

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2490 / April 3, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO and
JOHN BUONO, CPA

ORDER DENYING MOTION TO
COMPEL AND GRANTING IN
PART MOTION IN LIMINE

The Securities and Exchange Commission (Commission) commenced this proceeding on December 3, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) pursuant to Securities Exchange Act of 1934 (Exchange Act) Sections 4C and 21C and Commission Rule of Practice 102(e).¹ The hearing in this proceeding is set to commence on April 20, 2015, in Milwaukee, Wisconsin.

On March 24, 2015, Respondent Laurie Bebo (Bebo) filed a Motion to Compel the Production of the Division's Interview Notes (Motion to Compel).² In sum, Bebo seeks production of a few dozen sets of notes taken by or on behalf of the Division of Enforcement (Division) during pre-OIP, investigatory interviews of various potential witnesses. Motion to Compel at 1-2.

Each set of notes is plainly an "internal memorandum, note or writing prepared by a Commission employee." 17 C.F.R. § 201.230(b)(1)(ii). Such documents are, with certain exceptions inapplicable here, not subject to production. *Id.* To the extent Bebo seeks material exculpatory evidence contained within the notes, such evidence need not be disclosed by production of the notes themselves. *See John Thomas Capital Management Group LLC*, Securities Act of 1933 (Securities Act) Release No. 9429, 2013 WL 6384275, at *4 (Dec. 6, 2013) ("the Division can satisfy its obligations by providing the respondent with the substance of the materially exculpatory statements; it need not turn over the documents themselves");

¹ The proceeding has ended as to Respondent John Buono, CPA. *Laurie Bebo*, Exchange Act Release No. 74177, 2015 SEC LEXIS 347 (Jan. 29, 2015).

² The Division timely filed a Response to the Motion to Compel (Response), however, Bebo's reply may be overdue. *See* 17 C.F.R. § 201.154(b) (replies are due three days after service of an opposition). Out of an abundance of caution, and to avoid prejudice to Bebo, I have not considered the Response in deciding the Motion to Compel.

optionsXpress, Inc., Securities Act Release No. 9466, 2013 WL 5635987, at *6 (Oct. 16, 2013) (“a respondent is not entitled to conduct a fishing expedition in an effort to discover something that might assist it in its defense” (internal quotation marks, omissions, and citation omitted)); *see also* Motion to Compel at 13. Although Bebo correctly observes that the Federal Rules of Civil Procedure provide a mechanism for discovery of attorney work product, those Rules are inapplicable here. *See* Motion to Compel at 5 (discussing Fed. R. Civ. P. 26(b)); *John Thomas*, 2013 WL 6384275, at *6 (the Federal Rules of Civil Procedure “do not apply in administrative proceedings”).

On March 31, 2015, the Division submitted a Motion *in Limine* for a Protective Order Barring Respondent from Calling Division Attorneys as Witnesses (Motion in Limine), to which were attached three exhibits (Limine Exs. 1-3). The only identified potential witness to which the Motion in Limine applies is Scott Tandy (Tandy), a Division investigative attorney who is also one of the Division’s trial counsel in the present proceeding. Motion in Limine at 1-3; Limine Ex. 3. There is no need to hear from Bebo on this issue – Tandy will not be called as a witness for her.³

It is ORDERED that Bebo’s Motion to Compel the Production of the Division’s Interview Notes is DENIED.

It is FURTHER ORDERED that the Division’s Motion *in Limine* for a Protective Order Barring Respondent from Calling Division Attorneys as Witnesses is GRANTED IN PART, and Bebo is prohibited from calling as a witness Scott Tandy, or any other of the Division’s trial counsel in this proceeding.

Cameron Elliot
Administrative Law Judge

³ Indeed, I noted at the outset of the case, in anticipation that this issue might arise, that “I normally do not permit” a respondent to call the Division’s trial counsel as a witness. Limine Ex. 2 at 34. I will now put it more bluntly: demanding the deposition or examination of opposing trial counsel is almost always pure gamesmanship. I am deeply disappointed that Bebo has chosen this course instead of simply following my guidance. I intend to give both sides a fair hearing, and I expect all parties and all counsel to behave like professionals; if not, it will be a very long hearing indeed.