

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2751/June 1, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16383

In the Matter of

CHARLES L. HILL, JR.

ORDER DENYING CERTIFICATION

On May 13, 2015, Respondent Charles L. Hill, Jr., submitted a request that I issue a subpoena to the Securities and Exchange Commission. In his request, Mr. Hill sought ten sets of “documents and communications.” The eighth item covered by Mr. Hill’s request was:

All documents and communications that support, or reflect or are related to the allegations made by Lillian McEwen, a former SEC administrative law judge, as reported by the Wall Street Journal on May 6, 2015, that chief administrative law judge Brenda Murray “questioned [her] loyalty to the SEC” as a result of finding too often in favor of defendants and that SEC administrative law judges are expected to work on the assumption that “the burden was on the people who were accused to show that they didn’t do what the agency said they did.”

The Office of the General Counsel filed an opposition on May 20, 2015. As it related to item eight, the Office of the General Counsel objected on relevance grounds, asserting that:

[i]t is difficult to perceive how documents underlying statements to the press by a former ALJ who was at the agency long before the SEC’s investigation of Respondent’s conduct and to whom Respondent alleges no connection could have any relevance to the actions at issue in this matter, which allegedly occurred in 2011, or to the investigation or initiation of this action, which was filed in February 2015.

Opp’n at 8.

Because I disagreed with the Office of the General Counsel, I granted Mr. Hill's request on May 21, 2015. See *Charles L. Hill, Jr.*, Admin. Proc. Rulings Release No. 2706, 2015 SEC LEXIS 2016. After I granted Mr. Hill's request to modify the subpoena, the Office of the General Counsel filed a request that I certify my ruling for interlocutory review. For the reasons that follow, I DENY the request for certification.

Requests for certification for interlocutory review are governed by Rule of Practice 400. See 17 C.F.R. § 201.400. That rule provides that “[p]etitions . . . for interlocutory review are disfavored” and the Commission will grant a petition “prior to its consideration of an initial decision only in extraordinary circumstances.” 17 C.F.R. § 201.400(a). It also prohibits an administrative law judge from certifying a ruling for interlocutory review unless:

- (1) his or her ruling would compel testimony of Commission members, officers or employees or the production of documentary evidence in their custody; *or*
- (2) upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that:
 - (i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion;
and
 - (ii) an immediate review of the order may materially advance the completion of the proceeding.

17 C.F.R. § 201.400(c) (emphasis added).

In seeking certification, the Office of the General Counsel asserts that my ruling falls within the terms of Rule 400(c)(1) because it requires “the disclosure of ‘testimony of Commission members, officers or employees or the production of documentary evidence in their custody.’” Request at 2. The Office of the General Counsel also argues that Mr. Hill's request is “extraordinary.” *Id.* Finally, it relies on the presumption that administrative law judges are unbiased. *Id.* at 2-3. The Office of the General Counsel does not assert that Mr. Hill seeks irrelevant information.

I agree that Mr. Hill's request falls within the terms of Rule 400(c)(1). Rule 400(c)(2)(i) is also implicated. On one hand, Mr. Hill has a due process right to an unbiased adjudicator and the media article to which he refers raises concerns about that right. On the other hand, the Office of the General Counsel is correct that administrative law judges are presumed to be unbiased. Additionally, the conversation that is alleged in the media article must have occurred at least ten years ago—if it ever occurred at all. Mr. Hill has done little to tie that alleged conversation to his proceeding.

The initial opposition to Mr. Hill's request, however, was based only on an argument that the request sought irrelevant information. The opposition made no mention of the arguments the Office of the General Counsel now raises. The Commission, however, has made clear that a litigant “may not rely upon . . . arguments” not previously raised “as a basis for urging interlocutory review.” *John Thomas Capital Mgmt. Grp. LLC*, Securities Act of 1933 Release

No. 9519, 2014 SEC LEXIS 308, at *10 (Jan. 28, 2014). In light of the decision in *John Thomas Capital Management Group LLC* and the fact that the current basis for seeking interlocutory review was not previously raised, the request for certification is denied.

The Commission's obligation to comply with the subpoena related to item eight is stayed until 5:00 p.m. EDT on June 4, 2015, to allow the Office of the General Counsel time to determine whether to seek interlocutory review absent certification. If the Office of the General Counsel files a petition for interlocutory review before 5:00 on June 4, 2015, the stay will continue pending the Commission's determination.

IT IS SO ORDERED.

James E. Grimes
Administrative Law Judge