UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of **LAURIE BEBO, and** **JOHN BUONO, CPA** **Respondents.**	**RESPONDENT LAURIE BEBO'S PETITION FOR REVIEW OF THE INITIAL DECISION**

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Pursuant to Commission Rules of Practice 410 and 411, Respondent Laurie A. Bebo, by and through her counsel, hereby respectfully petitions the Commission for review of the Initial Decision rendered on August 13, 2020 finding various violations of the Securities Exchange Act of 1934 and rules promulgated thereunder. Bebo seeks review of each and every part thereof, issues to be further identified in her brief (*see* Rule 411(d)).[1] These errors include the following.

First, Bebo did not engage in disclosure fraud or fraudulent "scheme", as found by the ALJ. Rather, the evidence showed that in January 2009, at the height of the Great Recession, with her company Assisted Living Concepts, Inc. ("ALC") trending toward a potential default of occupancy and coverage ratio covenants (the "financial covenants") in a lease that covered a mere eight of the approximately 200 assisted living facilities that her company owned or operated (the "Lease" or the "Ventas Lease"), Bebo acted prudently and in the best interests of the Company and shareholders who she served as President and Chief Executive Officer. She thought that ALC's lease counter-party Ventas, Inc. ("Ventas") whose business was also being catastrophically disrupted by the recession, would be open to a flexible arrangement for compliance with the covenants. Because the Lease was also ambiguous, she decided to explore a clarification of Lease terms, as had been done informally in the past, after discussing the matter with ALC's general counsel.

Following a phone call with Ventas, Bebo sent an email confirming ALC's notification it was renting to employees, and that "all rentals related to employees" would be treated as if in the ordinary course of business. In the context of the economy and Lease covenant trends—of which

[1] Bebo does not challenge the finding that the low likelihood that noncompliance with the Lease would result in a worst-case scenario weighs against materiality. (ID at 100.) Nor does Bebo challenge that the private investor suit does not establish materiality. (ID at 105.) Bebo does not challenge the finding that market reactions to disclosure events do not weigh in favor of materiality. (ID at 103) However, Bebo does challenge the improper weight given to these materiality-related findings.

Ventas was aware—it would be obvious to anyone that ALC intended to count those rentals toward the covenant calculations. Bebo observed that the email went to several Ventas employees in charge of Lease monitoring.[2] None of them objected.

A few days later, ALC's CFO, who participated in the call and drafted the email, told members of ALC's disclosure committee, including the general counsel, that ALC had obtained clarification from Ventas to include employee-related rooms in the covenant calculations. No one on the disclosure committee, including ALC's general counsel, ever raised any concern to Bebo about ALC publicly affirming compliance with the Lease on this basis. Indeed, days after that first of many disclosure committee meetings to discuss this issue, *ALC's general counsel expressly approved ALC's statement in its filing with the Commission asserting compliance with the Ventas Lease*. These facts are not disputed. They should be dispositive of a fraud claim based ALC's compliance opinion.

But the ALJ improperly viewed this case as a breach of contract case. Put another way, the ALJ determined whether, in his view and through the lens of hindsight, ALC breached the Lease. If it was a breach, the ALJ's reasoning continues, then ALC misrepresented its compliance in its Commission filings. This foundational premise of the Initial Decision is so weak as a matter of fact and law that the entire Initial Decision should fall.

As a result of these and other erroneous factual and legal determinations regarding the required elements of falsity, scienter and materiality,[3] the Initial Decision erred in finding Bebo violated or caused violations of § 10(b) and Rule 10b-5(b) thereunder by making material misrepresentations or omissions in ALC's periodic filings with the Commission that ALC was in

[2] She also made sure that ALC's general counsel received copies of the email and Ventas' response.

[3] For the same reasons, it was error for the ALJ to find ALC's periodic reports were materially false or misleading, and violated § 13(a) and Rules 13a-1, 13a-13, and 12b-20.

compliance with the Ventas Lease, that Bebo provided false certifications under Rule 13a-14, or that Bebo violated and caused violations of § 10(b) and Rule 10b-5(a) and (c) by engaging in a scheme to defraud Ventas. In particular, the ALJ's erroneous materiality determination—which effectively makes any instance of CEO dishonesty material—and the broad application of scheme liability implicate important law and policy matters warranting Commission review.

Second, the ALJ erred in finding non-fraud books and records and internal control violations. *Third*, Bebo did not violate Rule 13b2-2 by making materially false or misleading statements to ALC's auditors, Grant Thornton, because, among other reasons, the auditors testified they were not misled and the record established that they were not. *Fourth*, based upon findings of violations, the decision erroneously imposed sanctions including a cease-and-desist order; a six-year officer-and-director bar; and $1,050,000 in civil penalties.[4]

In addition to the foregoing, Bebo further seeks review on Constitutional grounds and on the grounds that prejudicial errors were committed in the conduct of the proceeding. In particular (without limitation), Bebo asserts that: (a) Section 929P of Dodd-Frank on its face violates Bebo's right to due process and equal protection; (b) as applied, these proceedings violated Bebo's right to due process and equal protection; (c) the ALJs presiding here were insulated from removal by multiple layers of tenure protection in violation of Article II of the U.S. Constitution; (d) the proceeding is barred by the statute of limitations because no Constitutionally valid proceeding was instituted within five years of the conduct at issue.

Bebo also asserts under Rule 410(d) that she is unable to pay the civil monetary penalty imposed, and will file with her opening brief a sworn financial disclosure statement containing the information specified in Rule 630(b).

[4] Bebo does not challenge the Initial Decision's determination rejecting the applicability of disgorgement.

Dated this 1st day of September, 2020.

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Ryan S. Stippich of Reinhart Boerner Van Deuren s.c. certifies that, pursuant to the Commission's March 18, 2020 order in all pending administrative proceedings, Rel. No. 34-88415, on September 1, 2020, I caused the foregoing Respondent Laurie Bebo's Petition for Review of the Initial Decision to be filed with the Commission by sending it electronically to apfilings@sec.gov; and pursuant to the parties' March 26, 2020 stipulation, I caused the foregoing to be served upon Benjamin J. Hanauer, counsel for the Division of Enforcement, by sending it electronically to hanauerb@sec.gov.

/s/ Ryan S. Stippich