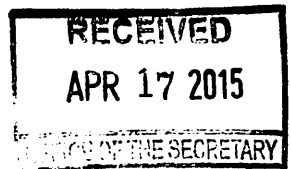


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16383



In the Matter of:

CHARLES L. HILL, JR.,

Respondent.

**RESPONDENT'S REPLY BRIEF IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER AND LEAVE
TO FILE MOTION FOR SUMMARY
DISPOSITION AND EXHIBITS UNDER
SEAL AND IN REDACTED FORM**

Respondent, Charles L. Hill, Jr., respectfully submits this reply brief in support of his Motion for Protective Order and Leave to File Motion for Summary Disposition and Exhibits Under Seal and in Redacted Form.¹

Respondent seeks a protective order with respect to his recently filed motion for summary disposition addressing the merits of the allegations underlying the Order Instituting Proceedings ("OIP") and the exhibits, including excerpts from transcripts of testimony taken by the Enforcement Division, attached thereto (together, "merits motion documents").² In his motion, Respondent specifically identified the narrow categories of documents over which protection was sought, described the harms that would befall Respondent and other third-parties in the event of public disclosure, and demonstrated that these harms outweighed the benefits, if any, to such disclosure.

Nothing in the Enforcement Division's opposition brief affects this calculus. Indeed, the weakness of the Enforcement Division's position advocating public disclosure is underscored by

¹ On April 14, 2015, Judge Grimes issued an Order granting in part Respondent's Motion For Leave to File Motion for Summary Disposition and Exhibits Under Seal and In Redacted Form pending the outcome of the Motion for Protective Order. Thus, this Reply Brief only addresses why Respondent is entitled to the protective order he seeks.

² Unless otherwise identified, the definitions in this Reply Brief shall have the same meaning ascribed to them in Respondent's Motion for Protective Order.

the merits motion documents filed yesterday. For all of these reasons, as well as the reasons explained below, Respondent's motion should be granted.

The Enforcement Division first takes issue with the specificity of the information Respondent seeks to keep under seal. Opposition Brief ("Opp. Br.") at 1, 5. It asserts that this Court "cannot meaningfully assess whether information described in such vague and broad terms should be kept off the public record." *Id.* at 1. However, consistent with his obligations under SEC Rule of Practice 322(a), Respondent provided "a general summary . . . of the documents without revealing confidential details." *See* Mot. for Prot. Order ("Mot.") at 1-2 (identifying three categories of confidential information sought to be sealed and providing specific examples of the information that was included within each category) and merits motion documents (identifying proposed redactions).

Because the confidential information specifically identified in the merits motion documents filed yesterday indicated exactly what Respondent is seeking to protect from public disclosure through his proposed redactions, the Enforcement Division's vagueness argument lacks merit because the information was specifically identified by the proposed redactions made.³

The Enforcement Division next contends that Respondent's motion fails to rebut the "strong presumption in favor of public access to judicial proceedings." Opp. Br. at 4, 7; *see also*

³ Specifically, the publicly-filed merits motion itself redacts confidential financial and business information, including: (1) the identity of business entities that have entered into contractual arrangements with Respondent; (2) the physical location and dollar value of specific confidential commercial transactions; and (3) the amount of money Respondent planned to commit to two confidential commercial transactions for a specific business entity. It also redacts personally identifiable information, including: (1) the names of third parties whose identities have not been disclosed in the OIP; and (2) the cell phone and landline numbers of Respondent and the cell phone numbers of these third parties. In addition to the specific information discussed above, Respondent seeks to seal the phone records contained in Exhibits B and C to the merits motion, which among other things, identify every phone number that a third party called, the telephone numbers of Respondent and other third parties, and the date, time, and duration of calls made.

United States v. Hubbard, 650 F.2d 293, 317 (D.C. Cir. 1980). While the Enforcement Division spends a significant portion of its opposition brief discussing this presumption, it omits the crucial fact that “[t]he decision as to access (to judicial records) is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.” *Hubbard*, 650 F.2d at 316-17 (internal quotations marks omitted). Indeed, the cases cited by the Enforcement Division confirm that the Court is to weigh the harms and benefits of disclosure in ruling on a motion for protective order.⁴ See 17. C.F.R. § 201.322(b) (providing that “a motion for a protective order [is to] be granted only upon a finding that the harm resulting from disclosure . . . outweigh[s] the benefits of disclosure”).

It should be emphasized that the information sought to be sealed in this proceeding is narrow. Respondent does not seek to seal this entire proceeding,⁵ but instead seeks to seal limited categories of confidential information that bear no relation to the merits of the allegations contained in the OIP. Indeed, the irrelevance of this sensitive information to the merits is confirmed through a review of the redacted merits motion documents.

⁴ For instance, in *Upshaw v. United States*, the district court articulated the following six-factors that a court should consider in ruling on a motion to seal:

- (1) The need for public access to the documents at issue;
- (2) The extent of previous public access to the documents at issue;
- (3) The fact that someone has objected to disclosure, and the identity of that person;
- (4) The strength of any property or privacy interests asserted;
- (5) the possibility of prejudice to those opposing disclosure; and
- (6) the purposes for which the documents were introduced during the judicial proceedings.

754 F.Supp.2d 24, 27 (D.D.C. 2010) (citing *Hubbard*, 650 F.2d at 317-22).

⁵ *Cf. Upshaw*, 754 F.Supp.2d at 27 (involving motion to seal “the public docket and all its contents”).

