

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11317

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 31, 2004

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

APR 01 2004

FIRST CLASS

In the Matter of :
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PUTNAM INVESTMENT : ORDER
MANAGEMENT, LLC :
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On March 23, 2004, the Division of Enforcement (Division) filed a Motion to Compel Putnam Investment Management, LLC (Putnam), to produce documents that the Division requested by subpoena and that Putnam had not produced (Motion to Compel). The Motion to Compel represented that many of the missing documents are essential to the analysis and anticipated testimony of the Division's expert witness. It also asserted that Putnam's failure to produce the documents on a timely basis may significantly and unfairly prejudice the Division's case. The Motion to Compel requested issuance of an order requiring Putnam to comply "immediately" with the subpoenas dated February 24, 2004, and March 11, 2004.

On March 29, 2004, Putnam filed an Opposition to the Division's Motion to Compel (Opposition). Putnam states that the Division had already received most of the documents identified in the Motion to Compel before that motion was even filed. Putnam also emphasizes that it has made, and is continuing to make, diligent efforts to eliminate any gaps in its production of responsive documents. Putnam represents that it has produced "nearly all" of the responsive documents in some categories and "a majority" of the responsive documents in other categories. It also offers an explanation as to why certain categories of documents have taken longer to produce than other categories of documents. Putnam argues that the Motion to Compel should be denied in its entirety.

On March 30, 2004, the Division submitted a Reply in Further Support of the Motion to Compel (Reply). The Division does not dispute that Putnam has produced an enormous number of documents during the investigation that led to this proceeding and during the proceeding itself. The Division also acknowledges that Putnam has produced a significant number of documents in the week since it filed the Motion to Compel.

However, the Division insists that partial compliance with the subpoenas is not sufficient. It requests an order requiring Putnam to make immediate production of all responsive documents. If there are no more responsive documents, the Division wants Putnam to so state.

Discussion

First, I am satisfied that Putnam has been making a good faith effort to provide the Division with a great deal of responsive material in a short period of time. There is no evidence of any “foot dragging.”


Second, Putnam cannot defeat the Motion to Compel by arguing that it has produced “a majority” or “most” or “nearly all” of the responsive documents in particular categories of documents. Putnam is obliged to produce all responsive documents. The Division represents, and Putnam does not deny, that Putnam has not yet produced many responsive documents in certain categories. As illustrations, the Division identifies the limited production it has received concerning communications with the Trustees, information on gross redemptions, and assets withdrawn from institutional accounts (Opposition at 4-5; Reply at 2-3).

Third, with respect to Item #5 of the Subpoena dated February 24, 2004, the Division argues that Putnam should be compelled to produce Lawrence J. Lasser’s employment agreement, on the theory that Putnam expressly referred to that document in its arbitration counterclaim against Lasser (Motion to Compel at 2; Reply at 3). Putnam responds that it has already produced each of the documents “filed and served” in the arbitration proceeding, and it questions the relevance of Lasser’s employment agreement to the issues in this proceeding. I decline to order Putnam to turn over the employment agreement to the Division at this time. If the Division wishes to renew its request for this document, it must make a detailed showing of relevance and it and Putnam must jointly craft a protective order that prohibits public release of the document until the document has been accepted into evidence at the upcoming hearing. See Rule 322 of the Commission’s Rules of Practice.

Fourth, the parties have relieved some of the time pressure by agreeing to postpone for one week the written direct testimony of their respective experts. See Order of March 30, 2004. However, I want to avoid the possibility of a situation in which the Division’s proposed expert witness offers testimony based upon certain assumptions (such as the assumption that Putnam lacks documents on a particular subject), only to find that Putnam has miraculously unearthed the missing documents (and thus shattered the assumptions upon which the Division’s expert relied) at the last moment.

IT IS ORDERED THAT the Motion to Compel is denied to the extent that it would require Putnam to produce the employment agreement of Lawrence J. Lasser. In all other respects, the Motion to Compel is granted. By the close of business on April 2, 2004, Putnam must complete production of all documents responsive to the subpoenas dated February 24, 2004, and March 11, 2004. If responsive documents are not in the

hands of the Division by that date and time, the Division will be entitled to prepare its case on the assumption that Putnam has no more responsive documents. Likewise, absent consent from the Division, Putnam will be barred from using any responsive documents produced after April 2, 2004, to challenge the Division's evidence at the hearing.



James T. Kelly
Administrative Law Judge