UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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February 28, 2020

UPS NEXT DAY AIR

Vanessa Countryman, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington D.C. 20549

Re: ***In the Matter of Laurie Bebo and John Buono, CPA*** **(AP File No. 3-16293)**

Dear Ms. Countryman:

Enclosed for filing in the above-referenced matter please find three copies of a letter that I sent today to the Honorable Administrative Law Judge Jason S. Patil.

Sincerely,

Benjamin J. Hanauer

Enclosures

Copies to: Hon. ALJ Jason S. Patil (via email and UPS delivery)
Marc A. Cameli, Esq. (via email and UPS delivery)

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February 28, 2020

VIA UPS NEXT DAY AIR AND EMAIL

Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F. Street, N.E.
Washington D.C. 20549

Re: *In the Matter of Laurie Bebo and John Buono, CPA* (AP File No. 3-16293)

Dear Judge Patil:

The Division of Enforcement submits this letter pursuant to the Court's February 10, 2020 Order Following Oral Argument and in reply to Respondent Laurie Bebo's letter dated February 21, 2020. This letter addresses Bebo's responses to the case law cited in the Division's February 13, 2020 letter to the Court.

a. Event Study Cases

In its February 13 letter, the Division cited five decisions standing for the proposition that a misstatement/omission can be material despite a lack of significant stock price movement. Bebo challenges these decisions because they do not involve event studies. But she fails to explain why the cases do not support the Division's position that materiality can be proved absent a showing of stock price movement. Indeed, in those decisions the lack of stock price movement was easily determined without the need for event studies, and event studies would not have been necessary for the courts' analyses. As in those decisions, the stock price movement at issue in this case – the 12% stock drop following ALC's May 4, 2012 disclosure of "irregularities" in the Ventas lease – is not in dispute.

Moreover, Bebo twice in her letter makes concessions that materiality can be demonstrated without a supporting event study. First, she acknowledges that evidence and expert testimony beyond event studies can be relevant to materiality. (Bebo's Feb.

21, 2020 letter at 2 n.1). Next, Bebo posits that materiality "must be evaluated based on *all the facts and circumstances* from the perspective of a reasonable public investor." (*Id.* at 4) (emphasis added). To that end, the Division has cited a variety of evidence establishing the materiality of ALC's compliance with the Ventas covenants, including: (a) the significant attention ALC, its board, Bebo, and Ventas paid to covenant compliance; (b) the Division of Corporation Finance's real-time scrutiny of ALC's covenant disclosures, and ALC's resulting modifications; (c) Bebo's admissions regarding the materiality of the Ventas covenants; (d) the stock price drop following the disclosure of Ventas lease "irregularities"; (e) the expert testimony of Barron; and (f) the impact to ALC's financial statements following the Ventas settlement and ALC's purchase of the Ventas facilities for $34 million above fair value, which Grant Thornton determined to be "damages as a result of occupancy rates falling significantly below required covenant occupancy rates." (*See, e.g.*, Division's Supplemental Post-Hearing Response Br. (Nov. 1, 2019) at 5-6, 40-41).

The cases Bebo cites do not help her. For instance, *SEC v. Mangan*, 598 F. Supp. 2d 731, 737 (W.D.N.C. 2008) was an insider trading case where, unlike Bebo's case, the SEC lacked evidence of materiality beyond stock price movement. Similarly, Bebo's other two cases – *Akerman* and *Barclays Bank* – only assessed stock price movement, as opposed to other evidence investors could consider material. Unlike *Mangan*, *Akerman*, and *Barclays Bank*, the Division has offered a variety of evidence, beyond stock price movement, to support materiality. And, as Bebo concedes, *Akerman* and *Barclays Bank* discuss event studies in the context of loss causation, an element in private securities fraud cases but not SEC actions.

