

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4551 / January 26, 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 FOLLOWING FINAL
PREHEARING CONFERENCE,
RESOLVING CERTAIN MOTIONS,
AND DIRECTING SUBPOENA
COMPLIANCE AS TO FERRARO

On January 25, 2017, I held a final prehearing conference in this matter, attended by counsel for all parties. Below is a summary of the matters addressed.

Motions in Limine

I denied the Division’s motions in limine to preclude Respondents’ advice-of-counsel defense and to preclude Respondents from offering testimony or evidence on advice received from attorney Kevin Galbraith. As explained, a separate order will issue regarding Respondents’ recent in camera submissions of documents containing communications with Galbraith. Further, I denied the Division’s motion in limine to preclude certain evidence and testimony, except that I deferred ruling on whether to preclude witnesses not identified on Respondents’ amended witness list. I will entertain objections to lay witness testimony if such testimony calls for specialized knowledge that the witness does not have.

Subpoena Compliance as to Joseph Ferraro

Regarding Respondents’ pending request to compel Division witness Joseph Ferraro to comply with a documentary subpoena, I ruled that evidence or information relating to Ferraro’s compensation may be relevant to the credibility of his expected testimony and noted that I would set a date for compliance. I ORDER Ferraro to produce the requested information to Respondents by close of business on January 30, 2017. Ferraro may move for a protective order regarding any evidence or testimony regarding his compensation. *See* 17 C.F.R. § 201.322.

Division Disclosures as to Witnesses

I directed the Division, by close of business today, to submit to Respondents the names of its substituted custodian document witnesses and to identify the witnesses it intends to call the

first two days of hearing. The Division acknowledged it will provide Respondents with advance notice of its order of witnesses as the hearing moves forward.

Sequestration

I granted the Division's request to sequester fact witnesses. Expert witnesses and Respondent Donald F. Lathen, Jr., are permitted to listen to the testimony of other witnesses.

Procedural and Logistical Matters

Lastly, I resolved procedural and logistical questions for the reasons stated on the record, and I directed the parties to submit any amended exhibit lists to me at the start of the hearing.

Jason S. Patil
Administrative Law Judge