

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

Administrative Proceedings Rulings
Release No. 5440 / January 9, 2018

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 on Conference Results
and Electronic Filing**

Conference Results

On January 5, 2018, the parties submitted a joint letter regarding the results of their conference. The parties primarily disagree about whether the eligibility of Eden Arc Capital Management, LLC, and Eden Arc Capital Advisors, LLC (collectively, Eden Arc Respondents), for requesting relief under the Equal Access to Justice Act (EAJA) should be decided before reaching the merits of whether the Division of Enforcement’s case was substantially justified. The Division argues that eligibility should be resolved first “in the interest of justice and efficiency,” but the Eden Arc Respondents maintain that bifurcating the proceeding would “needlessly delay and extend” it.

Also on January 5, the Division submitted a separate letter outlining its arguments on the Eden Arc Respondents’ eligibility for relief under EAJA and why those should be adjudicated first. The Eden Arc Respondents submitted a letter asking me to disregard the Division’s “unsolicited” letter or allow them to submit a similar letter.

I will not strike the Division’s separate letter, but I will not consider it at this time insofar as it advances arguments beyond why it believes the Eden Arc Respondents’ eligibility should be decided first. By January 12, 2018, the Eden Arc Respondents may submit a responsive letter addressing (1) whether

this proceeding should be bifurcated and (2) whether the public interest favors having public redacted versions of financial disclosures filed in this proceeding.

Once the Eden Arc Respondents submit their response, I will decide whether to bifurcate this proceeding as requested by the Division. In light of the need to decide this issue, I VACATE the prior answer and reply deadlines I set in my December 18, 2017, order. *Donald F. (“Jay”) Lathen*, Admin. Proc. Rulings Release No. 5398, 2017 SEC LEXIS 4137.

Electronic Filing

In a January 2, 2018, letter, Eden Arc Respondents ask whether they should submit over 1,000 pages of documentation supporting Donald F. Lathen’s financial disclosure in hard copy to the Commission’s Office of the Secretary or as an electronic submission on a thumb drive. In the underlying proceeding, I denied a request by Respondents to file Lathen’s financial documents electronically, noting that reproducing “no more than about 600 pages” was not unduly onerous. *Donald F. (“Jay”) Lathen*, Admin. Proc. Rulings Release No. 4865, 2017 SEC LEXIS 1707 (ALJ June 13, 2017).

Similarly, in the absence of a showing that such filing would be unduly onerous, Respondents shall submit the documents supporting Lathen’s financial disclosure form with the Office of the Secretary in hard copy, as prescribed by the Commission’s Rules of Practice. *See* 17 C.F.R. §§ 201.151-.153. But Respondents need not send hard copies to my office; a CD or thumb drive will suffice.

Jason S. Patil
Administrative Law Judge