

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12436

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 12, 2006

In the Matter of :
: ORDER
BRENDAN E. MURRAY :
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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings on September 26, 2006. The Commission also issued a settlement order that same day in a related matter, Administrative Proceeding No. 3-12434, James A. DeMatteo (DeMatteo).

The Division of Enforcement (Division) notified Respondent Brendan E. Murray (Murray) that its investigative file was available for inspection and copying on September 27, 2006. See Rules 230(a) and (d) of the Commission's Rules of Practice. The Division filed two privilege logs on December 1, 2006, identifying the documents it seeks to withhold from inspection and copying.¹ See Rule 230(c) of the Commission's Rules of Practice.

The Division seeks leave to withhold from producing to Murray documents concerning its settlement negotiations with DeMatteo. DeMatteo argued in Administrative Proceeding No. 3-12434 that he lacked the ability to pay financial sanctions, and the documents the Division seeks to withhold from Murray involve DeMatteo's personal financial circumstances. The Division represents that DeMatteo submitted two sworn financial statements, additional declarations, and supporting documents that have no bearing on the present proceeding against Murray. The Division acknowledges that two of the documents submitted by DeMatteo during his settlement negotiations contain information that may have some bearing on this proceeding against Murray. It proposes to produce redacted versions of those two documents to Murray.

Murray has not opposed the Division's request and the time for submitting an opposition has expired.

Pursuant to Rule 230(b)(1)(iv) of the Commission's Rules of Practice, I find that the Division may produce redacted versions of items 2b and 13 on its DeMatteo privilege log to Murray. I further find that the Division may withhold from production all other documents on its DeMatteo privilege log as not relevant to the subject matter of this proceeding.


¹ The Division submitted a thirteen-page privilege log identifying settlement documents related to DeMatteo and a separate nine-page privilege log identifying documents relating to other aspects of its investigation.

As a separate matter, Murray filed a "Demand for Discovery," to which the Division has responded.² The Division states that all documents it obtained during its investigation, excluding the documents identified on its privilege logs, have been made available to Murray. The Division represents that certain items requested by Murray are not in its possession. It further objects to other aspects of Murray's request as vague and overly broad, and as seeking information that lacks relevance or is subject to a claim of privilege. The Division objects to Murray's "Demand for Discovery" to the extent that it seeks documents that the Division is not required to produce under the Commission's Rules of Practice.

Murray's "Demand for Discovery" has already been satisfied in large part. I therefore deny the "Demand for Discovery," without prejudice to renewal. If Murray contends that the Division has improperly withheld specific items on its privilege logs, he may renew his request for production. Murray must file and serve any such motion to compel production by December 21, 2006. Any such motion must be targeted to specific entries on the Division's privilege logs, must demonstrate relevance, and must address the grounds the Division invoked for withholding.

IT IS ORDERED THAT the Division may produce items 2b and 13 on its DeMatteo privilege log to Murray in redacted form, and that the Division may withhold the other entries on its DeMatteo privilege log from production to Murray pursuant to Rule 230(b)(1)(iv) of the Commission's Rules of Practice; and

IT IS FURTHER ORDERED THAT Murray's "Demand for Discovery" is denied without prejudice to renewal on or before December 21, 2006, as specified in this Order.



James T. Kelly
Administrative Law Judge

² Murray filed his "Demand for Discovery" without first availing himself of the opportunity to inspect and copy in response to the Division's September 27, 2006, invitation.