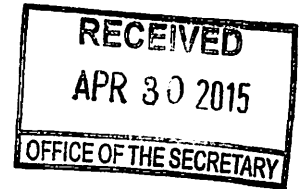


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



**ADMINISTRATIVE PROCEEDING**

**File No. 3-16223**

**In the Matter of**

**SANDS BROTHERS ASSET  
MANAGEMENT, LLC, STEVEN  
SANDS, MARTIN SANDS AND  
CHRISTOPHER KELLY,**

**Respondents.**

**SANDS BROTHERS ASSET MANAGEMENT, LLC'S REQUESTS FOR THE  
COMMISSION TO GRANT INTERLOCUTORY REVIEW AND  
TO STAY THE PROCEEDINGS**

Respondent Sands Brothers Asset Management, LLC ("SBAM"), by its undersigned counsel, respectfully requests, pursuant to Rule 400(a) and Rule 401 of the Rules of Practice<sup>1</sup> of the U.S. Securities and Exchange Commission that the Commission grant an interlocutory review of the Administrative Law Judge's ("ALJ") April 7, 2015 Order (the "Order") disqualifying Martin H. Kaplan, Esq. ("MHK") and Gusrae Kaplan Nusbaum PLLC ("GKN" together with MHK, "Kaplan")<sup>2</sup> from representing SBAM in the instant matter and to stay the proceedings pending consideration by the Commission of whether to grant interlocutory review.<sup>3</sup>

On February 25, 2015, the ALJ *sua sponte* issued an Order to Show Cause why Kaplan should not be disqualified as counsel for SBAM (the "ALJ's OSC").<sup>4</sup> Kaplan submitted his

<sup>1</sup> See 17 C.F.R. § 201.400(a) and § 201.401.

<sup>2</sup> References to Kaplan in this Motion shall be understood to apply to both Martin H. Kaplan, Esq. and Gusrae Kaplan Nusbaum PLLC.

<sup>3</sup> By this submission, SBAM renews its request made prior to the ALJ's refusal to certify the Order, that the Commission grant interlocutory review.

<sup>4</sup> As noted in SBAM's Certification and Stay Request, the ALJ's theory for disqualification has considerably shifted from the ALJ's OSC to the Order. The ALJ's OSC was initially concerned that "Kaplan is likely privy to confidential information regarding Kelly []" and "the appearance of a lack of integrity." See the ALJ's OSC at pp. 2-

response on March 6, 2015 (“Kaplan’s Response”). The Division of Enforcement and Christopher Kelly submitted their respective responses to Kaplan’s Response on March 13, 2015. Kaplan thereafter submitted a reply on March 18, 2015 (“Kaplan’s Reply”). On April 7, 2015 the ALJ issued a ruling disqualifying Kaplan from representing SBAM in this proceeding. On April 13, 2015, SBAM filed its Request for Certification of Ruling for Interlocutory Review and to Stay the Proceedings (“Certification and Stay Request”) with the ALJ.<sup>5</sup> On April 14, 2015, Christopher Kelly filed his Reply to SBAM’s Requests for Certification of Ruling for Interlocutory Review and to Stay the Proceedings. On April 15, 2015, the Division of Enforcement filed its Opposition to SBAM’s Request for Certification and Stay of Proceedings. On April 15, 2015, Martin Sands and Steven Sands filed their Memorandum in Support of [SBAM’s] Request for Certification and to Stay the Proceedings, or, In the Alternative, Motion for Clarification. On April 22, 2015, the ALJ denied to certify his Order for interlocutory review and denied the requests for a stay of the proceeding (the “April 22 Order”).

SBAM requests that the Commission grant the interlocutory review of the Order despite the ALJ’s denial to certify the Order for interlocutory review.<sup>6</sup> As set forth in SBAM’s Certification and Stay Request, extraordinary circumstances exist for the immediate review of the Order by the Commission because the ruling failed to use the appropriate standard of law for

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3. And the Order concedes that “[ ] Kaplan arguably does not actually possess or did not actually obtain confidential information about Kelly [ ]” and shifts the theory of disqualification and alleges that Kaplan “colluded with the Sands to formulate a defense that would pin the blame on Kelly.” See the Order at p. 5.

