

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2510 / April 7, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO and
JOHN BUONO, CPA

ORDER ON RESPONDENT'S MOTION
FOR DECLARATORY AND INJUNCTIVE
RELIEF FOR CONSTITUTIONAL
VIOLATIONS AND REQUEST FOR LEAVE
TO FILE OVERLENGTH MOTION

The Securities and Exchange Commission (Commission) commenced this proceeding on December 3, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Securities Exchange Act of 1934 (Exchange Act) Sections 4C and 21C and Commission Rule of Practice 102(e).¹ The hearing in this proceeding is set to commence on April 20, 2015, in Milwaukee, WI.

On January 12, 2015, the parties filed a joint proposed prehearing schedule, which included a request by Respondent Laurie Bebo (Bebo) to file a motion for summary disposition. *Laurie Bebo*, Admin. Proc. Rulings Release No. 2208, 2015 SEC LEXIS 115 (Jan. 12, 2015). I ordered the filing of motions for summary disposition by February 6, 2015, and of motions in limine by April 3, 2015. *Id.* Neither Bebo nor the Division of Enforcement filed motions for summary disposition. However, on April 6, 2015, this Office received Bebo's overlength Motion for Declaratory and Injunctive Relief for Constitutional Violations (Motion), accompanied by her Request for Leave to File a Motion in Excess of 7,000 Words Pursuant to Commission Rule of Practice 154(c) (Request).

Because the Motion seeks dismissal of this proceeding, it is construed as a motion for summary disposition. It is therefore untimely, although Bebo's arguments may be renewed post-hearing.²

¹ The proceeding has ended as to Respondent John Buono, CPA (Buono). *Laurie Bebo*, Exchange Act Release No. 74177, 2015 SEC LEXIS 347 (Jan. 29, 2015).

² Although I have not otherwise reached its merits, one assertion in the Motion warrants discussion. Bebo asserts that "unlike FDIC ALJs, [Commission] ALJs can issue final decisions under certain circumstances." Motion at 31 n.10 (citing *Landry v. FDIC*, 204 F.3d 1125 (D.C. Cir. 2000)). To be sure, under the Administrative Procedure Act of 1946, when no party timely petitions for review and the Commission does not timely order review on its own initiative, an initial decision "becomes the decision of the agency without further proceedings." 5 U.S.C. §

It is therefore ORDERED that Bebo's Motion for Declaratory and Injunctive Relief for Constitutional Violations is DENIED WITHOUT PREJUDICE to Bebo's raising these issues in post-hearing filings.

It is FURTHER ORDERED that Bebo's Request for Leave to File a Motion in Excess of 7,000 Words Pursuant to Commission Rule of Practice 154(c) is DENIED as moot.

Cameron Elliot
Administrative Law Judge

557(b). This provision applies with equal force to the FDIC, as in *Landry*, and to the Commission, and so does not distinguish FDIC ALJs from Commission ALJs. More to the point, an initial decision that becomes "the decision of the agency" only through inaction does not thereby become legally enforceable. The FDIC Board must first issue that agency's "final decision." 12 C.F.R. § 308.40(c); *see* 12 U.S.C. § 1818(i) (permitting FDIC to seek enforcement only of "any effective and outstanding notice or order" in U.S. District Court). Similarly, the Commission must first "issue an order that the [ALJ's initial] decision has become final," which "order of finality shall state the date on which sanctions, if any, take effect." 17 C.F.R. § 201.360(d)(2); *see* *Alchemy Ventures, Inc.*, Exchange Act Release No. 70708, 2013 WL 6173809, at *2 (Oct. 17, 2013) (discontinuing the former practice of "default orders" issued by Commission ALJs); 17 C.F.R. § 201.601(a) (disgorgement and civil penalties "due pursuant to an order by a hearing officer shall be paid in accordance with the order of finality issued pursuant to 17 C.F.R. § 201.360(d)(2)"). Indeed, upon the filing of a petition for review, or if a majority of Commissioners do not agree to a disposition, an initial decision becomes a nullity. 17 C.F.R. § 201.411(a), (f); *see* *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *9 n.44, *11 (Feb. 13, 2009) (noting Commission's *de novo* review), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Gregory M. Dearlove, CPA*, Exchange Act Release No. 57244, 2008 WL 281105, at *10 n.42 (Jan. 31, 2008) ("The law judge's opinion ceased to have any force or effect once [petitioner] filed his petition for review."), *pet. denied*, 573 F.3d 801 (D.C. Cir. 2009). If in the end Bebo is dissatisfied with the initial decision in this proceeding, she may unilaterally render it null and void by the simple expedient of filing a petition for review of it.