



DIVISION OF  
ENFORCEMENT

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
NEW YORK REGIONAL OFFICE  
200 VESEY STREET, SUITE 400  
NEW YORK, NY 10281

**COPY**

Direct Number: (212) 336.0971

June 9, 2017

Via Email and Facsimile

Honorable Carol Fox Foelak  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington DC 25049



Re: *In the Matter of Lynn Tilton, et al. (File No. 3-16462)*

Dear Judge Foelak:

We write in response to Respondents' letter, dated June 6, 2017, notifying the Court of supplemental authority in light of the U.S. Supreme Court's decision in *Kokesh v. SEC*, No. 16-529 (S. Ct. June 5, 2017) (Slip Op.). The Division of Enforcement ("Division") concurs with Respondents that \$45,447,417 of the Division's requested disgorgement stems from misconduct that occurred more than five years prior to the initiation of this action. In light of *Kokesh*, the Division no longer seeks disgorgement of these ill-gotten gains.

Respondents correctly note that *Kokesh* did not address the question of "whether courts possess authority to order disgorgement in SEC enforcement proceedings" (Slip Op. 5 n.3), and therefore controlling law on this subject remains unchanged. *Kokesh* similarly did not address the Eighth Amendment's Excessive Fines Clause.

We therefore do not believe that any additional submissions on this subject are necessary to address these issues, but the Division is prepared to submit any supplemental briefing that would be helpful to the Court.

Sincerely,

Dugan Bliss  
Senior Trial Counsel

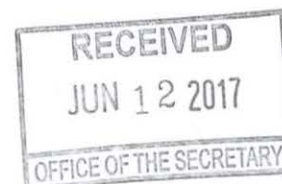
cc via email:

Randy Mastro, Esq.  
Lisa Rubin, Esq.  
Susan Brune, Esq.

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

**COPY**

ADMINISTRATIVE PROCEEDING  
File No. 3-16462



In the Matter of

LYNN TILTON,  
PATRIARCH PARTNERS, LLC,  
PATRIARCH PARTNERS VIII, LLC,  
PATRIARCH PARTNERS XIV, LLC, and  
PATRIARCH PARTNERS XV, LLC,

Respondents.

**DIVISION OF ENFORCEMENT'S OPPOSITION TO  
RESPONDENTS' PETITION FOR INTERLOCUTORY REVIEW OF THE HEARING  
OFFICER'S DENIAL OF A STAY OF THIS PROCEEDING, AND FOR A STAY**

The Commission should reject Respondents' request to stay this proceeding in light of the Tenth Circuit's decision in *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016), *reh'g denied* (No. 15-9586), and *Raymond J. Lucia Companies, Inc. and Raymond J. Lucia v. SEC*, No. 15-1345 (D.C. Cir.), which is currently pending before the *en banc* court in the D.C. Circuit.<sup>1</sup> The Commission has consistently held that the requirements of the Appointments Clause apply only to officers of the United States, not employees, and that its ALJs are employees. *See, e.g.*,

<sup>1</sup> Given the Commission's plenary authority over its administrative proceedings, the Division does not believe that the denial of certification for interlocutory review by the ALJ presents a bar to the Commission's consideration of Respondents' stay request. *See* 17 C.F.R. § 201.400(a) ("The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review."); *see also id.* § 201.411(a). The Commission has recently made clear that, consistent with Rule 400(a), "any respondent may seek a stay of [an] administrative proceeding and, where appropriate, the Commission in its discretion may issue such a stay." *Amendments to the Commission's Rules of Practice*. 81 Fed. Reg. 50221, 50224 n.111 (July 29, 2016) (discussing Rule 400(a)).

*Bennett Group Fin. Serv. & Dawn J. Bennett, LLC*, Rel. No. 33-10331, 2017 WL 1176053, at \*5 (Mar. 30, 2017), *pet. filed* May 26, 2017 (10th Cir. No. 17-9524). And it reiterated that holding in two decisions that post-date the Tenth Circuit's contrary determination in *Bandimere*.

*Bennett*, 2017 WL 1176053, at \*5; *Harding Advisory LLC & Wing F. Chau*, Securities Act Release No. 10277, 2017 WL 66592, at \*19 & n.90 (Jan. 6, 2017), *pet. filed* (D.C. Cir. No. 17-1070).

In issuing its May 22, 2017 order staying all proceedings before an ALJ or the Commission in which a respondent could appeal to the Tenth Circuit pending a decision by the government whether to file a certiorari petition in *Bandimere*, the Commission necessarily considered the impact of the *Bandimere* decision on proceedings outside of that Circuit and decided that such proceedings could continue at this time consistent with existing law. *See In re Pending Administrative Proceedings*, Order, Exchange Act Release No. 80741 (May 22, 2017). The Division sees no reason why the Commission should depart from this approach and, accordingly, requests that Respondents' stay motion be denied.

June 9, 2017

Respectfully submitted,



---

Dugan Bliss, Esq.  
Nicholas Heinke, Esq.  
Amy Sumner, Esq.  
Mark L. Williams, Esq.  
Division of Enforcement  
Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Division's Opposition to Respondents' Petition for Interlocutory Review of the Hearing Officer's Denial of a Stay of this Proceeding, and for a Stay** was served on the following on this 9<sup>th</sup> day of June, 2017, in the manner indicated below:

Securities and Exchange Commission  
Brent Fields, Secretary  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
(By Facsimile and original and three copies by UPS)

Hon. Judge Carol Fox Foelak  
100 F Street, N.E.  
Mail Stop 2557  
Washington, D.C. 20549  
(By Email)

Randy M. Mastro, Esq.  
Lawrence J. Zweifach, Esq.  
Barry Goldsmith, Esq.  
Caitlin J. Halligan, Esq.  
Reed Brodsky, Esq.  
Monica K. Loseman, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
(By email pursuant to the parties' agreement)

Susan E. Brune, Esq.  
Brune Law PC  
450 Park Avenue  
New York, NY 10022  
(By email pursuant to the parties' agreement)

Martin J. Auerbach  
Law Firm of Martin J. Auerbach, Esq.  
1330 Avenue of the Americas  
Ste. 1100  
New York, NY 10019  
(By email pursuant to the parties' agreement)

