

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
June 5, 2007

SECURITIES & EXCHANGE COMMISSION  
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In the Matter of	:	
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MICHAEL SASSANO,	:	ORDER REQUIRING DIVISION OF
DOGAN BARUH,	:	ENFORCEMENT TO PROVIDE
ROBERT OKIN, and	:	ADDITIONAL INFORMATION
R. SCOTT ABRY	:	

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On March 6, 2007, the Division of Enforcement (Division) identified 240 documents that it was withholding from inspection and copying (Withheld Document List). See Rule 230(c) of the Rules of Practice of the Securities and Exchange Commission (Commission). On May 25 and May 30, 2007, respectively, Respondents Michael Sassano (Sassano) and Robert Okin (Okin) moved to compel the production of 35 of the 240 documents on the Division's Withheld Document List.<sup>1</sup>

On June 4, 2007, the Division filed its response. The Division agreed to produce documents ## 2-17, 55, 58, 83-85, and 90 on its Withheld Document List. It also agreed to produce notes of an interview with Douglas Fecci, although it had not identified those notes on the Withheld Document List (Sassano Motion at 2 n.1). The Division has already taken steps to copy these materials and make them available to Respondents. The Division reserves the opportunity to object to the admissibility of these materials at the hearing in this matter.

The Division objects to producing documents ## 18-24 and 35-40 on its Withheld Document List. It maintains that these materials should be protected from disclosure by the work-product doctrine. See Rule 230(b)(1)(ii) of the Commission's Rules of Practice, which permits the Division to withhold a document if it is an internal memorandum, note, or writing prepared by a Commission employee, or is otherwise attorney work-product and will not be offered in evidence. The Division describes these thirteen documents as memoranda prepared by staff attorneys after they had interviewed witnesses. It represents that the memoranda contain the authors' thoughts and impressions, were prepared in anticipation of litigation, and are not "verbatim transcripts" of the interviews.


It is well settled that the party asserting a privilege bears the burden of establishing all of its essential elements. See, e.g., United States v. BDO Seidman, 337 F.3d 802, 811 (7th Cir. 2003); In re Grand Jury Investigation, 723 F.2d 447, 450-51 (6th Cir. 1983) (collecting cases). The information provided by the Division to date is insufficient to support the claimed work-

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<sup>1</sup> Sassano and Okin identified these as documents ## 2-24, 35-40, 55, 58, 83-85, and 90 on the Division's Withheld Document List.

product protection from disclosure. In particular, the Division has not shown that the documents in question are incapable of redaction, so as to cure any perceived privilege issues. See Clarke T. Blizzard, 55 S.E.C. 754, 762-63 (2002); cf. SEC v. Treadway, 229 F.R.D. 454, 455-56 (S.D.N.Y. 2005) (suggesting that defendants may obtain redacted factual work-product contained within Commission proffer session notes where the witnesses are unavailable for deposition, due to their invocation of their Fifth Amendment rights against self-incrimination or for other reasons). Nor has the Division addressed its obligation to produce some of the documents pursuant to Rule 231(a) of the Commission's Rules of Practice, even if the memoranda are entitled to work-product protection.<sup>2</sup> See Goldberg v. United States, 425 U.S. 94, 101-02 (1976); Stuart-James Co., Inc., Administrative Proceedings Rulings Release No. 336, 1989 SEC LEXIS 5129, at \*1-2 (July 13, 1989) (ALJ).

IT IS ORDERED THAT, on or before June 8, 2007, the Division shall supplement its opposition to producing items ## 18-24 and 35-40 on its Withheld Document List, by addressing the matters discussed in this Order.

  
James T. Kelly  
Administrative Law Judge

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<sup>2</sup> Some of the withheld memoranda involve interviews of individuals on the Division's list of proposed witnesses. The Division's assertion that the memoranda are not "verbatim transcripts" of these interviews is not dispositive.