

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

Administrative Proceedings Rulings
Release No. 6766 / June 10, 2020

Administrative Proceeding
File No. 3-18292

In the Matter of

**Anton & Chia, LLP,
Gregory A. Wahl, CPA,
Michael Deutchman, CPA,
Georgia Chung, CPA, and
Tommy Shek, CPA**

**Order Denying in Part Motion
to Admit New Exhibits and
Specifying Further
Procedures**

After jointly filing his post-hearing brief and proposed findings of fact with Respondent Georgia Chung, CPA, Respondent Gregory A. Wahl, CPA, moved to admit 31 exhibits, most of which are the investigative testimony and deposition transcripts of witnesses who testified at the hearing. Wahl requests admission of these exhibits because he relied on them when preparing his and Chung's brief and findings of fact instead of using the transcript, which he did not procure. The Division of Enforcement opposes Wahl's request, arguing that in this circumstance, prior testimony is inadmissible under the Securities and Exchange Commission's Rules of Practice. The Division, however, proposes loaning Wahl and the other Respondents a copy of the transcript so that they may include transcript citations in their post-hearing submissions.

Wahl's request to admit prior testimony is denied, with one exception. Rule 235 generally does not permit the introduction of sworn deposition or investigative testimony unless the witness in question is unable to attend a live hearing for various reasons. 17 C.F.R. § 201.235(a). In this case, nearly all the prior testimony Wahl seeks to admit was given by witnesses who also testified at the hearing. Further, it is not "in the interests of justice" to admit the testimony. 17 C.F.R. § 201.235(a)(5). Wahl was given the opportunity to obtain the hearing transcript, yet decided not to do so. *Anton & Chia, LLP*, Admin. Proc. Rulings Release No. 6701, 2019 SEC LEXIS 4262, at *4 (Oct. 29, 2019).

Accordingly, I DENY Wahl's request to admit Exhibits 4, 5, 6, 7, 11, 12, 16, 17, 20, 21, 23, 25, 26, 46, 47, 48, 49, 50, 53, 54, 70, and 1282.

I ADMIT Exhibits 13, 14, and 15, the prior testimony of Rahul Gandhi. Given that Gandhi did not testify at the hearing but worked for Anton & Chia, LLC, on audits that are the subject of this proceeding, his prior testimony may provide some additional background that would be helpful to my preparation of the initial decision. Thus, it would be "in the interests of justice" to admit his prior testimony. 17 C.F.R. § 201.235(a)(5).

I DENY Wahl's request to admit Exhibit 1280, biographies of hearing witnesses Shane Garbutt and Thomas Parry. Although Wahl argues that the biographies are based on publicly available information from Parry's firm's website and Garbutt's LinkedIn profile, Reply at 10, they are not identical to their alleged sources and are thus unreliable. 17 C.F.R. § 201.320. Regardless, Wahl questioned Garbutt and Parry about their professional backgrounds at the hearing, so there is already sufficient information on the topic in the record. Tr. 2967-69, 4393-95.

I ADMIT Exhibits 1203, 1281, 1283, and 1284, as they appear somewhat relevant and the Division does not object to their admission. 17 C.F.R. § 201.320. Exhibit 1029 is not admitted because it is a duplicate of Exhibit 810.

I RESCIND the admission of Exhibit 44.1, the prior testimony of Tommy Shek, as it was mistakenly admitted.

Going forward, Wahl has a choice:

- 1) He may rely on his and Chung's brief and findings of fact as they are. While the prior testimony he relies on is not admitted, I will still consider the proposed facts to the extent they are otherwise supported by the record. *See Mot.* at 1. In its response to Wahl and Chung's proposed facts, the Division will have the opportunity to note where their account of events differs from the admitted record.
- 2) He may accept the Division's offer to loan him a copy of the hearing transcript, or he may order a copy of relevant transcript days directly from the court reporter. If he pursues either option, he will have 30 days from receipt of the transcript to replace citations to non-admitted exhibits in his and Chung's proposed factual findings and brief with citations to the hearing transcript and to revise those limited portions

if they are inconsistent with the transcript.¹ He will not otherwise be permitted to modify the brief or proposed findings. The Division will have four weeks from Wahl's filing of an updated submission to file a response.

If Wahl is loaned the transcript, he must comply with restrictions the Division places on its use and retention, such as returning it 30 days after the issuance of an initial decision.

By June 15, 2020, Wahl must inform my office and the Division by email whether he intends to rest on his filings or borrow the transcript from the Division or order the transcript from the court reporter. If he chooses to pursue the Division's offer to loan him a copy of the transcript or if he orders the transcript from the court reporter, he should again email my office when he receives the transcript so that I can memorialize exact submission deadlines in a further order.

If Deutchman wants to avail himself of the same opportunity that the Division is providing Wahl and Chung (subject to the same limitations), his attorney should email my office and the Division by June 15.

Jason S. Patil
Administrative Law Judge

Served by email on all parties.

¹ I otherwise DENY the Division's request to require Wahl, Chung, or Respondent Michael Deutchman, CPA, to revise their filings to fully comply with the guidelines in my January 17, 2020, post-hearing order. *See* Opp'n at 6-7.