

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4621/February 23, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-16554

In the Matter of

GRAY FINANCIAL GROUP, INC.,
LAURENCE O. GRAY, and
ROBERT C. HUBBARD, IV

ORDER DENYING
MOTION FOR CERTIFICATION
AND TO STAY

On February 21, 2017, I issued an order denying Respondents' motion to stay this proceeding pending decision en banc in *Lucia v. SEC*, No. 15-1345, 2017 WL 631744 (D.C. Cir. Feb. 16, 2017). *Gray Fin. Grp., Inc.*, Admin. Proc. Rulings Release No. 4615, 2017 SEC LEXIS 523. Respondents now move for certification of that ruling for interlocutory review, under Rule of Practice 400(c), 17 C.F.R. § 201.400(c).

The motion is DENIED. Under Rule 400(c), I "shall not certify a ruling [for interlocutory review] unless . . . the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion[,] and an immediate review of the order may materially advance the completion of the proceeding." 17 C.F.R. § 400(c)(2)(i), (ii). That standard is not met here. The Commission remains of the view that its administrative law judges need not have been appointed in a manner consistent with the Appointments Clause, the Tenth Circuit Court of Appeals' decision in *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016), notwithstanding. *Harding Advisory LLC*, Securities Act Release No. 10277, 2017 SEC LEXIS 86, at *67-69 & nn.82, 90 (Jan. 6, 2017).

Respondents have also moved to stay this proceeding pending interlocutory review, under Rule of Practice 400(d), 17 C.F.R. § 201.400(d). That motion is also DENIED. On February 22, 2017, I canceled the hearing and ordered Respondents to show cause why their counsel should not be disqualified because of possible conflicts of interest. *Gray Fin. Grp., Inc.*, Admin. Proc. Rulings Release No. 4619, 2017 SEC LEXIS 536. The hearing in this proceeding is no longer imminent, and the question of Respondents' representation must be resolved before the hearing is rescheduled. Any interlocutory review may well be completed before then.

Cameron Elliot
Administrative Law Judge