

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

Administrative Proceedings Rulings
Release No. 5634 / February 28, 2018

Administrative Proceeding
File No. 3-18292

In the Matter of

**Anton & Chia, LLP,
Gregory A. Wahl, CPA,
Michael Deutchman, CPA,
Georgia Chung, CPA, and
Tommy Shek, CPA**

**Order Denying Motion for a
Ruling on the Pleadings**

On February 23, 2018, Gregory A. Wahl, CPA, submitted a motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure on behalf of himself and Anton & Chia, LLP, and purportedly on behalf of Georgia Chung, CPA. These three Respondents (the moving Respondents) are now proceeding pro se. The Federal Rules of Civil Procedure do not apply in this proceeding, but reading the motion liberally, as I must, I construe it as one for a ruling on the pleadings, which is analogous to a motion to dismiss under the Federal Rules. 17 C.F.R. § 201.250(a); Amendments to the Commission's Rules of Practice, 81 Fed. Reg. 50,212, 50,224 n.110 (July 29, 2016). I may grant a motion for a ruling on the pleadings if, "even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law." 17 C.F.R. § 201.250(a).

The moving Respondents argue that this proceeding should be dismissed because my appointment as an administrative law judge violated the Appointments Clause of the Constitution, and the Securities and Exchange Commission's November 30, 2017, ratification of my appointment did not cure the violation. Motion at 6-8. However, the Commission has held that its ratification of my appointment "resolv[ed] any Appointments Clause claims" in this proceeding. *Pending Admin. Proc.*, Securities Act of 1933 Release No.

10440, 2017 WL 5969234, at *2 (Nov. 30, 2017). As such, the motion fails, and I DENY it.

Three additional points warrant discussion. First, I was not hired as a Commission administrative law judge in precisely the manner the moving Respondents describe. *See David Pruitt, CPA*, Admin. Proc. Rulings Release No. 5603, 2018 SEC LEXIS 477, at *6 & n.19 (ALJ Feb. 15, 2018). But the manner of my initial hiring is now irrelevant, because the Commission's ratification order has rendered the question of its constitutionality moot.

Second, I have not considered any factual claims made by the moving Respondents, because when deciding a motion for a ruling on the pleadings, I look at whether "the movant is entitled to a ruling as a matter of law," and must accept "all of the non-movant's factual allegations as true." 17 C.F.R. § 201.250(a); *see* Motion at 3-5. For example, whether Chung had limited responsibilities at Anton & Chia, rendering her inclusion in the proceeding "an extremely unreasonable exercise of prosecutorial discretion" cannot be decided now. Motion at 3-4.

Finally, Wahl signed this motion on behalf of himself, Anton & Chia, and Chung. Wahl may represent himself, and as managing partner of Anton & Chia he may represent it as well. 17 C.F.R. § 201.102(a), (b). However, as a non-attorney, Wahl may not represent Chung. The moving Respondents may continue to file submissions jointly, but Chung must sign submissions herself. If she wishes to adopt the present submission, she should file a signed notice saying so.

Cameron Elliot
Administrative Law Judge