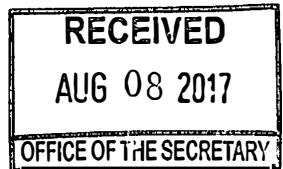


HARD COPY



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding
File No. 3-17228

In the Matter of

**David S. Hall, P.C. d/b/a The Hall
Group CPAs,
David S. Hall, CPA,
Michelle L. Helterbran Cochran,
CPA, and
Susan A. Cisneros**

Respondents.

**DIVISION OF ENFORCEMENT'S
OBJECTION TO RESPONDENT
MICHELLE L. HELTERBRAN'S
REQUEST TO FILE UNTIMELY
PETITION FOR REVIEW OF INITIAL
DECISION**

More than three months after being properly served with the Initial Decision in this matter—and more than a month after the decision became final—Respondent Michelle Helterbran seeks an opportunity to petition the Commission for untimely review of that Initial Decision. Because Helterbran was properly served with the Initial Decision, was aware it had been issued, and received a copy of it from a state regulator, her request should be denied.

I.
BACKGROUND

Administrative Law Judge Cameron Elliot entered an Initial Decision on March 7, 2017, denying Helterbran the privilege of appearing or practicing before the Commission as an accountant, with the right to reapply after five years; ordering her to cease and desist from causing violations of Rule 2-02(b)(1) of Regulation S-X and Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder; and ordering her to pay a civil penalty of \$22,500.

David S. Hall, P.C. d/b/a The Hall Group CPAs, David S. Hall, CPA, Michelle L. Helterbran

Cochran, CPA, and Susan A. Cisneros, Initial Decision Release No. 1114 (Mar. 7, 2017), 116 SEC Docket 05, 2017 WL 894965. The Office of the Secretary served the Initial Decision by certified mail the same day it was entered. On March 11, 2017, a notice of the mailing was left at Helterbran's residence. Exhibit A.

On March 20, the Texas State Board of Public Accountancy (the "TSBPA") emailed Helterbran to request that she respond to some prior correspondence from the TSBPA in light of the Initial Decision. Exhibit B. Helterbran told the TSBPA that she was aware that the Initial Decision had been issued but she had not yet been served. *Id.* That same day, the TSBPA emailed Helterbran a copy of the Initial Decision, and she thanked them for the copy. *Id.*

A week later, Helterbran emailed the Division regarding the Initial Decision, again indicating that she was aware of it, but had not yet received it from the Office of the Secretary. Exhibit C. The next day, the Division advised Helterbran that it had received its copy of the Initial Decision on March 10, 2017, and suggested that she reach out to the Office of the Secretary with any questions regarding service. *Id.*

On or before April 3, 2017, Helterbran left a voicemail with the Office of the Secretary regarding her deadline to file a petition for review of the Initial Decision. Exhibit D. On April 3, the Office of the Secretary emailed Helterbran, advising her that it could not answer any legal questions, but referred her to relevant rules from the Commission's Rules of Practice. *Id.* The Office of the Secretary also sent a link to the Commission's public website where Helterbran could obtain a copy of the decision and provided her with the specific release number for the Initial Decision. *Id.* Two days later, on April 5, the post office in Coppell, Texas, classified Helterbran's service copy of the Initial Decision as unclaimed and designated it for return to the Office of the Secretary. Exh. A.

The Commission entered its Notice That Initial Decision Has Become Final in this matter on June 15, 2017. Exchange Act Release No. 34-80949. In light of this notice, the TSBPA sent Helterbran a letter dated July 5, again requesting that she respond to their prior correspondence. Exhibit E. In response, Helterbran sent a letter to the Office of the Secretary, dated July 15 and received by the Office of the Secretary on July 25, stating that she wanted an opportunity to have the Commission review the Initial Decision and that she had never been served. *Id.* Helterbran forwarded a copy of this letter to the TSBPA in a letter dated July 29, requesting an extension of her deadline to respond to the TSBPA's correspondence. *Id.*

The Office of the Secretary forwarded the July 15 letter from Helterbran to the Division on July 28. Although the Division was never served a copy of the letter, and it is not styled as a motion, out of an abundance of caution the Division construes the July 15 letter as motion for leave to file an untimely petition for review of the Initial Decision (the "Motion") and files this response, asking the Commission to deny the Motion.¹

II. ARGUMENT

The Commission should not allow Helterbran to seek untimely review of the Initial Decision because she was properly served under the Commission's Rules of Practice, knew the Initial Decision was available and where to find it, and had been sent a copy by the TSBPA.

