741-5222

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DIVISION OF  
ENFORCEMENT

UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549-6010

July 17, 2017

BY EMAIL

Marshal Shichtman, Esq.  
Marshal Shichtman & Associates, P.C.  
1 Old Country Rd., Suite 360  
Carle Place, NY 11514  
[marshal@lawmsa.com](mailto:marshal@lawmsa.com)

Re: *In the Matter of Digital Brand Media & Marketing Group, Inc., et al.*

Dear Mr. Shichtman:

As you know, by letter dated May 17, 2017, the Division of Enforcement offered Respondent Digital Brand Media & Marketing Group, Inc. discovery pursuant to SEC Rule of Practice 230. Pursuant to your July 14, 2017 request and SEC Rule of Practice 230, I have attached those portions of the Division's investigative file relevant to Digital Brand Media & Marketing Group, Inc. I have also enclosed, pursuant to Rule 230(c), a list of categories of documents withheld.

If you have any questions, please call me at (202) 551-4731.

Sincerely,

Neil J. Welch, Jr.  
Senior Investigations Counsel

Enclosures

**Division of Enforcement's Withheld Document List  
for July 17, 2017 Production to Digital Brand Media & Marketing Group, Inc.  
*In the Matter of Digital Brand Media & Marketing Group, Inc., et al.*  
Admin. Proceeding File No. 3-17990**

	<b>Document or Category</b>	<b>Date or Dates</b>	<b>Author or Authors</b>	<b>Basis for Withholding or Redaction</b>
1	Action memoranda and draft action memoranda	Various	Neil J. Welch, Jr. and other Commission attorneys	Attorney Work Product; Attorney Client Communications; Deliberative Process Privilege; Internal Writing of Commission Employee
2	Internal SEC emails, notes, and memoranda	Various	Neil J. Welch, Jr. and/or other Commission attorneys	Attorney Work Product; Attorney Client Communications; Deliberative Process Privilege; Internal Writing of Commission Employee
3	Phone logs	Various	Neil J. Welch, Jr. and/or other Commission attorneys	Attorney Work Product; Attorney Client Communications; Internal Writing of Commission Employee
4	Internal SEC spreadsheets and databases	Various	D. Frye and/or other Commission attorneys	Attorney Work Product; Internal Writing of Commission Employee





DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

November 15, 2013

Via Email to

Ms. Linda Perry  
Executive Director  
Digital Brand Media & Marketing Group, Inc.  
747 Third Avenue  
New York, NY 10017

Dear Ms. Perry:

We note that your August 31, 2012 financial statements were audited by Sherb & Co., LLP. On November 7, 2013, the Securities and Exchange Commission ("SEC") denied Sherb & Co., LLP the privilege of appearing or practicing before the Commission as an accountant. You can find a copy of the order at <http://www.sec.gov/litigation/admin/2013/34-70823.pdf>

As Sherb & Co., LLP is barred from practicing before the SEC, you may not include its audit report in your filings with the Commission on or after November 7, 2013. If Sherb & Co., LLP audited a year that you are required to include in your filings with the Commission, you should have a firm that is registered with the PCAOB re-audit that year.

Please advise us as to how you intend to address this matter by no later than November 29, 2013. If you have any questions, you can reach me at 202-551-3849.

Sincerely,

/s/ Jennifer Thompson for

James Allegretto  
Senior Assistant Chief Accountant



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

December 2, 2013

Via U.S. Mail and Facsimile to 646 722 2501

Linda Perry  
Executive Director  
Digital Brand Media & Marketing Group, Inc.  
747 Third Avenue  
New York, NY 10017

Re: Digital Brand Media & Marketing Group, Inc.  
File No.: 000-52838

Dear Ms. Perry:

In your letter dated November 29, 2013, you requested that the staff waive the requirement and exempt the company from a re-audit of its 2012 financial statements in its 2013 Form 10-K. The company's 2012 financial statements were audited by Sherb & Co., LLP ("Sherb").

We are unable to grant the company's request. As previously stated in a letter dated November 15, 2013, the SEC denied Sherb the privilege of appearing or practicing before the Commission as an accountant. The company should not include Sherb's audit report in any filings made on or after November 7, 2013. The company should have a firm that is permitted to practice before the Commission as an accountant and is registered with the PCAOB re-audit the 2012 financial statements included in its 2013 10-K.

The staff's conclusion is based solely on the information provided in your letter. Different or additional material facts could result in a different conclusion. If you have any questions, I can be reached at 202-551-3511.

Sincerely,

Louise M. Dorsey  
Associate Chief Accountant



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

February 27, 2017

CERTIFIED MAIL  
TRACKING # 7013 2630 0002 2660 1267  
RETURN RECEIPT REQUESTED

Linda Perry, Executive Director  
Digital Brand Media & Marketing Group, Inc.  
747 Third Avenue  
New York, NY 10017

Re: Digital Brand Media & Marketing Group, Inc.  
File No. 0-52838

Dear Ms. Perry:

We are writing to address the reporting responsibilities under the Securities Exchange Act of 1934 of the referenced company. For ease of discussion in this letter, we will refer to the referenced company as the "Registrant."

It appears that the Registrant is not in compliance with its reporting requirements under Section 13(a) of the Securities Exchange Act of 1934. If the Registrant is in compliance with its reporting requirements, please contact us (through the contact person specified below) within fifteen days from the date of this letter so we can discuss the reasons why our records do not indicate that compliance. If the Registrant is not in compliance with its reporting requirements, it should file all required reports within fifteen days from the date of this letter.

If the Registrant has not filed all required reports within fifteen days from the date of this letter, please be aware that the Registrant may be subject, without further notice, to an administrative proceeding to revoke its registration under the Securities Exchange Act of 1934. This administrative proceeding would be brought by the Commission's Division of Enforcement pursuant to Section 12(j) of the Securities Exchange Act of 1934. If the Registrant's stock is trading, it also may be subject to a trading suspension by the Commission pursuant to Section 12(k) of the Securities Exchange Act of 1934.

Page 2

Finally, please consider whether the Registrant is eligible to terminate its registration under the Securities Exchange Act of 1934. If the Registrant is eligible to terminate its registration, it would do so by filing a Form 15 with the Commission. While the filing of a Form 15 may cease the Registrant's on-going requirement to file periodic and current reports, it would not remove the Registrant's obligation to file all reports required under Section 13(a) of the Securities Exchange Act of 1934 that were due on or before the date the Registrant filed its Form 15. Again, if the Registrant is eligible to terminate its registration under the Securities Exchange Act of 1934, please note that the filing of a Form 15 would not remove the Registrant's requirement to file delinquent Securities Exchange Act of 1934 reports – the Registrant would still be required to file with the Commission all periodic reports due on or before the date on which the Registrant filed a Form 15.

If you should have a particular question in regard to this letter, please contact the undersigned at (202) 551-3245 or by fax at (202) 772-9207.

Sincerely,

A handwritten signature in black ink, appearing to read "JDS/MDS".

Marva D. Simpson  
Special Counsel  
Office of Enforcement Liaison  
Division of Corporation Finance