

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 6607/June 14, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of	:	
	:	
LAURIE BEBO and	:	ORDER
JOHN BUONO, CPA	:	

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP), pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice on December 3, 2014. Only Respondent Laurie Bebo remains in the proceeding.¹

The conduct alleged in the OIP occurred from 2009 through early 2012, when Bebo was CEO of Assisted Living Concepts, Inc. (ALC), which was a publicly traded assisted living and senior residence provider. The OIP alleges that ALC leased eight of its facilities from Ventas, Inc., and that Bebo knew, or was reckless in not knowing, that ALC misrepresented in its Forms 10-K and 10-Q that it was in compliance with occupancy and financial covenants in its lease with Ventas.

A subpoena directed to non-party Ventas was issued on February 7, 2019, at Respondent's request. Under consideration are Ventas's February 20, 2019, motion to quash; Respondent's March 8, 2019, opposition;² and Ventas's March 19, 2019, reply.

Ventas argues that the documents sought by the subpoena are irrelevant and to produce them would be extremely burdensome, at a cost in excess of \$1 million. Bebo's response minimizes the burden and argues that the materials sought will show Ventas's practices, which will in turn show whether it was reasonable for ALC and Bebo to represent that ALC was in compliance with the Ventas lease. That is, if Bebo could learn how Ventas dealt with other

¹ See *Laurie Bebo*, Exchange Act Release No. 74177, 2015 SEC LEXIS 347 (Jan. 29, 2015) (settlement order as to John Buono, CPA).

² The motion and opposition were timely filed. *Laurie Bebo*, Admin. Proc. Rulings Release No. 6478, 2019 SEC LEXIS 296 (A.L.J. Mar. 4, 2019).

tenants, it would show the reasonableness of her belief that ALC was in compliance with the lease covenants. Ventas and Bebo refer to an attempt/willingness to narrow the scope of the request or to stipulate as to facts that would obviate Bebo's need for the requested material, but they have not come to agreement. Each blames the other for this.

The Subpoena

The items sought to be produced are:

(1) documents between April 1, 2005, and December 31, 2007, relating to the previous tenant of the facilities ALC leased from Ventas, specifically: communications between the tenant and Ventas concerning the manner by which the tenant calculated the occupancy and coverage ratio covenants in its lease (Item 1); quarterly compliance reports (Item 2); communications relating to the tenant's employees staying or living at the facilities (Item 3); instances where occupancy was reported over 100% (Item 4); and documents related to the tenant's use of an affiliated home health company to provide services as it pertains to the tenant's calculations of coverage ratio covenants (Item 5).

(2) various documents between at least January 1, 2008, and December 31, 2010, pertaining to any Ventas lessee (Items 6-12).

Ruling

The undersigned evaluated the motion to quash and responsive filings in light of the OIP charges that Bebo "knew, or [was] reckless in not knowing, that ALC misrepresented in its Forms 10-K and 10-Q that it was in compliance with occupancy and financial covenants" in the Ventas lease; that she "undertook an elaborate scheme to hide ALC's lack of compliance with the covenants;" and that the scheme included her "direct[ing] ALC personnel to include in the lease covenant calculations large numbers of fabricated occupants who did not reside at the facilities." OIP at 1-2. With reference to Items 1-5 concerning the previous tenant of the ALC facilities, Bebo states that she understood that the previous tenant had employees living at the facilities and reported in the covenant calculations to Ventas, which was aware of this and did not take any adverse action toward the tenant. Opp. at 12-13. Such awareness is not relevant to Ventas's possible tolerance of reporting "large numbers of fabricated occupants *who did not reside at the facilities.*" With reference to Items 6-12, Bebo does not argue that she was aware of *any* practices by Ventas lessees other than the previous tenant. The subpoena, especially Items 6-12, is overbroad, amounting to a disfavored "fishing expedition." See, e.g., *Orlando Joseph Jett*, Admin. Proc. Rulings Release No. 514, 1996 SEC LEXIS 1683, at *1-2 (June 17, 1996) (frowning on "fishing expeditions" in the context of *Brady* material). Therefore, it will be quashed, without prejudice to Bebo's requesting another more narrowly tailored subpoena to seek a narrower set of material with a showing of relevance to the issues to be decided by the undersigned, *i.e.*, whether *Bebo* knew, or was reckless in not knowing, of ALC's misrepresentations in its Forms 10-K and 10-Q concerning its compliance with the Ventas lease covenants and whether *Bebo* was part of a scheme to hide ALC's lack of compliance with the covenants. Such relevant material cannot include Ventas's practices of which she was unaware at the time of the alleged conduct – 2009 through early 2012.

Bebo may wish to confer with the Division as to whether it is planning to dispute the facts she hopes to find from Ventas material. The parties may be able to stipulate as to some of these facts. Bebo is reminded that she may be required to pay reasonable compensation to Ventas for certain costs of complying with a subpoena that may be issued, pursuant to 17 C.F.R. § 201.232(e)(2).

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge