

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2247 / January 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO and
JOHN BUONO, CPA

ORDER ON REQUEST FOR
ISSUANCE OF SUBPOENAS

The Securities and Exchange Commission (Commission) commenced this proceeding on December 3, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) pursuant to Securities Exchange Act of 1934 (Exchange Act) Sections 4C and 21C and Commission Rule of Practice 102(e).¹ On January 14, 2015, I received Respondent Laurie Bebo's (Bebo) request for issuance of subpoenas to produce documents (Request). In response to my Order of January 15, 2015, the Division of Enforcement (Division) submitted a statement (Division Statement) on January 20, 2015, sharing some information on whether any of the documents requested under Bebo's four requested subpoenas *duces tecum* have already been produced to Bebo and on any applicable privilege waiver known to the Division. In particular, the Division did not object to the Request. Div. Statement at 1. On January 21, 2015, Bebo submitted a statement (Bebo Statement) in response to the Division Statement.

A party may request the issuance of subpoenas requiring the production of documentary or other tangible evidence. 17 C.F.R. § 201.232(a). However, a respondent is not entitled to conduct a "fishing expedition" in an effort to discover something that might assist him in his defense, or "in the hopes that some evidence will turn up to support an otherwise unsubstantiated theory." *Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at *17 n.54 (Jan. 30, 2009) (internal quotations omitted), *quoted in China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *18 n.131 (Nov. 4, 2013). Thus, I may refuse to issue a subpoena, or issue it with conditions, if compliance with the subpoena would be unreasonable, oppressive, excessive in scope, or unduly burdensome. 17 C.F.R. § 201.232(b). I may also require the party requesting the subpoena to show the general relevance of the evidence sought. *Id.*

¹ The proceeding is stayed as to Respondent John Buono, CPA (Buono), pending Commission consideration of his offer of settlement. *Laurie Bebo*, Admin. Proc. Rulings Release No. 2149, 2014 SEC LEXIS 4865 (Dec. 18, 2014).

The Request seeks four subpoenas: to Enlivant, f/k/a Assisted Living Concepts, LLC (ALC), Bebo's former employer (ALC Subpoena); to Milbank, Tweed, Hadley & McCloy LLP (Milbank), the law firm which ALC retained to conduct an internal investigation of the facts underlying this proceeding (Milbank Subpoena); to Ventas, Inc. (Ventas), the counterparty to the leasing agreement at issue in this proceeding (Ventas Subpoena); and to Quarles & Brady LLP (Quarles), ALC's corporate and litigation counsel (Quarles Subpoena). Request at 1-2. The parties agree that the privileged status of at least some of the requested documents has been waived. Div. Statement at 2; Bebo Statement at 2. Some requested documents likely have already been produced as part of the investigative file; Bebo does not dispute this. Div. Statement at 2; Bebo Statement, *passim*.

I have reviewed every requested category of documents, and I will issue some, either with or without modification. Bebo may renew her request as to those categories I have stricken or modified, provided that the categories are narrowed, and, where applicable, upon a sufficient showing of relevance pursuant to Commission Rule of Practice 232(b), 17 C.F.R. § 201.232(b). Also, as suggested in the Bebo Statement, I will change the return date to February 9, 2015. I address each request individually below.

ALC Subpoena

The first six categories of requested documents pertain to materials Bebo maintained in the course of her employment with ALC, including legal pads with handwritten notes and binders assembled for ALC board of directors meetings (collectively, Bebo Notes). It appears that at least some of the requested documents were collected during the Division's investigation, and presumably are in the investigative file. ALC Subpoena, Ex. A at 2; Bebo Statement at 2 & n.2. However, Bebo contends that such materials have been altered or destroyed, and has asserted spoliation of evidence as an affirmative defense. Answer at 11; Bebo Statement at 2 n.2. The requested documents appear to be relevant, the requests are otherwise not facially objectionable, and the ALC Subpoena will issue without modification as to these categories.

