

DIVISION OF SECURITIES
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DEPARTMENT OF COMMERCE
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF **MANLEY E.
LOGAN**, RESPONDENT

**ORDER ON MOTION FOR
CONTINUANCE**

CASE NO. SD-12-048

BY THE PRESIDING OFFICER:

The notice of agency action and order to show cause in this matter were sent by the Division of Securities (Division) to Manley E. Logan (Respondent) on August 3, 2012. The matter is currently scheduled for hearing before the Utah Securities Commission (Commission) on January 24, 2013.

On January 16, 2013, Respondent filed a motion for continuance. The Division has stated that it does not object. Respondent represents that the continuance is needed in order to allow Respondent time to review the Division's final disclosures as required by Utah Administrative Code § R151-4-504(2)(b)(i). Pursuant to a scheduling order issued October 4, 2012, both parties

were required to provide final disclosures by December 17, 2012. It appears that neither has done so.¹

Pursuant to Utah Administrative Code § R151-4-108(1), this administrative matter is to be concluded within 180 days of date on which the notice was sent to the Respondent. In this case, the deadline for concluding the matter within 180 days would be approximately February 3, 2013. Therefore, the January 24, 2013 Commission meeting is the final opportunity to take the matter to hearing within this timeframe for resolution.

Under the controlling administrative rules, it is permissible for the presiding officer to continue the matter beyond 180 days if it can still be resolved within 240 days of the date on which the notice was sent to the Respondent—in this case, by approximately April 3, 2013. Therefore, the presiding officer finds that it would be permissible to continue the matter to the next regularly scheduled Commission meeting, which is March 28, 2013, upon a showing of good cause. Utah Administrative Code § R151-4-109(1)(b).

The presiding officer finds it difficult to agree that a party's failure to comply with a deadline set forth in a scheduling order constitutes good cause for continuing a matter. Ordinarily, the remedy for failure to comply with a disclosure requirement would be the exclusion at hearing of any evidence or witness that was required to be disclosed. However, where this case can be continued and still go to hearing within the 240-day period for resolution contemplated by Section R151-4-109(1)(b), the presiding officer is willing to give the parties some leeway if they will stipulate to a new date for providing final disclosures and mutually waive the right to object at hearing to evidence on the ground that it was not disclosed by December 17, 2012. Should such a stipulation be filed with the presiding officer by January 22,

¹ Respondent's initial disclosures appear to be fairly comprehensive. Similarly, it appears that the Division provided Respondent with a CD-Rom of evidence in conjunction with its initial disclosures. It is possible that neither party has anything further to disclose pursuant to Section R151-4-504(2)(b)(i).

2013, the hearing shall be continued to March 28, 2013. The parties are hereby put on notice that the matter will not be further continued unless extraordinary circumstances exist pursuant to Utah Administrative Code § R151-4-109(2)(b). Absent such stipulation, the motion for continuance shall be denied, and the hearing shall go forward as scheduled on January 24, 2013, with the parties being precluded from offering into evidence any documents or witnesses not timely and properly disclosed.

This order shall be effective on the signature date below.

DATED this 17th day of January, 2013.

UTAH DEPARTMENT OF COMMERCE


Jennie T. Jonsson, Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2013, the undersigned mailed a true and correct copy of the foregoing document both by electronic mail and by first class mail, postage prepaid, to:

Manley Logan
c/o Wallace T. Boyack
Boyack Ashton LC.
2290 East 4500 South, Ste. 130
Salt Lake City, UT 84117
wboyack@hotmail.com

and caused a copy to be hand delivered to:

D. Scott Davis, Assistant Attorney General
Division of Securities
Heber M. Wells Building, 5th Floor

Ann Skaggs, Security Analyst
Division of Securities
Heber M. Wells Building, 2nd Floor

A handwritten signature in blue ink, appearing to read "J. J. J. J. J.", with a long horizontal flourish extending to the right.