

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 753/ February 27, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15124

In the Matter of	:	
	:	ORDER ON MOTION FOR
DAVID F. BANDIMERE and	:	CERTIFICATION FOR
JOHN O. YOUNG	:	INTERLOCUTORY REVIEW
	:	

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings on December 6, 2012, pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Section 9(b) of the Investment Company Act of 1940, and Sections 203(f) and (k) of the Investment Advisers Act of 1940 (Advisers Act).

On January 14, 2013, I received a letter from counsel for Respondent David. F. Bandimere (Bandimere) requesting the issuance of a subpoena duces tecum directed to the Commission pursuant to Rule 232(a) of the Commission's Rules of Practice. The Division of Enforcement (Division) filed a Motion to Quash Subpoena (Motion to Quash) on January 22, 2013, and Bandimere filed a Response in Opposition to Motion to Quash on January 29, 2013. I issued an Order on February 5, 2013 (February Order), granting in part, and denying as moot in part, the Motion to Quash. The February Order also required the Division to file a withheld document list and a declaration describing its compliance with Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and 17 C.F.R. § 201.231.

On February 12, 2013, Bandimere filed a Motion for Certification Pursuant to [Commission's] Rule of Practice 400 for Interlocutory Review of February Order (Motion), requesting that I certify the February Order to the Commission for interlocutory review. The Division filed an Opposition to Bandimere's Motion for Certification Pursuant to Rule 400 [of the Commission's Rules of Practice] (Opposition) on February 15, 2013, opposing Bandimere's Motion in all respects. No reply brief was timely filed.

Rule 400(c) of the Commission's Rules of Practice provides, in relevant part, that the hearing officer shall not certify a ruling to the Commission for interlocutory review unless "the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion" and "an immediate review of the order may materially advance the completion of the proceeding." 17 C.F.R. § 201.400(c)(2). Petitions for interlocutory review are disfavored and the Commission will grant such a petition "only in extraordinary circumstances." 17 C.F.R. § 201.400(a). The Commission "has sought 'to make clear that petitions for interlocutory review . . .

rarely will be granted.” Eric David Wanger, Securities Act Release No. 9304 (Mar. 29, 2012), 103 SEC Docket 52431, 52433 & n.8 (citing Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission, Exchange Act Release No. 49412 (Mar. 19, 2004), 82 SEC Docket 1744, 1749).

Bandimere argues that certification for interlocutory review is appropriate and purports to set forth six controlling questions of law about which there are substantial differences of opinion: 1) the determination that Rule 230(b) is a sufficient basis to quash a subpoena seeking internal documents; 2) the rejection as irrelevant any authority decided under the Federal Rules of Civil Procedure; 3) the concept of relevance in administrative proceedings being extremely broad; 4) the limited nature of the law enforcement privilege and the need for an adequate foundation to support it; 5) that factual portions of any documents referring to the Commission’s decision to bring an administrative proceeding would not contain the reasons why the administrative forum was chosen; and 6) my interpretation of SEC v. Kovzan, No. 11-2017-JWL, 2012 WL 4819011 (D. Kan. Oct. 12, 2012), and specifically whether training materials used by the Commission to identify Ponzi schemes are relevant to Bandimere’s alleged recklessness and negligence.¹ Motion, pp. 3-7.

The Division argues that the issues raised by Bandimere’s Motion do not involve controlling questions of law, pointing out that the relevant law is well settled, and asserts that “[m]ere disagreement with a law judge’s determination is not an issue appropriate for interlocutory review.” Opposition, pp. 1-2 (citing Montford and Co., Inc., Advisers Act Release No. 3311 (Nov. 9, 2011), 102 SEC Docket 48181, 48184).

With respect to the first five allegedly controlling questions of law presented by Bandimere, as set forth above, there is no basis for finding a substantial ground for difference of opinion with regard to the law. The law is settled and mere disagreement with a ruling on a particular issue is an insufficient basis for interlocutory review. See Montford and Co., Inc., 102 SEC Docket at 48184. As to the sixth allegedly controlling question of law, my interpretation of Kovzan and the relevance of Commission training materials to Bandimere’s state of mind, there may be a substantial ground for difference of opinion, however, I do not believe that an immediate review of the February Order would materially advance the completion of the proceeding and there are no “extraordinary circumstances” that would justify interlocutory review by the Commission. See 17 C.F.R. § 201.400(a).

Order

Accordingly, it is ORDERED that Bandimere’s Motion is DENIED.

Cameron Elliot
Administrative Law Judge

¹ In stating the grounds on which Bandimere objects to the February Order, I am not adopting Bandimere’s characterization of my rulings as true. The February Order speaks for itself.