Categories seven and eight seek Bebo's telephone records from January 2008 to May 2012. There is no apparent relevance to these documents, and the request is overbroad, because it presumably seeks a large number of telephone records irrelevant to the OIP. The ALC Subpoena will issue with these categories stricken.

Categories nine and ten seek information regarding the salary and benefits of two ALC employees. Although such information may warrant a protective order, the category is otherwise narrowly tailored and not oppressive, unduly burdensome, or excessive in scope. The ALC Subpoena will issue without modification as to these categories.

Categories eleven and twelve seek Bebo's Outlook email and calendar files between January 2007 and May 2012. These appear to be relevant for the same reason as the Bebo Notes. However, the OIP alleges misconduct starting in 2008, and there is no apparent relevance to documents dating to January 2007. OIP at 3. The ALC Subpoena will issue as to these categories, but its scope will be limited to between January 2008 and May 2012.

Category thirteen seeks the Outlook calendar of a person, presumably an ALC employee, between January 1, 2009, and March 31, 2009. Although the relevance of this document is unclear, the category is narrowly tailored and not oppressive, unduly burdensome, or excessive in scope. The ALC Subpoena will issue without modification as to this category.

Category fourteen seeks inspection and imaging of Bebo's ALC-issued laptop computer. This appears to be relevant for the same reason as the Bebo Notes, and the laptop has apparently been preserved. ALC Subpoena, Ex. A at 8. The ALC Subpoena will issue without modification as to this category.

Categories fifteen, sixteen, and seventeen seek travel records, expense reports, and job descriptions of certain ALC employees. The temporal scope of this request – apparently from January 1, 2007, to the present – is overbroad. ALC Subpoena at 2. Also, at least some of the requested documents are contained in the investigative file, and category fifteen seeks travel records not limited to matters relevant to the OIP. Div. Statement at 2. The ALC Subpoena will issue with these categories stricken.

Categories eighteen, nineteen, and twenty pertain to Milbank's internal investigation and appear to be relevant. Although the exact scope of any privilege waiver is disputed, the ALC Subpoena contains a provision allowing production of a privilege log in lieu of privileged responsive materials. ALC Subpoena at 4; Div. Statement at 2; Bebo Statement at 2-3. The ALC Subpoena will issue without modification as to these categories.

Categories twenty-one and twenty-two pertain to statements in one of ALC's Schedule 14A proxy statements. Although such information may warrant a protective order, the category is otherwise narrowly tailored and not oppressive, unduly burdensome, or excessive in scope. The ALC Subpoena will issue without modification as to these categories.

Categories twenty-three, twenty-four, and twenty-five pertain to "350 boxes of hard-copy documents" and "over 5,400 email communications" collected by ALC for production to the Division. Although the relevance of these materials is unclear, they are not clearly part of the investigative file, and it would seemingly be a simple matter for ALC to produce them, if they still exist. *See* Div. Statement at 2. The ALC Subpoena will issue without modification as to these categories.

Category twenty-six pertains to "board materials" provided to Bebo. These appear to be relevant for the same reason as the Bebo Notes, and ALC is apparently willing to provide them to Bebo. ALC Subpoena, Ex. A at 8. The ALC Subpoena will issue without modification as to this category.

Categories twenty-seven through thirty-four pertain to certain business records of ALC. There is no apparent relevance to these documents. The ALC Subpoena will issue with these categories stricken.

In summary, as to the ALC Subpoena: categories one through six, nine, ten, thirteen, fourteen, and eighteen through twenty-six will issue without modification; categories eleven and twelve will issue with modifications; and the remaining categories will not issue.

Milbank Subpoena

The first six categories of requested documents pertain to the Bebo Notes, and the Milbank Subpoena will issue without modification as to these categories for the same reasons as the first six categories of the ALC Subpoena.

