

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

Administrative Proceedings Rulings
Release No. 6497 / March 15, 2019

Administrative Proceeding
File No. 3-15124

In the Matter of

**David F. Bandimere and
John O. Young**

**Order Following
Prehearing Conference**

Following reassignment of this proceeding to me on March 4, 2019, I directed the parties to participate in a telephonic prehearing conference on March 13, 2019, to discuss case status. On March 12, 2019, my office contacted the parties to inform them that they should be prepared during the conference to discuss Respondent David F. Bandimere's pending motion for a ruling on the pleadings. The conference was held as scheduled on March 13, 2019.

This order memorializes that, with the exception of the portion of Bandimere's motion for a ruling on the pleadings arguing that the order instituting proceedings fails to state a claim for securities fraud, the motion is denied for the reasons stated during the prehearing conference. I will adjudicate the remaining aspect of the motion by later order.

Near the conclusion of the conference, Bandimere's counsel asked that I list in this order the authorities I discussed in denying Bandimere's motion. The decisions and statutes on which I relied are as follows:

Failure to provide a timely hearing under Securities Act of 1933 Section 8A, Securities Exchange Act of 1934 Section 21C, and Investment Advisers Act of 1940 Section 203(k):

United States v. James Daniel Good Real Prop., 510 U.S. 43, 63–65 (1993)

United States v. Montalvo-Murillo, 495 U.S. 711, 717–18 (1990)

Brock v. Pierce Cty., 476 U.S. 253, 259–62 (1986).

Failure to provide a prompt hearing under 5 U.S.C. § 555(b):

5 U.S.C. § 706(1)

Dayton Tire v. Sec’y of Labor, 671 F.3d 1249, 1252–53 (D.C. Cir. 2012)

Mashpee Wampanoag Tribal Council, Inc. v. Norton, 336 F.3d 1094, 1100 (D.C. Cir. 2003)

Ability to impose civil penalties under Exchange Act Section 15 in the case of unregistered individuals:

James S. Tagliaferri, Securities Act Release No. 10308, 2017 WL 632134, at *5 (Feb. 15, 2017)

Gary L. McDuff, Exchange Act Release No. 74803, 2015 WL 1873119, at *1 n.2 (Apr. 23, 2015)

Due Process violation:

Withrow v. Larkin, 421 U.S. 35, 47–56 (1975)

Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1105–07 (D.C. Cir. 1988)

James E. Grimes
Administrative Law Judge