

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4542 / January 23, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. (“JAY”) LATHEN, JR.,
EDEN ARC CAPITAL MANAGEMENT, LLC, and
EDEN ARC CAPITAL ADVISORS, LLC

ORDER REGARDING SUBPOENA
DIRECTED TO JOSEPH FERRARO

On January 17, 2017, a documentary subpoena was issued at Respondents’ request to Joseph Ferraro, who is identified as a potential witness on the Division of Enforcement’s witness list. The subpoena specified that production was due today, January 23. Under consideration is Respondents’ letter, submitted today, requesting an order compelling Ferraro to immediately comply with the subpoena. Attached to Respondents’ letter is a copy of e-mail correspondence between Respondents’ counsel and Ferraro’s counsel. In that correspondence, Ferraro’s counsel expressed his views that the subpoena was overbroad, and, on January 18, Respondents’ counsel listed five categories of documents or information sought, in what Respondents’ counsel considered an attempt to narrow the subpoena’s scope. In an e-mail response to Respondents’ letter, Ferraro’s counsel represented to my office that Ferraro has produced non-privileged documents in his possession responsive to the requests of Respondents’ counsel, except for documents or information concerning Ferraro’s compensation, asserting that Ferraro’s compensation is not relevant to this proceeding.

In view of the imminent start of the hearing next week, I order as follows:

1) By Noon Eastern Time on January 25, Ferraro’s counsel shall file a log of the withheld documents. The log should be of sufficient detail to allow me to ascertain whether the asserted basis for withholding any document is appropriate and whether any privilege(s) apply. If necessary, Ferraro’s counsel may be required to appear at the hearing next week and submit withheld documents for *in camera* review.

2) By the same deadline, Respondents shall file a letter explaining the relevance of the request for a chart reflecting Ferraro’s “salary, bonus, incentive compensation, stock option awards or other form of compensation from 2012 [to] 2016.”

Jason S. Patil
Administrative Law Judge