Respondent's motion should be granted because the harms that would flow from revealing his confidential information to the public greatly outweighs any benefit of public disclosure. The Enforcement Division agrees that sensitive personal information irrelevant to this case, such as social security numbers, financial account numbers, and Respondent's PIN numbers, should be kept under seal. *See* Opp. Br. at 3, 6, n.1, 7, 8, n.2, 10. Nevertheless, it objects to keeping under seal other confidential information pertaining to: (1) Respondent's financial accounts; (2) Respondent's business activities and relationships; and (3) the telephone numbers and telephone records of Respondent and other third parties whose identities have not been disclosed in the OIP.⁶

Financial Account Information: Respondent has a legitimate privacy interest in his personal financial information. Mot. at 2. The Enforcement Division does not dispute that Respondent has a privacy interest in his financial account information, but merely contends that the information contained therein "goes to the heart of this insider trading case." Opp. at 7. In the merits motion documents, Respondent only seeks to redact limited personal financial information related to the value of confidential business transactions with third parties, unrelated to the allegations in the OIP. Respondent has not sought broad redactions regarding his general financial account information. As explained below, the Enforcement Division's objections to sealing this information is without merit.

Business Relationships and Business Activities:

The Enforcement Division attempts to downplay the reputational harm to the third-party business entities that have transacted business with Respondent, arguing that any embarrassment they may experience is insufficient to compel a court to seal records. Opp. at 8. Yet the cases

⁶ Apparently, the Enforcement Division does not object to disclosure of the personally identifiable information of third parties whose identities are not disclosed in the OIP.

upon which the Enforcement Division relies to support this argument are inapposite, as they address the embarrassment of the litigants themselves, not third-parties who have nothing to do with the underlying proceeding. *See Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) ([t]he mere fact that the production of records may lead to a *litigant's* embarrassment, incrimination, or exposure to further litigation, will not, without more, compel the court to seal its records") (emphasis added); *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 533 (1st Cir. 1993) (addressing the potential commercial embarrassment to the defendant from the disclosure of certain evidence). Moreover, the identity of the entities with whom Respondent transacts business and the nature of those business relationships constitute potentially competitive confidential business information that the Enforcement Division's own cases recognize warrant protection. *See Hubbard*, 650 F.2d at 314-15 (noting that the "common law tradition of public access to records of a judicial proceeding . . . is not without its time-honored exceptions[, such as ensuring that court records do not serve] as sources of business information that might harm a litigant's competitive standing").

The Enforcement Division does not otherwise dispute that Respondent's goodwill in cultivating the aforementioned relationships over several years of working in the commercial real estate industry will be impaired. *See Mot.* at 3. Nor does it dispute that Respondent's privacy interest in his confidential business agreements will be curtailed. *See id.*; *see also Vista India, Inc. v. Raaga, LLC*, No. 07-1262, 2008 WL 834399, at *3-4 (D.N.J. Mar. 27, 2008) (recognizing the confidentiality of a business agreement as a legitimate private interest sufficient to justify a motion to seal).

Instead, the Enforcement Division asserts that public disclosure of Respondent's business dealings is warranted because they "are an important part of this case." *See Opp.* At 9. However, Mr. Hill only seeks to protect from disclosure to the public, the amount of certain

confidential business transactions with a third party to protect his business relationship with and the privacy interests of the third party. He is not seeking to keep confidential all of his financial information, as the Enforcement Division suggests.

Telephone Numbers and Telephone Records:

The telephone numbers and telephone records of Respondents and other third parties are confidential in their entirety. They contain, among other things, the following information: (1) the telephone numbers involved in a given call; (2) the frequency of calls between certain telephone numbers; (3) call duration; and (4) the date a call is made. It is undisputed that Respondent and the third parties possess a privacy interest over this information. *See* Mot. at 2. Indeed, one could readily infer from this information certain details concerning the private life of a third party that is not the subject of this proceeding.

The telephone numbers of Respondent and the third parties also constitute confidential information that is subject to a reasonable expectation of privacy. The Enforcement Division nevertheless asserts that the White Pages and internet already contain such information. However, this analogy is unavailing for two reasons. First, it is Respondent's understanding that an individual has the opportunity to opt out of inclusion in the White Pages, by electing to have their landline telephone number unlisted. Second, many of the telephone numbers at issue here are cell phone numbers. It is also Respondent's understanding that cell phone numbers are not included in the White Pages.

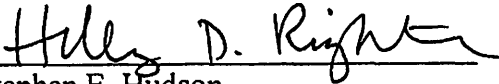
The Enforcement Division has failed to articulate any particular benefit to be gained from public disclosure of Respondent's confidential information which, as the preceding discussion makes clear, is immaterial to the allegations underlying the OIP. In any event, given the narrow scope of information Respondent seeks to protect, any curtailment to the public's ability to access this administrative proceeding is minimal. This conclusion is underscored by the merits

motion documents publicly filed yesterday, where the redactions of confidential information take nothing away from the factual and legal argument challenging the allegations contained in the OIP.

Accordingly, for all of these reasons, Respondent's Motion for Protective Order should be granted. Specifically, Respondent seeks to protect from public disclosure the specific information redacted in the merits motions documents, including Exhibits B and C in their entirety.

Dated: April 16, 2015.

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