

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4501/January 5, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17674

In the Matter of

ALEXANDER KON

ORDER REGARDING
RESPONDENT'S MOTION FOR
JUDGMENT ON THE PLEADINGS
AND MOTION FOR
WITHDRAWAL

On January 3, 2017, Respondent submitted a motion for a ruling on the pleadings (motion to dismiss), pursuant to 17 C.F.R. § 201.250(a). On January 4, 2017, Respondent submitted a motion for withdrawal, in which he argues that I am disqualified from presiding over this proceeding.

Respondent argues in his motion to dismiss that Commission administrative law judges are appointed in violation of the Appointments Clause of Article II of the Constitution, and that this proceeding must therefore be dismissed. *See* Motion to Dismiss at 2-3. On the same basis, Respondent argues in his motion for withdrawal that I must disqualify myself from this proceeding. *See* Motion for Withdrawal. The two United States Circuit Courts of Appeal that would likely have jurisdiction over any petition for review from a final Commission action arising from this proceeding are currently split on the applicability of the Appointments Clause to Commission ALJs. *Compare Bandimere v. SEC*, __ F.3d __, No. 15-9586, 2016 WL 7439007, at *15 (10th Cir. Dec. 27, 2016), with *Raymond J. Lucia Cos. v. SEC*, 832 F.3d 277, 283-89 (D.C. Cir. 2016). The Commission, however, has held that its ALJs are not subject to the Appointments Clause. *See Raymond J. Lucia Cos.*, Exchange Act Release No. 75837, 2015 WL 5172953, at *21-23 (Sept. 3, 2015).

Respondent's motion to dismiss is therefore DENIED IN PART as to his Appointments Clause argument. In responding to the motion to dismiss, the Division of Enforcement need only address the remaining arguments. Respondent's motion for withdrawal is DENIED. This Order does not resolve Respondent's pending motion to amend his answer, to which the Division should file a response.

SO ORDERED.

Cameron Elliot
Administrative Law Judge