

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 6403/December 13, 2018

ADMINISTRATIVE PROCEEDING  
File No. 3-18061

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In the Matter of

RETIREMENT SURETY LLC,	:	
CRESCENDO FINANCIAL LLC,	:	
THOMAS ROSE, DAVID LEEMAN, and	:	ORDER
DAVID FEATHERSTONE	:	

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The Securities and Exchange Commission instituted this proceeding, pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, on July 6, 2017. Only Thomas Rose, David Leeman, and David Featherstone (Respondents) remain in the proceeding. *See Retirement Surety LLC*, Securities Act Release No. 10436, 2017 SEC LEXIS 3583 (Nov. 14, 2017) (Settlement Order).

Section III of the Settlement Order contained detailed findings of facts at issue, finding that Respondents, from November 2013 through November 2015, brokered sales of 7% promissory notes of Verto Capital Management LLC, which were securities for which no registration statement had been filed, and that none of the Respondents had ever been registered as or associated with a registered broker-dealer. *Id.* at \*2-14. The Settlement Order concluded that Respondents had willfully violated Securities Act Section 5(a) and (c) and Exchange Act Section 15(a)(1). *Id.* at \*14-15. The Settlement Order imposed a cease-and-desist order and associational suspensions; it ordered additional proceedings to determine what, if any, disgorgement, prejudgment interest, and civil penalties are appropriate in the public interest against each Respondent; it provided that these issues could be determined on the basis of the written record, without a hearing. *Id.* at \*16-18. The Settlement Order also provided that (1) Respondents “will each be precluded from arguing that they did not violate the federal securities laws described in this Order” and (2) “the findings in Section III of this Order shall be accepted as and deemed true by the hearing officer.” *Id.* at \*16-17. Thereafter, on April 18, 2018, an Initial Decision imposed various monetary sanctions on Respondents. *Retirement Surety LLC*, Initial Decision Release No. 1250, 2018 SEC LEXIS 924 (A.L.J.).

As a result of the Supreme Court’s decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), the Commission ordered that respondents in pending proceedings, including this one, “be provided with the opportunity for a new hearing before an ALJ who did not previously participate in the matter,” and that “the ALJ shall issue an order directing the parties to submit proposals for the conduct of further proceedings”; the proceeding was reassigned to the undersigned. *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 SEC LEXIS 2058, at \*2-4 (Aug. 22, 2018) (August 22 Order); Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018). The undersigned issued the required order on October 3, 2018. *Retirement Surety LLC*, Admin. Proc. Rulings Release No. 6136, 2018 SEC LEXIS 2727 (October 3 Order). The October 3 Order ordered the parties to submit proposals for the conduct of further proceedings by November 30, 2018.

Respondents and the Division of Enforcement submitted a joint letter for the conduct of further proceedings on November 30, 2018. The Division urges that the remaining issues, regarding potential monetary sanctions as to each Respondent, be resolved on summary disposition on the basis of the existing written record supplemented by updated financial affidavits and supporting documents. Respondents urge that a hearing that includes their live testimony on the remaining issues, which include the ability to pay monetary sanctions.

In view of the detailed findings of fact in the Settlement Order that Respondents are precluded from controverting, it is not clear what purpose would be served by hearing Respondents' live testimony. Nonetheless, the parties may wish to consider filings that supplement the existing written record and a hearing at which each Respondent could testify for, *e.g.*, thirty minutes and be cross-examined by the Division followed by brief oral arguments. To conserve public and private resources, such a hearing could be held by teleconference. It is noted that each Respondent is located in the Dallas-Fort Worth area, and the Commission's Fort Worth field office has video conference capability. The parties should continue to attempt to reach agreement on a joint proposal for the conduct of further proceedings and may request a prehearing conference be scheduled to facilitate this. The parties should submit a further proposal by January 25, 2019.

IT IS SO ORDERED.

/S/ Carol Fox Foelak  
Carol Fox Foelak  
Administrative Law Judge