A. Helterbran Was Properly Served with the Initial Decision

Under Commission Rule of Practice 141(b), service of the Initial Decision is to be made by the Office of the Secretary and can be served by any method of service authorized under

¹ Because the Division is submitting this response based only on Helterbran's three-sentence letter, it requests an opportunity to submit further briefing if the Commission orders Helterbran to submit additional briefing in support of the Motion.

Rules 141(a) and 150(c)(1)-(3). Under Rule 150, service can be made by mail and is complete on mailing. Rule 150(c)(2), (d). If service is made by mail, an additional three days is added to a response period. Rule 160(b).

The Office of the Secretary informed the Division that it mailed the Initial Decision to Helterbran on March 7, 2017, the same day it was entered. Thus, Helterbran was served that day. Rule 150(d). The Initial Decision ordered that any petition for review was to be filed within 21 days from service of the Initial Decision. Because the Office of the Secretary served Helterbran by mail, she had 24 days from March 7—until Friday, March 31, 2017—to file her petition for review. She failed to do so.

The Office of the Secretary also provided the Division a copy of the tracking information for its mailing of the Initial Decision to Helterbran. Exhibit A shows that a notice was left with Helterbran on March 11, 2017, but she left the Initial Decision unclaimed for more than three weeks. Although Helterbran claimed that she attempted to pick up the letter sometime before April 3, postal records show that the letter was available in the Coppell post office until at least April 5, when it was deemed unclaimed and designated to be returned. Exh. A. Regardless of her failure to accept delivery of the Initial Decision, service on Helterbran was complete when the Office of the Secretary mailed it to her on March 7. *Brian J. Ourand*, Investment Adviser Act Release No. 4482, n.13 (August 12, 2006) (“But the fact that the mailings were returned does not have an effect on whether service was completed.”)(*citing* 4B Wright & Miller, Fed. Prac & Proc. Civ. § 1148 (4th ed.)). Thus, Helterbran was properly served with the Initial Decision, and her March 31 deadline to petition for review has long since passed.

B. Helterbran Was Aware of , and Actually Received a Copy of, the Initial Decision

Even if she had not been properly served with the Initial Decision, Helterbran has known of it, and had a copy of it, for months. As shown above, Helterbran acknowledged she knew the Initial Decision had been entered as early as March 20 and that she had received a copy of it by email from the TSBPA on the same day. Exh. B. She also acknowledged the entry of the Initial Decision to the Division on March 27. Exh. C. Finally, she was directed to a public copy of the Initial Decision on April 3 by the Office of the Secretary. Exh. D. Thus, it cannot be disputed that she was aware of, and in possession of, the Initial Decision since at least March 20, 2017. Based on these facts, Helterbran cannot establish any reason to excuse her failure to timely file a petition for review.

III. RELIEF REQUESTED

Despite being properly served, Helterbran asks the Commission to allow her to make an untimely petition for review of an Initial Decision that became final more than a month ago. Because she actually received the Initial Decision, she cannot argue that she did not know about it or receive it. Rather, she appears to argue only that because she chose not to retrieve it from the post office, she has not been served and her time to seek review has not passed. This argument is legally incorrect and establishes no reason to excuse her failure to timely file a petition for review. Her motion should be denied.

