

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 6412/December 18, 2018

ADMINISTRATIVE PROCEEDING  
File No. 3-16293

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In the Matter of

LAURIE BEBO and :  
JOHN BUONO, CPA : ORDER  
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The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings, pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice on December 3, 2014. Only Respondent Laurie Bebo remains in the proceeding.<sup>1</sup> A prehearing conference was held today. Benjamin J. Hanauer, Scott Tandy, and Timothy Stockwell appeared on behalf of the Division of Enforcement, and Mark Cameli and Ryan Stippich of Reinhart Boerner Van Deuren S.C. appeared on behalf of Respondent Bebo.

As agreed by the parties, all discovery requests will be initiated by January 31, 2019; Respondent will file any dispositive motion by February 28, 2019; and discovery will be completed by May 15, 2019. The discovery rules currently in effect in the Commission's Rules of Practice will apply. Tentatively, the week of June 24, 2019, will be blocked out for any hearing sessions, to be held at the hearing room at the Commission's headquarters: U.S. Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549.

The parties' agreed "Term Sheet," attached as Attachment A, is adopted.

IT IS SO ORDERED.

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

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<sup>1</sup> See *Laurie Bebo*, Exchange Act Release No. 74177, 2015 SEC LEXIS 347 (Jan. 29, 2015) (settlement order as to John Buono, CPA).

*In the Matter of Laurie Bebo, and John Buono, CPA – File No. 3-16293*

Term Sheet Regarding Evidentiary Matters For New Proceedings on Remand

1. General Intent. The parties agree that the decision by ALJ Foelak will be determined primarily based on the existing record, *de novo* (i.e. with no deference to or consideration of any statements or determinations made by ALJ Elliot, whether as to witness credibility, other factual issues, or legal issues).
2. Limitation on Credibility Determinations for Record Review. Except for live credibility determinations of witnesses based on matters that could only be observed through live testimony, such as witness appearance, demeanor, etc., and will not take into account any statements, observations, or findings by ALJ Elliot with respect to witness credibility. However, ALJ Foelak could otherwise make any credibility determinations about witnesses that she finds appropriate based on other aspects of the record, such as common sense, valid impeachment, corroboration by other evidence/witnesses, etc.
3. Treatment of Discovery/Evidence Excluded. The parties agree that, subject to the limited circumstances described in the following subparagraphs, no witness who testified at the last hearing will be re-called at a subsequent evidentiary hearing, no new witnesses will be called, and no additional discovery will take place. The only exceptions to the prohibition on additional testimony and discovery are as follows:
  - (a) Pursuant to orders dated January 23, 2015 and March 11, 2015, ALJ Elliot precluded Bebo from taking discovery from Ventas regarding (i) how “Old CaraVita” calculated and reported covenant compliance to Ventas (*see, e.g.*, requests 1-4 of Bebo’s initial subpoena and Requests 1-3 of Bebo’s supplemental subpoena); and (ii) lease practices by Ventas with respect to other tenants besides ALC (*see, e.g.*, requests 10-16, 18 of Bebo’s initial subpoena and requests 6-12 of Bebo’s supplemental subpoena). In the event Bebo is permitted to obtain this discovery, new lay witnesses from Ventas or Ventas witnesses who previously testified may be recalled to the extent necessary to present documents or testimony related to these subjects. The Division reserves its rights to contest Bebo’s ability to obtain this discovery and to object to the admissibility of any subsequently obtained documents or testimony on any grounds, including relevancy. Ventas would also be entitled to assert objections to any discovery/testimony sought.
  - (b) Pursuant to an order dated April 3, 2015, ALJ Elliot denied Bebo’s motion to compel the production of Division staff notes taken during interviews of certain witnesses some of whom subsequently testified in the hearing and some who did not. The Division agrees to conduct another *Brady* review of these notes in light of testimony elicited in the prior hearing to evaluate, among other things, potential inconsistencies with those prior statements,

and Bebo reserves the right to again assert her motion to obtain the notes that were subject to that prior order. To the extent Judge Foelak allows such discovery or testimony, one or more lay witnesses from the Division may need to testify regarding the notes, but the parties agree that no witness who was the subject of the interviews will be called or re-called based on any information contained in the notes. The Division reserves its rights to contest Bebo's ability to obtain this discovery and to object to the admissibility of any subsequently obtained documents or testimony on any grounds, including relevancy, privilege, work-product doctrine, and the Commission's Rules of Practice.

- (c) Pursuant to an order dated April 3, 2015, ALJ Elliot precluded Bebo from calling a witness from the Division—either a 30(b)(6)-type witness or Division attorney of record Scott Tandy—to testify regarding the general considerations the Division and/or Commission consider in determining whether to pursue an enforcement action administratively or in district court in an effort to support her claims that these administrative proceedings violate her constitutional rights. Bebo intends to attempt to seek document discovery and potentially call one or more lay witnesses to the extent necessary to present documents or testimony related to this subject. The Division reserves its rights to contest Bebo's ability to obtain this discovery and to object to the admissibility of any subsequently obtained documents or testimony on any grounds, including relevancy, privilege, work-product doctrine, and the Commission's Rules of Practice.
- (d) ALJ Elliot made various rulings at various points in time related to documents and discovery sought by Bebo from Milbank Tweed Hadley & McCloy, LLP (*see, e.g.* Trial Tr. at 1814-24; 6/10/2015 Telephonic Hearing Transcript; 6/11/2015 Protective Order). Except for communications between various ALC board members and Milbank regarding a report Milbank provided to the board about its investigation of the conduct at issue in these proceedings, Bebo was precluded from obtaining discovery into Milbank's investigation (including specifically notes and memoranda of witness interviews) and testimony from Milbank witnesses regarding the same. Bebo may attempt to seek discovery and to present testimony from Milbank attorneys involved in the investigation, and if a review of the Milbank interview notes/memos reveals that a witness that did not previously testify possesses previously unknown exculpatory information, Bebo reserves the right to call those witnesses. The Division reserves its rights to contest Bebo's ability to obtain this discovery and to object to the admissibility of any subsequently obtained documents or testimony on any grounds, including relevancy. Milbank and/or ALC and/or ALC board members would also be entitled to assert objections to any discovery/testimony sought.

- (e) ALJ Elliot admitted the complete expert reports of Bebo expert witnesses David B.H. Martin and John Durso (*see* September 9, 2015 Rule 351 Exhibit List at 66-67). However, ALJ Elliot precluded the Division from cross-examining Mr. Martin and limited cross-examination of Mr. Durso. The parties understand that ALJ Foelak, like ALJ Elliot, generally treats expert reports as the expert's direct examination and proceeds only with cross-examination and re-direct at evidentiary hearings. The Division may call Mr. Martin for cross-examination and may re-call Mr. Durso to cross-examine him with respect to those aspects of his report for which the Division was precluded from cross-examining previously, and Bebo may elicit testimony on re-direct as appropriate.
- (f) No new expert witnesses or opinions may be offered by either party.
- (g) Any discovery requested would be evaluated and/or permitted under and consistent with the current Commission Rules of Practice.

4. Treatment of Evidence Previously Admitted. As to evidence that was previously admitted in the record, all admissibility objections would be preserved for Commission review. However, all evidence previously admitted would remain admitted for the purpose of ALJ Foelak's review and the parties would continue to be able to make arguments about the weight or relevance of such evidence.