Categories seven through eleven pertain to Milbank's internal investigation. Although they are broader in scope than the categories requested in the ALC Subpoena, and some of the requested documents are apparently in the investigative file, the documents are otherwise facially unobjectionable for the same reasons as categories eighteen through twenty of the ALC Subpoena. Div. Statement at 2. The Milbank Subpoena will issue without modification as to these categories.

The Milbank Subpoena will therefore issue without modification.

Ventas Subpoena

The first four categories pertain to documents referencing events in 2005 through 2007. There is no apparent relevance to these documents and they are outside the scope of the OIP. The Ventas Subpoena will issue with these categories stricken.

Category five pertains to communications concerning Bebo, Bueno, and ALC. This request is overbroad because it is not sufficiently limited in subject matter. The Ventas Subpoena will issue with this category stricken.

Categories six, seven, and eight pertain to documents concerning two former Ventas employees. Although the relevance of these documents is unclear, the categories are narrowly tailored and not oppressive, unduly burdensome, or excessive in scope. The Ventas Subpoena will issue without modification as to these categories.

Category nine pertains to communications between Ventas and Milbank. This request is overbroad because it is not sufficiently limited in subject matter. The Ventas Subpoena will issue with this category stricken.

Categories ten through sixteen pertain to counterparties to Ventas leases other than ALC. There is no apparent relevance to these documents, and the category is excessive in scope because it seeks documents dating to January 2007. The Ventas Subpoena will issue with this category stricken.

Category seventeen pertains to telephone records, apparently of calls between either Bebo or Bueno and a Ventas employee between January and March 2009. Although the relevance of such records is unclear, the category is narrowly tailored and not oppressive, unduly

burdensome, or excessive in scope. The Ventas Subpoena will issue without modification as to this category.

Category eighteen pertains to Ventas leases other than the one with ALC. There is no apparent relevance to these documents. The Ventas Subpoena will issue with this category stricken.

Categories nineteen through twenty-five pertain to certain business records of Ventas. There is no apparent relevance to these documents. The Ventas Subpoena will issue with these categories stricken.

Category twenty-six pertains to Ventas' method for determining the purchase price for the Ventas properties ALC leased. This is a matter alleged in the OIP, and the Division does not contend that responsive documents are in the investigative file. OIP at 10; Div. Statement at 2. The Ventas Subpoena will issue without modification as to this category.

In summary, as to the Ventas Subpoena: categories six, seven, eight, seventeen, and twenty-six will issue without modification; and the remaining categories will be stricken.

Quarles Subpoena

The first category pertains to native file versions of approximately fourteen voicemails attached to emails apparently produced as part of the investigative file. Although their relevance is unclear, the request is narrowly tailored and it would seemingly be a simple matter for Quarles to produce them, if they still exist. The Quarles Subpoena will issue without modification as to this category.

Categories two, three, and four pertain to certain Quarles billing records. There is no apparent relevance to these documents. The Quarles Subpoena will issue with these categories stricken.

Categories five through nine pertain to Quarles records concerning matters alleged in the OIP. Although the relevance of the requested documents is generally clear, in part because responsive materials appear to be in the investigative file for this proceeding, the requests are overbroad because they seek documents dating to May 2013, which is outside the scope of the OIP. OIP at 3; Div. Statement at 2. Accordingly, the Quarles Subpoena will issue with this category modified to seek responsive materials from January 1, 2008, through May 31, 2012.

Category ten pertains to documents concerning an arrangement whereby a Quarles attorney acted as ALC's outside general counsel. There is no apparent relevance to these documents. The Quarles Subpoena will issue with this category stricken.

In summary, as to the Quarles Subpoena: category one will issue without modification; categories five through nine will issue with modifications; and the remaining categories will be stricken.

It is, therefore, hereby ordered that the Request is GRANTED IN PART and otherwise DENIED WITHOUT PREJUDICE, as outlined above. If Bebo submits a new request for issuance of subpoenas, she is urged to use this Office's subpoena form, which is available here: <http://www.sec.gov/alj>; she may attach papers to the form if necessary.

Cameron Elliot
Administrative Law Judge