Dated: August 4, 2017

Respectfully submitted,



Timothy L. Evans
Texas Bar No. 24065211

David D. Whipple
D.C. Bar No. 999495
New York Registration No.4902565

United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 978-5036
(817) 978-4927 (facsimile)
EvansTim@sec.gov
COUNSEL FOR
DIVISION OF ENFORCEMENT


SERVICE LIST

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing was served on the following on August 4, 2017 via United Parcel Service, Overnight Mail:

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Michele L. Helterbran Cochran, CPA
[REDACTED]
Coppell, TX [REDACTED]

Ms. Susan A. Cisneros
[REDACTED]
Flower Mound, TX [REDACTED]


Timothy L. Evans

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70162070000111330143



In-Transit

Product & Tracking Information

[See Available Actions](#)

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
April 23, 2017, 1:03 pm	Business Closed	WASHINGTON, DC 20549
<p>Your item is being held at the Post Office in WASHINGTON, DC 20549 on April 23, 2017 at 1:03 pm because the business was closed. The item will be delivered the next delivery day that the business is open.</p>		
April 23, 2017, 12:09 pm	Arrived at Hub	WASHINGTON, DC 20018
April 5, 2017, 9:46 am	Unclaimed/Being Returned to Sender	COPPELL, TX [REDACTED]

EXHIBIT A

DATE & TIME	STATUS OF ITEM	LOCATION
March 11, 2017, 11:00 am	Notice Left (No Authorized Recipient Available)	COPPELL, TX [REDACTED]

See More ▾

Available Actions

See Less ▲

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<http://faq.usps.com/?articleId=220900>)

There's an easier way to track your packages.

Why jump from page to page to track packages being sent to you? With My USPS™, you can easily track all your packages in one place. Sign up to:

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- Provide delivery instructions, so your carrier knows where to leave packages

Sign Up

(https://reg.usps.com/entreg/RegistrationAction_input?

app=UspsTools&appURL=https%

(https://www.usps.com/)

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HELPFUL LINKS

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(https://www.usps.com/help/welcome.htm)

Site Index

(https://www.usps.com/globals/site/index.htm)

FAQs (http://faq.usps.com/)

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National Postal Museum (http://www.postalmuseum.si.edu/)

Resources for Developers (https://www.usps.com/webtools/webtools/welcome.htm)

LEGAL INFORMATION

Privacy Policy (http://about.usps.com/who-we-are/privacy-policy/privacy-policy-highlights.htm)

Terms of Use (http://about.usps.com/termsfuse.htm)

FOIA (http://about.usps.com/who-we-are/foia/welcome.htm)

FEAR Act EEO Data (http://about.usps.com/who-we-are/foia/welcome.htm)



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(<https://twitter.com/usps>)



(<http://www.pinterest.com/uspsstamps/>)



(<https://www.youtube.com/usps>)

Virginia C. Moher

Halter Bran

From: Michelle Cochran <[REDACTED]@gmail.com>
Sent: Monday, March 20, 2017 2:45 PM
To: John D. Moore
Subject: Re: SEC Original Decision March 7th.

Thank you.

Sent from my iPhone

On Mar 20, 2017, at 2:41 PM, E. Lance Fitzgerald <LFitzgerald@tsbpa.texas.gov> wrote:

Attached is the initial decision.

From: Michelle Cochran <[REDACTED]@gmail.com>
Sent: Monday, March 20, 2017 2:40 PM
To: E. Lance Fitzgerald
Subject: Fwd: SEC Original Decision March 7th.

Mr. Fitzgerald – I have not been served with their decision yet – but heard through the grapevine it was out there.

I believe their are factual and judgmental issues with the ruling and will be appealing.

I've met (over the phone) with five of the countries too SEC appellate attorneys and will be engaging one soon.

Please let me know what additional information you need from me.

Sincerely,

Michelle Cochran

Sent from my iPhone

Begin forwarded message:

From: "E. Lance Fitzgerald" <LFitzgerald@tsbpa.texas.gov>
Date: March 20, 2017 at 2:30:21 PM CDT
To: "Michelle Cochran" <[REDACTED]@gmail.com>
Subject: SEC Original Decision March 7th.

Ms. Cochran, are you going to contest the SEC's original administrative decision? Let me know either way. If you will not be contesting the original decision, then please respond to my letter.

Lance Fitzgerald
Staff Attorney - Enforcement Division

Texas State Board of Public Accountancy

P: (512) 305-7840

L.Fitzgerald@tsbpa.texas.gov

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<id1114ce.pdf>

From: Evans, Timothy
To: Michelle Cochran; Minnick, Deborah
Subject: Re: Initial Decision
Date: Tuesday, March 28, 2017 10:23:04 AM

Michelle,

We were served a copy of the Initial Decision via mail on March 10.

