

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2677/May 15, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO and
JOHN BUONO, CPA

PROTECTIVE ORDER

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 Sections 4C and 21C and Commission Rule of Practice 102(e). Hearing testimony was heard on April 20-24, April 27-May 1, and May 4-7, and will resume on June 15, 2015.

During the hearing, on April 28, 2015, I held a telephonic conference regarding Respondent's request to call attorneys with Milbank, Tweed, Hadley & McCloy LLP (Milbank) as witnesses; the conference was attended by the Division of Enforcement, Respondent's counsel, Milbank (representing itself), and Ropes & Gray LLP (representing Assisted Living Concepts, Inc. (ALC), Milbank's former client). Tr. 1787-88. I ruled in open court that communications between employees of ALC and the staff of Milbank "in the course of Milbank's internal investigation [of ALC] in 2012" were subject to attorney-client privilege. Tr. 1814-15. I further ruled that, although there had been a limited waiver of some privileged communications, I would not permit examination of Milbank staff regarding any report or legal advice provided by Milbank to ALC's board of directors as a result of the internal investigation. Tr. 1815-16; *see Diversified Indus., Inc. v. Meredith*, 572 F.2d 596, 611 (8th Cir. 1977) (en banc) (discussing limited waiver in response to government subpoena); *see generally United States v. Treacy*, No. 08-cr-366, 2009 WL 812033 (Mar. 24, 2009).

Moreover, I previously held, in partially quashing a subpoena directed to ALC seeking documents exchanged between Milbank and ALC board members, that Respondent needed to first "seek privilege waivers from the individual [ALC] Board members" before the subpoena would be enforced. *Laurie Bebo*, Admin. Proc. Rulings Release No. 2384, 2015 SEC LEXIS 854, at *5 (Mar. 6, 2015). I reaffirmed this ruling during the hearing, and further ruled that it covered "the report given to the [ALC] board" by Milbank, meaning that testimony by Milbank staff as to the report would not be permitted without a privilege waiver from each individual board member. Tr. 782, 1816, 1821.

It is difficult to square these rulings with the hearing testimony of ALC's board members. Alan Bell (Bell), in particular, testified at length about what Milbank reported to the board, and his written notes regarding Milbank's report and legal advice were admitted in evidence. *E.g.*, Tr. 621-53; Div. Exs. 558, 559. If testimony by the deliverers of Milbank's report (i.e., Milbank staff) is subject to privilege, it would seem that testimony by the recipients of that report (i.e., Bell and other board members) is also subject to privilege. Also, Bell testified briefly about a separate matter, not involving Milbank, that may have been subject to an attorney-client privilege possessed by ALC. Tr. 659-61.

Out of an abundance of caution, I will order the hearing transcript and Bell's notes sealed pending further briefing by ALC, Milbank, and the parties. *See* 17 C.F.R. § 201.322(b). I will entertain any appropriate relief – for example, a finding of intentional waiver, the striking of testimony from the record, the permanent sealing of certain pages of the hearing transcript, reconsideration of my previous rulings, or the like. I will not set a date for responsive briefing at this time; if responses appear to be needed, I anticipate holding a telephonic conference in lieu of written submissions. *See* 17 C.F.R. § 201.111. As an aid to addressing these issues, the following is a non-exhaustive list of transcript passages that may contain privileged information:

Alan Bell: Tr. 578, 586, 621-53, 659-61, 669-75, 677-93, 741, 744-46
Derek Buntain: Tr. 1430-31
Charles Roadman: Tr. 2615-26, 2628-32, 2654, 2659
Melvin Rhineland: Tr. 2849, 2919-21

It is ORDERED that the full hearing transcript and Exhibits 558 and 559 (Sealed Documents) be SEALED, because the harm resulting from their disclosure presently outweighs the benefits of public disclosure. *See* 17 C.F.R. § 201.322(b). Until further order, the Sealed Documents shall be disclosed only to:

- (1) Commissioners, employees, and agents of the Commission;
- (2) Respondent, her counsel, and her counsel's agents (including expert witnesses);
- (3) Employees of Milbank, Tweed, Hadley & McCloy LLP;
- (4) Employees of, and counsel for, Assisted Living Concepts, Inc., including employees of Ropes & Gray LLP; and
- (5) Witnesses Alan Bell, Derek Buntain, Charles Roadman, and Melvin Rhineland.

It is further ORDERED that the parties, Milbank, and ALC shall file points and authorities addressing the issues discussed *supra* no later than Friday, June 5, 2015.

Cameron Elliot
Administrative Law Judge