<sup>5</sup> In the Certification and Stay Request, SBAM set forth the grounds for certification as required Rule 400(c)(2), that the ALJ’s ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and immediate review will enhance the completion of this proceeding. In addition, SBAM identified “extraordinary circumstances” to warrant immediate interlocutory review by the Commission.

<sup>6</sup> Rule 400(a) allows the Commission to grant interlocutory review at any time and on its own motion. 17. C.F.R. §201.400(a). See In the Matter of John Thomas Capital Mgmt. Group LLC, d/b/a Patriot 25 LLC and George R. Jarquesy, Jr. Exchange Act Release No. 71021, 2013 WL 634275, at p. \*4 (Dec. 6, 2013), (internal citations omitted).

determining disqualification, the ALJ applied the Csapo and Blizzard decisions,<sup>7</sup> which are not controlling law as in 2010 the Morgan Keegan<sup>8</sup> case significantly altered the standard of law for determining disqualification. The overly broad interpretation of the duty of loyalty and resulted in an inappropriate interference with the attorney-client relationship. The ALJ's misapplication of the standard of law for disqualification creates a conflict in the Commission's case law and standards. Moreover, in the April 22 Order denying certification the ALJ explicitly acknowledges and disregards the more recent standard for evaluating disqualification. The ALJ states, "A law judge's order, however, is not binding precedent on another law judge []." <sup>9</sup> The Commission should grant interlocutory review to clarify the appropriate standard for evaluating disqualification of counsel in a proceeding before the Commission.

As set forth in SBAM's Certification and Stay Request, the Order has far reaching implications and the conflict in the current case law should be rectified by the Commission. The ruling also ignored state law and standards underlying counsel and his firm's use of advanced conflict waivers to address standard conflict issues.

The issue of disqualification of counsel is of paramount importance and fundamentally impacts the attorney-client relationship and a party's right to choose its counsel, a cornerstone of U.S. Constitutional rights and the Due Process considerations arising therefrom. SBAM will be irreparably prejudiced by the disqualification of its counsel which has represented it for over a decade. In this case, review after the issuance of an initial decision is not sufficient to protect SBAM's right to counsel of its choice. Interlocutory review has been granted under circumstances

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<sup>7</sup> See SEC v. Csapo, 533 F.2d 7, 12 (D.C.Cir.1976); In Re Blizzard, Release No. 2032, (Apr. 24, 2002), 2002 WL 714444.

<sup>8</sup> In the Matter of Morgan Asset Mgmt. et al., SEC Admin. Proceedings Rulings Release No. 657, 2010 WL 7765366, (July 19, 2010).

<sup>9</sup> April 22 Order at p. 2.

where, as here, it will “expedite the disposition of the matter, avoid a future remand, and provid[e] general guidance with regard to the conduct of [] proceedings.”<sup>10</sup>

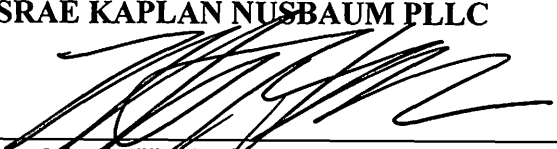

SBAM respectfully requests that the Commission stay this proceeding pending its consideration of SBAM’s request for interlocutory review.<sup>11</sup> Moreover, SBAM also requests that the Commission expedite the briefing schedule under Rule 450(a)(2)(v).<sup>12</sup>

In conclusion, SBAM respectfully requests that the Commission grant its request for interlocutory review and stay this proceeding.

Dated: New York, New York  
April 29, 2015

Respectfully submitted,  
**GUSRAE KAPLAN NUSBAUM PLLC**

By: \_\_\_\_\_

  
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<sup>10</sup> Cf. City of Anaheim, Exchange Act Release No. 42140, 1999 WL 1034489 at \*1 (Nov. 16, 1999).

<sup>11</sup> See In the Matter of John Thomas Capital Management Group LLC d/b/a Patriot 28 LLC, George R. Jarkesy, Jr., John Thomas Financial, Inc., and Anastasios “Tommy” Belesis, SEC Admin. Proceedings Order Granting Interim Stay, Release No. 34-70869, 2013 WL 6021114, (November 13, 2013) citing Cf. Clark T. Blizzard, Admin. Proc. File No. 3-10007 (Mar. 5, 2002) (staying law judge’s order pending consideration by the Commission of a request to grant interlocutory review).

<sup>12</sup> See 17 C.F.R. § 201.450(a)(2)(v).