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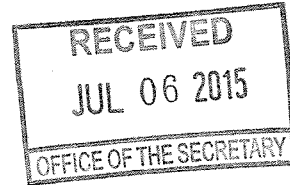
**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-15519**

In the Matter of :

Timbervest, LLC, :
Joel Barth Shapiro, :
Walter William Anthony Boden, III, :
Donald David Zell, Jr., :
and Gordon Jones II, :

Respondents. :
:



Division of Enforcement’s Opposition to Respondents’ Motion to Compel

On May 27, 2015, the Commission ordered the Division of Enforcement (“Division”) to file and serve on Respondents by June 4, 2015, an affidavit and any supporting materials if appropriate, “setting forth the manner in which ALJ Cameron Elliot and Chief ALJ Brenda Murray were hired, including the method of selection and appointment,” to assist “the Commission’s consideration of the Appointments Clause challenge.” The Division complied with the Order by filing an Affidavit on June 4 stating (at ¶ 4) that ALJ Elliot “was not hired through a process involving the approval of individual members of the Commission,” and a Notice of Filing noting (at 1-2 & n.1) that this fact alone is sufficient for purposes of the Commission’s consideration of Respondents’ Appointments Clause claim.¹

¹ The Notice of Filing also presented some additional “background information regarding the selection and hiring of Commission ALJs” and stated that it was the Division’s understanding that this process was applied to Judge Elliot’s hiring. Notice of Filing at 2. On June 23, 2015, the Division filed a supplemental Notice advising the Commission that ALJ Elliot had stated, during a hearing in another case, that he believed that his hiring process differed from that described in the Division’s June 4 Notice of Filing because ALJ Elliot transferred to his current

Respondents have nonetheless taken issue with the Division's June 4 submission and now seek "an order compelling the Division to comply with the Commission's May 27 Order." Mot. 3. Respondents assert, without elaborating, that additional details regarding ALJ Elliot's and Chief ALJ Murray's "method of selection and appointment" are in fact "relevant to the Article II issues raised by Respondents in their appeal to the Commission." Mot. 1, 3. They provide no explanation, however, and their own filings in federal court belie their claim. On June 12, 2015, Respondents filed a motion for a temporary restraining order and preliminary injunction in federal district court; they have asked, in part, that the court stay the administrative proceeding and enjoin the Commission from publicly disseminating a final order in the case on the ground that the proceeding is unconstitutional. Pl.'s Mot. for TRO and Prelim. Inj., Civ. No. 15-cv-2106 (June 12, 2015). In particular, citing the Division's June 4 Affidavit, Respondents argue that "[b]ecause SEC ALJs were not hired by the President or by the Commissioners directly, their hiring violates the Appointments Clause." Pl.'s Memo. of Law In Support of Mot. for TRO and Prelim. Inj. at 13, No. 15-cv-2106 (June 12, 2015). Thus, for purposes of the federal court challenge, Respondents appear to recognize that the only factual information legally relevant to their Appointments Clause challenge is that ALJ Elliot was not hired through a process involving the approval of the individual Commissioners.² Their present claim that additional information is somehow necessary to advance their argument is therefore unconvincing. To the extent the Commission disagrees and determines that further discovery on the method of ALJ selection and

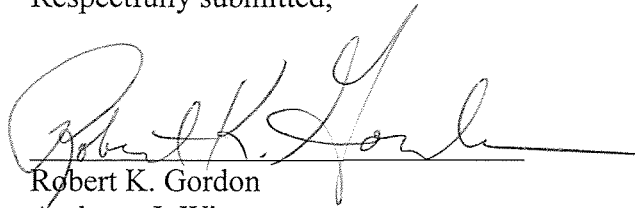
position from the Social Security Administration. But, as the Division explained, the additional information offered by ALJ Elliot about his hiring process is "not necessary to resolve the claims in this case." Notice at 2.

² Other respondents who have challenged the Commission's administrative process under Article II have conceded as much. Indeed, a district court recently observed that plaintiffs seeking to enjoin an administrative proceeding had admitted that the Appointments Clause issue was a purely legal one. *Tilton v. SEC*, 15-CV-2472-16 (SDNY) (June 30, 2015 Order at 16).

appointment is appropriate, the Division will endeavor to provide any such information that the Commission may deem relevant to resolving the case at that time.

This 2nd day of July, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert K. Gordon", written over a horizontal line.

Robert K. Gordon

Anthony J. Winter

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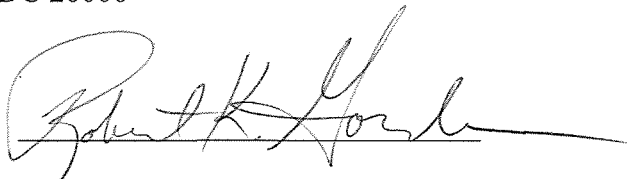
CERTIFICATE OF SERVICE

The undersigned counsel for the Division of Enforcement hereby certifies that he has served the foregoing document by electronic mail and by UPS overnight mail this day addressed as follows:

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A handwritten signature in black ink, appearing to read "Robert K. Gordon", with a long horizontal flourish extending to the right.

Robert K. Gordon
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