



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

June 28, 2005

BY HAND

Hon. Leonard B. Sand  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: United States v. John J. Rigas, et al.  
SI 02 Cr. 1236 (LBS)

Dear Judge Sand:

The Government writes in response to the motions submitted by defendants John J. Rigas and Timothy J. Rigas for bail pending appeal. The motions fail to identify any substantial claim on appeal, and accordingly, the motions for

The Court is fully familiar with the facts surrounding the convictions and the procedural history of this case, and the Government will not restate those facts here.

As the Court is aware, bail pending appeal may be granted only if the Court finds: (1) by clear and convincing evidence that the defendant in question is neither a risk of flight nor a danger to the community; and (2) that the contemplated appeal is not for purposes of delay and raises a substantial question of law or fact likely to result in reversal, a new trial, or a new sentence less than the expected duration of the appeal process. See 18 U.S.C. § 3143(b).

In their motions for bail pending appeal, the defendants raise a number of supposedly substantial issues which they claim support granting bail pending appeal. None of the issues raised by either defendant comes close to representing a meritorious appeal point, and accordingly, the motions for bail pending appeal should be denied.

Both John Rigas and Timothy Rigas assert that the evidence supporting their convictions on the bank fraud counts

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was insufficient. See JR Br. at 5; TR Br. at 26-33. Their arguments on this point simply rehash the positions taken in their motions for a new trial. See *id.* This Court, in a written opinion, denied all of those claims, and for reasons expressed by the Court in that opinion, those claims lack merit here. See United States v. Rigas, 2004 WL 2601084 at \* 2-5 (Nov. 15, 2004).

Similarly, John Rigas asserts that there was insufficient evidence supporting his convictions on the securities fraud counts. The Court denied precisely this argument in denying John Rigas' motion for a new trial, and this motion should be denied for the same basis. See *id.* at \*2.

John and Timothy Rigas also restate their claims relating to the testimony of Robert DiBella, again arguing that his testimony was false and demonstrates Government misconduct. For the reasons expressed by the Court in denying the defendants' new trial motion on this ground, these claims also lack merit. See Hearing Transcript (3/17/05) at 38-46 (Attached as Exhibit A, hereto).

John Rigas' final claims - that the Court improperly admitted certain background evidence, that the Government proved multiple conspiracies, and that the Court excluded a defense expert - were all previously rejected by this Court in denying his new trial motion and have no more merit as a basis for bail pending appeal. See United States v. Rigas, 2004 WL 2601084 at \*4.

The only new argument advanced by the defendants' is Timothy Rigas' claim that the Government was somehow required at trial to call an accounting expert. Not surprisingly, Timothy Rigas' brief fails to cite a single criminal case, in history, where such a requirement has been recognized. This argument is ludicrous, contrary to governing case law, and by no means supports a grant of bail pending appeal. See TR Br. at 18-20 (citing exclusively civil, and predominantly malpractice cases).

No case has ever held that the Government, in a criminal securities fraud prosecution, is required to call an accounting expert to prove that the disclosures in question was, in the expert's opinion, violative of generally accepting accounting principles ("GAAP"). Indeed, it is the established law of this Circuit that public statements, including financial statements filed with the Securities and Exchange Commission, may

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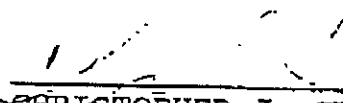
properly be the basis of a securities fraud conviction even if they comply with GAAP. See, e.g., United States v. Simon, 425 F.2d 796 (2d Cir. 1969) (Friendly, J.). If the Government may convict a defendant of accounting fraud even when the financial statements comply with GAAP, it cannot be the Government's burden to prove the financial statements do not comply with GAAP, through expert testimony or otherwise. This argument is frivolous.

Each of the defendants' arguments for bail pending appeal lacks merit, and many lack any basis in law or fact. Accordingly, the motions for bail pending appeal should be denied.

Respectfully Submitted,

DAVID N. KELLEY  
United States Attorney

By:

  
CHRISTOPHER J. CLARK  
Assistant United States Attorney

Tel: (212) 637-6205

cc: Counsel on Attached  
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