

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 1997 / November 10, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-15965

In the Matter of

CHILD, VAN WAGONER & BRADSHAW, PLLC,
RUSSELL E. ANDERSON, CPA, and
MARTY VAN WAGONER, CPA

ORDER DENYING MOTION FOR
PREHEARING CONFERENCE
AND EXTENSION

On July 8, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings against Child, Van Wagoner & Bradshaw, PLLC (Child), Russell E. Anderson, CPA (Anderson), and Marty Van Wagoner, CPA (collectively, Respondents), pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, and against Child and Anderson pursuant to Rule 102(e)(1)(iii). The hearing is scheduled to commence on December 8, 2014, in Salt Lake City.

According to the current prehearing schedule, the parties' witness lists and expert disclosures must be exchanged and filed by today, Monday, November 10, 2014. In the late afternoon of Friday, November 7, 2014, Respondents filed a "Motion for Prehearing Conference in Connection With Request for Extension of Time to File Expert Disclosures and Witness Lists" (Motion), in which they requested an extension until Friday, November 14, 2014, for all parties (including the Division of Enforcement (Division)) to file witness lists and expert disclosures. They maintain that a "miscommunication between Respondents' counsel and an expert . . . negatively impacted Respondents' ability to obtain an expert report by the deadline." Motion at 2. They offer no explanation for their requested extension of the witness list deadline.

The Motion is denied. No prehearing conference is needed to resolve the Motion, and no response from the Division is, either. I have considered the factors listed in Commission Rule of Practice 161(b)(1), 17 C.F.R. § 201.161(b)(1), some of which admittedly weigh in favor of an extension. However, the stage of the proceedings at the time of the request – less than two hours before close of business on the Friday before the due date – weighs heavily against the requested extension. Respondents offer no explanation for delaying their request until the eleventh hour.

Additionally, three other "matters as justice may require" weigh heavily against the requested extension. 17 C.F.R. § 201.161(b)(1)(v). First, Respondents seek an extension on the deadline for exchanging and filing witness lists, but provide no reason justifying the request.

Second, Respondents may be able to exchange and file an incomplete version of their expert disclosures by the deadline, which would reduce the prejudice to the Division. For example, the expert report might not be finished on time, but the other materials required by Rule 222(b), 17 C.F.R. § 201.222(b), might be, and if so, I encourage Respondents to timely exchange and file such materials. Third, and most important, although I have denied the present Motion, I have not ruled that Respondents' proposed expert evidence is inadmissible, for tardiness or for any other reason. In the event Respondents exchange and file their expert report late, and the Division moves to exclude it (for whatever reason), I may consider Respondents' tardiness in resolving such a motion, but I do not consider tardiness alone to be dispositive. In other words, filing expert disclosures late does not automatically result in exclusion of expert evidence.

SO ORDERED.

Cameron Elliot
Administrative Law Judge