

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

Administrative Proceedings Rulings
Release No. 5533 / January 25, 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 Denying Bifurcation
Request and Sealing Financial
Disclosures**

Bifurcation

The Division of Enforcement requests I bifurcate this proceeding to address the eligibility of Eden Arc Capital Management, LLC, and Eden Arc Capital Advisors, LLC (collectively, Eden Arc Respondents), for relief under the Equal Access to Justice Act (EAJA) before addressing whether the Division’s case was substantially justified. The Eden Arc Respondents disagree. Each party believes its approach will promote efficiency.

I find the Eden Arc Respondents’ position more reasonable. Even if eligibility is a threshold question, both issues can be briefed together and potentially be addressed in a single decision. *See* 17 C.F.R. § 201.56 (contemplating a decision that includes findings on both eligibility and substantial justification). As the Eden Arc Respondents point out, this approach could avoid protracted litigation; should a finding of ineligibility be reversed and remanded, I would need to decide substantial justification at a later date, potentially several years from now. I therefore DENY the Division’s bifurcation request.

Filings Under Seal

The Eden Arc Respondents filed financial disclosures and supporting documents for themselves as well as for Donald F. Lathen. The parties agree that the harm resulting from public disclosure of these materials would likely

outweigh any benefit of disclosure, and I agree because they provide a detailed picture of the finances of the Eden Arc Respondents and Lathen. *See* 17 C.F.R. §§ 201.42(b), .322(b). I therefore SEAL the following filings of the Eden Arc Respondents: (1) exhibits 1 and 2 to the Affirmation of Donald F. Lathen dated December 15, 2017; (2) all the exhibits to the Affirmation of Donald F. Lathen dated December 22, 2017; (3) all the exhibits to their Supplemental Memorandum of Law dated December 29, 2017; and (4) all the supporting documents filed with the Office of the Secretary on January 18, 2018.

This order does not seal any briefs or affirmations that reference or allude to net worth figures. Such figures do not provide the detailed financial picture contained in the exhibit documents. Nor does this order require that any future filings be placed under seal. Any party seeking further relief must file a motion identifying the particular, potential harm that would be incurred by the disclosure of net worth figures and proposing a reasonable procedure for such filings. I note that administrative proceedings are presumptively public. Because the net worth figures are crucial to addressing eligibility, I am wary of a procedure that would require me to conduct any significant part of the proceeding non-publicly.

The parties disagree about whether the Eden Arc Respondents should file public redacted versions of the financial disclosures I seal in this order. I find that at this time, redaction would be unhelpful. As noted, information alluding to net worth is already in the parties' other filings, and I see no meaningful way of providing further detail to the public without disclosing information this order is designed to protect. And there is little to no concrete information in the financial disclosures and supporting documents that could be released, making redaction a largely fruitless exercise. However, as this case progresses, I or the parties may identify material that could be made public.

Scheduling

New filing deadlines must be set. The Division's answer, which shall address both eligibility and substantial justification, is now due February 14, 2018. The Eden Arc Respondents' reply is due February 28, 2018. The parties should confer and provide my office with their availability for in-person oral argument in Washington, DC, during the month of March.

Jason S. Patil
Administrative Law Judge