Finally, Bebo's event study argument fails for the simple reason that there was never a fulsome "corrective disclosure" from which to gauge market reaction. Specifically, ALC never disclosed the egregious aspects of Bebo's fraud on which this lawsuit is premised: the use of large numbers of phony occupants to meet the covenants, including employees who never stayed at the Ventas facilities, employees simultaneously listed as residents of multiple facilities, and Bebo's friends and family. That information only became public after this lawsuit was filed, by which time ALC had already been acquired by a private firm and was no longer making public disclosures.

b. Issuer Determinations of Materiality

Bebo does not appear to dispute the Division's contention that an issuer's determination of materiality is relevant to, and can support a finding of, materiality for the purposes of a fraud determination. Indeed, Bebo concedes that materiality must be evaluated "based on all the facts and circumstances" from a perspective of a reasonable investor. (Feb. 21 Letter, at 4). To that end, the cases cited by the Division support the proposition that an issuer's materiality determination is relevant to and informs a reasonable investor's investment decision.

Contrary to Bebo's assertion, the Division is not arguing that a disclosure is *per se* material simply because it is contained in a 10-K. Nor does the Division dispute the holdings of the two cases cited by Bebo – *Oran v. Stafford*, 226 F.3d 275, 287-88 (3d Cir. 2000) and *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1055 (9th Cir. 2014) – that different disclosure obligations exist between Exchange Act Rule 10b-5 and Securities Act Rule S-K 303.

Rather, the Division submits that ALC undisputedly determined that its disclosures regarding the Ventas covenants (and the impact of non-compliance) were material and that ALC's determinations properly inform the decisions of reasonable investors. *See, e.g., Media Gen., Inc. v. Tomlin*, 387 F.3d 865, 870 (D.C. Cir. 2004) (testimony by issuer's counsel that non-disclosed information was material to him "is not dispositive, but it certainly suggests that reasonable investors could have concluded that [the information was] material."). Moreover, ALC's contemporaneous decision-making on what information to disclose occurred in the context of longstanding Commission guidance that "companies should focus on material information and eliminate immaterial information" from Commission filings. *See, e.g., Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*, Release No. 34-48960, 2003 SEC LEXIS 3034, *6 (Dec. 19, 2003). While not dispositive, ALC's real-time determinations that investors would consider disclosures about the Ventas covenants to be important information supports a finding that those disclosures were material.

c. Consideration of Settlements in Related Actions

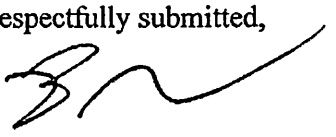
Bebo apparently does not contest the Division's proposition that non-settling defendants appropriately face greater punishment than settling co-defendants, and that courts may properly consider the settling defendant's punishment. Indeed, Bebo cites decisions standing for the proposition that in cases involving "similar" defendants, the settling defendant's punishment should be considered to ensure against improper disparity. (Feb. 21, 2020 Letter, at 4-5). Bebo then asks the Court to consider Buono's $100,000 penalty to prevent "significant disparity" with any penalty assessed against her. (*Id.* at 5).

Beyond the fact that Buono settled at the onset of this litigation, other relevant factors support the notion that Bebo should receive a significantly larger penalty. In terms of the *Steadman* factors, Bebo acted with greater scienter and more egregiously than Buono. Bebo, not Buono, was the mastermind of the fraud who ordered the use of phony occupants to avoid failing the Ventas covenants. It was Bebo who personally selected the identities of the phantom residents. And it was Bebo who directed that the use of employees be concealed from Ventas. Moreover, whereas Buono has cooperated and admitted wrongdoing, Bebo has not. *See, e.g., SEC v. Williky*, 942 F.3d 389, 393 (7th Cir. 2019) (listing relevant penalty factors).

The statutory penalty factors likewise suggest that Bebo should receive higher penalties than Buono. As CEO, Bebo received a higher salary and greater bonuses than her subordinate Buono.[1] Thus, a penalty substantially higher than Buono's is required to deter other highly compensated CEOs from engaging in fraud. Exchange Act Section 21B(c)(5).

Because key differences exist between Bebo and Buono for the purposes of assessing penalties, imposing significantly higher penalties against Bebo is warranted and would not result in inappropriate disparity.

Respectfully submitted,



Benjamin J. Hanauer

CC: Marc A. Cameli, Esq. (via email and UPS delivery)

[1] The Division has requested that Bebo be ordered to disgorge her discretionary bonuses, totaling more than $1.1 million for 2009 through 2011, on the ground that multiple board members who determined her bonuses testified that Bebo would not have received bonuses if the board had known about her fraud. (Division's Post-Hearing Br. (July 31, 2015) at 57).