UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3372/December 4, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16509

In the Matter of EDWARD M. DASPIN, a/k/a "EDWARD (ED) MICHAEL," LUIGI AGOSTINI; and LAWRENCE R. LUX	ORDER

The hearing in this matter is scheduled to begin January 4, 2016, in Manhattan. This order addresses a number of pending matters.

Under the current prehearing schedule, the parties were to file witness lists and exchange but not file exhibit lists and copies of exhibits by November 30, 2015. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3041, 2015 SEC LEXIS 3348, at *11, *13-14 (Aug. 14, 2015). On November 29, 2015, Respondent Edward M. Daspin sent by e-mail a possible combined witness and exhibit list, although it is not clear whether he properly filed and served it. On December 1, 2015, the Office of the Secretary received what appeared to be exhibits for Mr. Daspin. On determining that Mr. Daspin likely had not served these exhibits on the Division of Enforcement, my Office forwarded them to the Division's counsel.

Separately, Mr. Daspin forwarded by e-mail on December 1 what appears to be a motion concerning several issues. It is not clear whether he properly filed and served this motion. Although Mr. Daspin has been warned not to forward substantive requests by e-mail alone without properly serving and filing his requests, *see Edward M. Daspin*, Admin. Proc. Rulings Release No. 3202, 2015 SEC LEXIS 4103 (Oct. 6, 2015), because Mr. Daspin discusses a number of issues that are likely to arise during the hearing, I address the issues herein.

Mr. Daspin asks that he be permitted to amend his "witness list to include [witnesses on Respondent Luigi Agostini's] list of [w]itness[es] a[n]d Mr[.] [Michael] Nw[o]gugu, Mrs[.] Monica Petty, [and] the owner of Black Ops" whose name "escapes" Mr. Daspin. Mr. Daspin may amend his witness list to include those individuals on Mr. Agostini's list and Mr. Nwogugu and Ms. Petty. Absent more specific information about "the owner of Black Ops," his request to add that person to his list is denied.

Mr. Daspin also asks that I allow him "to use any of the 150,000 documents given at the request of the SEC[']s subpoena request." It is unclear what relief Mr. Daspin seeks. As with any respondent, he is permitted to use any relevant and material documents that are not unduly repetitive. 17 C.F.R. § 201.320. If, however, Mr. Daspin is asking for permission to submit exhibits without numbering or marking them, his request is denied. Numbering or marking exhibits in a coherent fashion is required. It is the only way for litigants, judges, and appellate authorities to identify exhibits. Without a coherent numbering system and exhibit list, a litigant will find it impossible to locate a document when he or she needs it. That is why I ordered that copies of exchanged exhibits be pre-marked. *See Edward M. Daspin*, 2015 SEC LEXIS 3348, at *11. To the extent electronic versions of these exhibits are exchanged, they necessarily need to be pre-marked so they can be electronically displayed in a coherent fashion.

Additionally, during a hearing, it is often necessary to discuss exhibits or to refer witnesses to exhibits. Mr. Daspin is informed that if he intends to present his exhibits in hardcopy, providing multiple copies of all exhibits at the hearing will enable the parties, the witness(es), and the administrative law judge to simultaneously see the exhibit while it is being discussed. Bringing a single copy of all exhibits is usually unworkable.[1]

When I directed the parties to exchange pre-marked exhibits by November 30, 2015, and to identify joint exhibits, I also directed the parties to "agree to a consistent nomenclature for identifying exhibits." *See Edward M. Daspin*, 2015 SEC LEXIS 3348, at *11, *13. Mr. Daspin has not objected to these requirements. Mr. Daspin, however, is unrepresented. To the extent he requires additional time to mark his exhibits, I *sua sponte* grant him a two-week extension, until December 14, 2015, to provide the Division all of his pre-marked exhibits and a revised exhibit list. Per my August 14 order, Daspin shall not provide his exhibits or exhibit list to my Office prior to the hearing. *Id.*

To accommodate the changes above, the deadline *for the Division* to file objections to exhibits and witnesses is extended to December 21, 2015. Owing to the approaching holidays, the parties' subpoena requests must be *received* by my office no later than December 14, 2015.

Mr. Daspin also indicates that he intends to raise authenticity objections to "documents that bear [his] email address." I will defer ruling on these objections until such time as the Division offers the e-mails into evidence.

Mr. Daspin also states that his wife intends to assert a privilege to not testify against him. Mr. Daspin correctly recognizes that the adverse spousal testimony "privilege may only be claimed by a testifying spouse." J. Weinstein & M. Berger, *Weinstein's Evidence Manual*

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[1] I encourage Mr. Daspin to confer with the Division regarding the possibility of presenting his exhibits electronically. The need to make multiple copies of exhibits can potentially be alleviated if the parties are able to present exhibits electronically such that the parties, the witness(es), and the administrative law judge can all simultaneously see the exhibit while it is being discussed. Electronic presentation, however, is not possible if exhibits are not identified in advance.

§ 18.05[4] (2015); *see Trammel v. United States*, 445 U.S. 40, 53 (1980). The privilege—which allows a spouse to refuse to testify altogether when called as a witness against his or her spouse—is, however, "recognized only in criminal proceedings," not in administrative or civil proceedings. Weinstein's Evidence Manual § 18.05[4].[2] There is a distinct "confidential marital communications privilege" that can apply in civil or administrative proceedings and "protects from disclosure private communications between the spouses in the confidence of the martial relationship." *Lavin*, 111 F.3d at 925. That privilege, however, does not exclude spousal testimony altogether; rather, it applies only to particular communications between the spouses and when certain prerequisites are met. *See id.* As such, with respect to any testimony his wife might provide at the hearing, Mr. Daspin may only assert the confidential marital communications privilege if and when the Division questions his wife on the content of such confidential marital communications.

Mr. Daspin also raises a number of speculative allegations in his motion. He should be prepared to address his intentions regarding these allegations during the prehearing conference on December 21, 2015.[3]

Finally, the Division has submitted a letter explaining its efforts to permit Mr. Daspin to appear by video teleconference. The Division represents that it has had difficulty ascertaining the feasibility of its two proposals. It further represents that at this point, Mr. Daspin has not tested or familiarized himself with the possible video conferencing methods the Division proposes. I will defer ruling on this issue until the prehearing conference on December 21, 2015. I will consider allowing Mr. Daspin to appear remotely only if he either (1) accepts one of the Division's proposals and demonstrates that the method in question will function sufficiently for him to participate in the hearing from a remote location; or (2) provides an alternative video teleconference method that is sufficiently reliable and with which he has sufficient familiarity.

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James E. Grimes
Administrative Law Judge

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[2] *See SEC v. Lavin*, 111 F.3d 921, 925 (D.C. Cir. 1997) ("the privilege against adverse spousal testimony . . . allows a spouse called as a witness against his or her spouse in a criminal proceeding to refuse to testify"); *United States v. Premises Known as 281 Syosset Woodbury Rd., Woodbury, N.Y.*, 71 F.3d 1067, 1070 (2d Cir. 1995) ("The adverse spousal testimony privilege has traditionally been limited to criminal cases."); *Appeal of Malfitano*, 633 F.2d 276, 277 (3d Cir. 1980) ("The crux of this privilege is that a person may not be forced to be a witness against his or her spouse in a criminal proceeding.").

[3] The time of the conference will be set by subsequent order. The parties are asked to confer and by December 14, 2015, submit a letter proposing a time for the conference.