

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2518 / April 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO and
JOHN BUONO, CPA

ORDER DENYING CERTAIN
MOTIONS IN LIMINE

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 The hearing in this proceeding will commence on April 20, 2015, in Milwaukee, WI.

On April 6, 2015, this Office received several motions in limine filed by Respondent Laurie Bebo (Bebo), including: (1) Motion in Limine to Exclude Testimony and Exhibits Related to ALC's Alleged Failure to Provide GAAP-Compliant Financial Information to Ventas (GAAP Motion); (2) Motion in Limine to Exclude Irrelevant Ventas Testimony and Exhibits Relating to Internal Communications, Lease Practices and Policies (Ventas Motion); and (3) Motion in Limine to Exclude Division Exhibit 552 (Exhibit 552 Motion). I have determined that these three motions may be decided without further briefing; however, I intend to resolve Bebo's other pending motions in limine at the outset of the hearing.

GAAP Motion

The GAAP Motion seeks to exclude "testimony with regard to ALC's compliance with GAAP in connection with financial statements provided to Ventas," including several paragraphs of the expert report filed by the Division of Enforcement (Division). GAAP Motion at 4. Such evidence is directly relevant to proving the allegations found in paragraph thirty-three of the OIP, a point Bebo apparently does not dispute. *Id.* at 2. Moreover, although paragraph thirty-three of the OIP only mentions Buono by name, it relates to ALC generally, and Bebo was the CEO of ALC at the time. OIP at ¶ 33; Bebo Answer at 2. Further, nothing in paragraph thirty-three rules out the possibility that Bebo knew, for example, that "[t]he quarterly materials ALC sent to

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).

Ventas did not reference the inclusion of non-residents in the covenant calculations.” OIP at ¶ 33. ALC’s compliance with GAAP in connection with financial statements provided to Ventas is relevant and will not be excluded.

Ventas Motion

The Ventas Motion seeks to exclude five categories of evidence, all generally pertaining to matters internal to Ventas, because they are allegedly irrelevant. Ventas Motion at 1. Most of the categories of evidence cannot be excluded at this juncture because they are ill-defined and/or overbroad. In particular, the categories would seemingly include statements and documents transmitted to Bebo and therefore relevant. Inasmuch as certain proposed exhibits contain irrelevant evidence, there is no need to redact them; if the evidence is truly irrelevant, I will ignore it. *See* Ventas Motion at 5; *City of Anaheim*, 54 S.E.C. 452, 454 (1999) (“Administrative agencies . . . are more expert fact-finders, less prone to undue prejudice, and better able to weigh complex and potentially misleading evidence than are juries.”). Accordingly, the evidence covered by the Ventas Motion will not be excluded prehearing, but Bebo may of course object to such evidence, on a question-by-question basis, once the hearing commences.

Exhibit 552 Motion

The Exhibit 552 Motion seeks to exclude a summary exhibit which I have not seen, but which Bebo describes as “a chart containing the Division’s argument with regard to the number of employees [ALC] purportedly included in its occupancy calculations that should not have been included . . . at specific properties during each quarter of 2009-11.” Exhibit 552 Motion at 2. Based on the filings in this proceeding to date, such an exhibit will be extremely helpful in evaluating the evidence and I would very much like to see it. If Exhibit 552 is inaccurate, because it relies on testimony that does not turn out as the Division expects, or for any other reason, Bebo may point out those inaccuracies, presumably by examining the Division’s sponsoring summary witness. Bebo may also offer in evidence her own competing summary exhibit, if desired. Nor is Exhibit 552 improper merely because it is argumentative. There will be no jury and I may simply ignore what would be considered inadmissible argument under the Federal Rules of Evidence. *See* Exhibit 552 Motion, *passim* (citing Federal Rule of Evidence 1006); *City of Anaheim*, 54 S.E.C. at 454.

It is therefore ORDERED that Bebo’s Motion in Limine to Exclude Testimony and Exhibits Related to ALC’s Alleged Failure to Provide GAAP-Compliant Financial Information to Ventas, Bebo’s Motion in Limine to Exclude Irrelevant Ventas Testimony and Exhibits Relating to Internal Communications, Lease Practices and Policies, and Bebo’s Motion in Limine to Exclude Division Exhibit 552 are DENIED.

Cameron Elliot
Administrative Law Judge