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ADMINISTRATIVE PROCEEDING
FILE NO. 3-11465

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
May 27, 2004

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

MAY 27 2004

FIRST CLASS

In the Matter of :
:
PUBLIC FINANCE :
CONSULTANTS, INC., : ORDER
ROBERT D. FOWLER, :
DOLPHIN AND BRADBURY :
INCORPORATED, :
and ROBERT J. BRADBURY :
:

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on April 26, 2004. Respondents received the OIP on May 3, 2004, and filed Answers on May 24, 2004. I held a telephonic prehearing conference on May 26, 2004, and counsel for all parties participated.

The Division of Enforcement (Division) agreed to provide a copy of the final offering document that allegedly omitted material facts. The Division also agreed to provide copies of correspondence and/or tolling agreements relevant to Respondents' statute of limitations defense. These materials shall be filed by June 2, 2004. The Division shall also state its position as to whether the tolling agreements did or did not lapse before the Commission issued the OIP. If Respondents disagree with the Division's position, they should state their position on the lapse of the tolling agreements by June 4, 2004.

Respondents expressed an intent to seek documents from four institutional investors who purchased the municipal bonds and then resold them to retail customers. Respondents should submit their subpoena applications to this Office by June 2, 2004.

I have advised the parties that, if inability to pay financial sanctions becomes an issue in the proceeding, I will require Respondents to provide financial disclosure to the full extent required by Rule 630(b) of the Commission's Rules of Practice. Respondents should begin to assemble the relevant documents now.

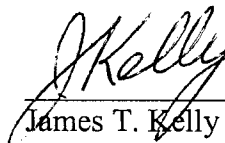
The hearing previously set for June 7, 2004, in Washington, D.C., is postponed. After discussion, the parties agreed to the following schedule:

- June 14, 2004: Division to identify any expert witnesses and provide information required by Rule 222(a)(4) and (b) of the Commission's Rules of Practice;
- June 21, 2004: Respondents to identify any expert witnesses and provide information required by Rule 222(a)(4) and (b) of the Commission's Rules of Practice;
- June 23, 2004: Telephonic prehearing conference at 10 a.m. Eastern time, with the Division to initiate the call and obtain a court reporter;
- July 6, 2004: Division to file a list of proposed hearing exhibits and a list of proposed fact witnesses, in accordance with Rule 222(a)(3) and (4) of the Commission's Rules of Practice;
- July 19, 2004: Division to file direct testimony of its expert witnesses; Respondents to file a list of proposed hearing exhibits and a list of proposed fact witnesses, in accordance with Rule 222(a)(3) and (4) of the Commission's Rules of Practice;
- Aug. 3, 2004: Respondents to file direct testimony of their expert witnesses; parties to exchange proposed hearing exhibits; Division to file its prehearing brief in lieu of opening statement at the hearing;
- Aug. 11, 2004: Respondents to file their prehearing briefs in lieu of opening statements at the hearing; and
- Aug. 16, 2004: Hearing to commence in Philadelphia, Pa., at a site to be determined; estimated duration, two weeks.

The Division inquired about filing motions in limine, aimed at barring Respondents from offering testimony on various subjects. The purpose of a motion in limine is to allow the trial court to rule in advance of trial on the admissibility and relevance of certain anticipated evidence. See Luce v. United States, 469 U.S. 38, 41 n.4 (1984) (noting that, “[a]lthough the Federal Rules of Evidence do not explicitly authorize in limine rulings, the practice has developed pursuant to the district court’s inherent authority to manage the course of trials”); see also Palmieri v. Defaria, 88 F.3d 136, 141 (2d Cir. 1996); Nat’l Union Fire Ins. Co. v. L.E. Myers Co. Group, 937 F. Supp. 276, 283 (S.D.N.Y. 1996). Evidence should be excluded on a motion in limine only when the evidence is clearly inadmissible on all potential grounds. See SEC v. U.S. Env’tl., Inc., 2002 U.S. Dist. LEXIS 19701, at *5 (S.D.N.Y. Oct. 16, 2002). Courts considering a motion in limine may reserve judgment until trial, so that the motion is placed in the appropriate factual context. Nat’l Union Fire Ins. Co., 937 F. Supp. at 287. Further, a court’s ruling regarding a motion in limine is “subject to change when the case unfolds, particularly if the actual testimony differs from what was contained in the . . . proffer.” Luce, 469 U.S. at 41.

The Division may file its motions in limine at this time if it wishes to do so, but it will face an uphill battle. The Commission has not been enthusiastic about orders by Administrative Law Judges granting motions in limine. See City of Anaheim, 71 SEC Docket 191 (Nov. 16, 1999) (vacating an ALJ's order granting a motion in limine). On the other hand, the Commission has emphasized that Administrative Law Judges retain flexibility in ruling on matters of relevance during the hearing. Id. at 194 ("We . . . wish to make clear that the law judge conducting the hearing may make such rulings with respect to particular evidence as it is introduced as the law judge deems appropriate.").

SO ORDERED.



James T. Kelly
Administrative Law Judge