If you have any questions regarding the service of the Initial Decision, you should reach out to the Commission's Office of the Secretary.

Thank you,

Timothy Evans
Trial Counsel - SEC
817-978-5036
Original Message
From: Michelle Cochran
Sent: Monday, March 27, 2017 2:14 PM
To: Evans, Timothy; Minnick, Deborah
Subject: Initial Decision

Hi Tim & Deborah --

I have heard through the grapevine that an Initial Decision has been made. I have not received a copy of it either through email or certified mail.

I am concerned about the ability to have a time to respond.

Please advise.

Michelle Cochran

Sent from my iPhone

From: Michelle Cochran
To: Evans, Timothy
Subject: Fwd: message on telephone
Date: Friday, August 04, 2017 1:34:02 PM

Mr. Evans,

Pursuant to our conversation this afternoon, attached is the communication I had with Ms. Baldwin after you suggested I contact her to get served with the Initial Decision.

Sincerely,

Michelle Helterbran

Sent from my iPhone

Begin forwarded message:

From: Michelle Cochran [REDACTED]@gmail.com>
Date: April 3, 2017 at 11:37:54 AM CDT
To: Margaret Baldwin <baldwinm@sec.gov>
Subject: Fwd: message on telephone

Ms. Baldwin --

I attempted to pick up the certified letter at my post office and they said it had been returned to sender. Would you please have it resent and let me know when to expect it?

Thank you for the information below.

Sent from my iPhone

Begin forwarded message:

From: "Baldwin, Margaret" <baldwinm@SEC.GOV>
Date: April 3, 2017 at 11:34:57 AM CDT
To: '[REDACTED]@gmail.com'
[REDACTED]@gmail.com>
Subject: message on telephone

Dear Ms. Cochran,

I received your voice mail asking about the deadline to file a petition for review of the initial decision.

EXHIBIT D

I am unable to answer any legal questions, including specifying any due dates, but would refer you to Rules 410 and 411 of the Rules of Practice. The Rules of Practice are available on [sec.gov](http://www.sec.gov) and the link is below.

<https://www.sec.gov/about/rules-of-practice-2016.pdf>

Additionally, initial decisions are posted on [sec.gov](http://www.sec.gov), and the link to that page is below. Your initial decision release number is 1114.

<https://www.sec.gov/alj/aljorders.shtml>

Thank you,

Maggie

Margaret Baldwin
Senior Program Information Specialist
U.S. Securities and Exchange Commission
Office of the Secretary
100 F Street, NE, Room 10914B
Mail Stop 1090
Washington, DC 20549
Office: 202-551-7875
Cell: [REDACTED]



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RECEIVED
2017 AUG -1 AM 11:03
TEXAS STATE BOARD OF
PUBLIC ACCOUNTANCY

July 29, 2017

Mr. John Moore, Attorney
Enforcement Division
The Texas State Board of Public Accountancy
333 Guadalupe, Tower 3
Suite 900
Austin, TX 78701-3900

ENF
AUG 01 2017

In Re: File No. 16-11-05L

Dear Mr. Moore:

I am responding to your letter dated July 5, 2017 regarding the filing of an Initial Decision by the Securities and Exchange Commission.

Attached is a letter sent to Mr. Brent Fields at the Securities and Exchange Commission informing him that I have not been served with the Initial Decision as required to affect a Final Order. I have been working with appellate counsel and intend on filing a response and requesting the Commissioners have an opportunity to review the case as well.

Therefore, I request that the deadline for the response to your November 1, 2016 Initial Investigation is postponed until this matter is properly concluded.

Please do not hesitate to give me a call with any questions.

Respectfully submitted,



Michelle L. Helterbran

██████████
██████████
Coppell, TX ██████████

July 15, 2017

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549

Admin Proc. File No. 3-17228

Dear Mr. Fields:

I am writing to you regarding your notice titled "Notice That Initial Decision Has Become Final" in the above referenced matter.

I would like the opportunity to respond, and for the Commission to review the decision, however, I have never been served with the Initial Decision.

My address for service remains the same, as indicated below.

Respectfully submitted,



Michelle Helterbran

██████████
Coppell, TX ██████████

Cc: Eduardo A. Aleman
Assistant Secretary