

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.

The Honorable Cameron Elliot,
Administrative Law Judge

**MILBANK TWEED HADLEY & MCCLOY LLP'S MOTION FOR LEAVE TO FILE A
REPLY IN FURTHER SUPPORT OF ITS MOTION TO QUASH NON-PARTY
SUBPOENA DUCES TECUM**

Pursuant to Rule 154 of the Rules of Practice of the Securities and Exchange Commission ("Commission"), 17 C.F.R. § 201.154, non-party Milbank Tweed Hadley & McCloy LLP ("Milbank") hereby moves for leave to file a reply brief in further support of its Motion to Quash Non-Party Subpoena *Duces Tecum* Issued at the Request of Respondent Laurie Bebo ("Motion to Quash"). Milbank seeks leave to file a reply brief of no more than ten pages on or before Friday, March 6, 2015. Milbank has consulted with the Division of Enforcement (the "Division"), which does not oppose this request. Milbank also consulted with counsel for Respondent Laurie Bebo ("Ms. Bebo"), who opposes this request. In further support of this motion, Milbank states as follows:

1. The above-captioned proceeding was commenced on December 3, 2014.
2. On January 14, 2015, Ms. Bebo filed a Request for Issuance of Subpoenas *Duces Tecum* to Milbank, Assisted Living Concepts, Inc. ("ALC"), Ventas, Inc. ("Ventas") and Quarles & Brady LLP ("Request for Issuance of Subpoenas").

3. On January 23, 2015, this Court granted in part Ms. Bebo's Request for Issuance of Subpoenas (as modified) and authorized the issuance of a subpoena *duces tecum* to be served upon Milbank by Ms. Bebo (the "Milbank Subpoena").

4. On February 10, 2015, this Court granted Milbank's motion for an extension of time until February 20, 2015 to respond to the Milbank Subpoena.

5. On February 20, 2015, Milbank filed the Motion to Quash.

6. On March 2, 2015, Ms. Bebo filed a Response to the Motion to Quash (the "Response").

7. Although Rule 232 does not expressly provide for the submission of reply briefs in further support of motions to quash subpoenas, hearing officers have often permitted and considered such replies. *See, e.g., Sean A. Cooper*, Administrative Proceedings Rulings Release No. 2040, 2014 SEC LEXIS 4433 (Nov. 21, 2014); *Michael A. Horowitz*, Administrative Proceedings Rulings Release No. 1676, 2014 SEC LEXIS 2855 (Aug. 7, 2014); *Morgan Asset Mgmt.*, Administrative Proceedings Rulings Release No. 658, 2010 SEC LEXIS 2339 (July 20, 2010); *Putnam Inv. Mgmt.*, Administrative Proceedings Rulings Release No. 613, 2004 SEC LEXIS 1096 (Mar. 26, 2004).

8. Here, the Court will benefit from concise reply briefing, as the Response omits and fails to address the legal significance of certain material information regarding the internal investigation conducted by Milbank and raises other points and arguments that Milbank has not yet had an opportunity to address. For example, the Response asserts that the internal investigation conducted by Milbank was purportedly not conducted in anticipation of litigation. In doing so, the Response acknowledges that Milbank's retention was prompted by an employee's May 2012 letter to the Audit Committee and ALC's Board of Directors, *see Opp. at*

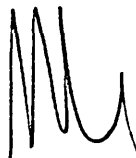
5-6, but omits that the letter was a “whistleblower” letter under the Sarbanes-Oxley Act of 2002 that alleged that ALC’s prior financial statements were materially misleading. That the internal investigation was conducted by Milbank in response to a “whistleblower” letter under the Sarbanes-Oxley Act of 2002—particularly where the letter contained assertions of misleading financial disclosure—has legal significance for purposes of the work product assertions in the Motion to Quash that the Response fails to acknowledge or address. *See, e.g., Tumbling v. Merced Irrigation Dist.*, 262 F.R.D. 509, 520 (E.D. Cal. 2009) (documents prepared by outside counsel during investigation in response to whistleblower allegations were protected work product because they were prepared in anticipation of litigation). ALC fully anticipated litigation at the time of Milbank’s retention; the whistleblower letter was a clear indication of possible future SEC involvement, as well as possible future litigation from the whistleblower himself. Moreover, ALC’s concerns regarding future litigation proved to be well-founded. On May 9, 2012, within days of Milbank’s retention, Ventas sent ALC a letter asserting fraud in connection with ALC’s satisfaction of occupancy covenants under the Ventas lease. And, shortly thereafter, the SEC issued a document preservation notice and then subpoenaed ALC for documents relating to this practice, which was later followed by the commencement of a securities class action by a well-known plaintiff’s firm. The suggestion that Milbank’s internal investigation was not conducted in “anticipation of litigation” lacks any merit.

9. As the scheduled hearing date of April 20, 2015 is still seven weeks away, Milbank does not believe that its request for leave to file a reply brief will impact the hearing officer’s ability to complete the proceeding in a timely fashion, as the reply brief would be filed on or before Friday, March 6, 2015.

WHEREFORE, Milbank respectfully requests that it be granted leave to file a reply brief of no more than ten pages in further support of its Motion to Quash on or before Friday, March 6, 2015.

Dated: March 3, 2015


Respectfully submitted,



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CERTIFICATE OF CONFERENCE

Milbank has consulted with the Division, which does not oppose this request. Milbank also consulted with counsel for Ms. Bebo, who opposes this request.



Mark D. Villaverde

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CERTIFICATE OF SERVICE

I, Mark D. Villaverde, hereby certify that on March 3, 2015 I caused Milbank Tweed Hadley & McCloy LLP's Motion for Leave to File a Reply in Further Support of Its Motion to Quash Non-Party Subpoena *Duces Tecum* to be served via email and/or FedEx on the following:

Brent J. Fields, Secretary
Office of the Secretary
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Hon. Cameron Elliot
U.S. SECURITIES AND EXCHANGE COMMISSION
Via alj@sec.gov and Milnorc@sec.gov

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Dated: March 3, 2015

Respectfully submitted,



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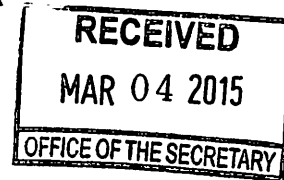
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March 3, 2015

BY FEDEX

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: *In the Matter of Laurie Bebo*, AP File No. 3-16293

Dear Mr. Fields:

Enclosed for filing in the above-referenced matter please find an original and three copies of Milbank Tweed Hadley & McCloy LLP's Motion for Leave to File a Reply in Further Support of Its Motion to Quash Non-Party Subpoena *Duces Tecum*.

Respectfully submitted,


Mark D. Villaverde

cc: Benjamin J. Hanauer
The Honorable Cameron Elliot (*via email*)
Mark A. Cameli
Ryan S. Stippich
Patrick S. Coffey