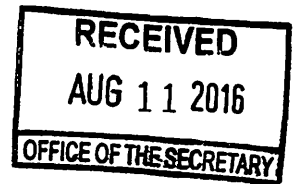


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING
File No. 3-17319**

In the Matter of

JAN E. HELEN,

Respondent.

**DIVISION OF ENFORCEMENT'S
OPPOSITION TO JAN E. HELEN'S
MOTION FOR RECONSIDERATION OF
SUA SPONTE DISMISSAL OF
AFFIRMATIVE DEFENSES**

The Division of Enforcement ("Division") submits this opposition to Respondent Jan E. Helen's ("Respondent") Motion for Reconsideration of *Sua Sponte* Dismissal of Affirmative Defenses ("Motion"). The Motion should be denied.

Reconsideration of the dismissal of the Appointments Clause defense is not warranted because, as the Court correctly recognized, the Commission has rejected similar challenges to the appointment of its ALJs on the ground that Commission ALJs are not constitutional "Officers." Order Following Prehearing Conference ("Order") at 2.¹ Moreover, contrary to Respondent's argument, no factual development of that defense is necessary because, as the Division explained in its August 5, 2016, letter, the Division has stipulated that Chief ALJ Murray was not hired with the approval of the Commissioners.

Respondent also will not be prejudiced by the Court's Order. As the Court indicated at the prehearing conference, Respondent is free to preserve the Appointments Clause claim for the record by raising it again in his briefing. Similarly, in addressing Respondent's Due Process

¹ Indeed, the D.C. Circuit has now agreed that Commission ALJs are not Officers of the United States to whom the Appointments Clause applies. *Raymond J. Lucia Cos. v. Securities and Exchange Commission*, No. 15-1345 (D.C. Cir. Aug. 9, 2016).

defense, the Court stated, “there is no basis for Respondent’s due process defense at this state of the proceeding; if Respondent wishes to further brief the issue in his post-hearing brief to preserve it for the record, he is free to do so.” Order at 2.

Finally, there is no basis for respondent’s claim that he has been denied access to the certificate that the Court provided to the Office of the Secretary, and which the Division provided to Respondent’s counsel at his request. Although, as Respondent notes, the certificate has not been posted to the Commission website,² nothing precluded counsel from reaching out to the Office of the Secretary to obtain the certificate, as the Division did here.

Dated: August 10, 2016

Respectfully submitted,



Danielle A. Voorhees, Esq.
Marc D. Ricchiute, Esq.
Attorneys for the Division of Enforcement
Securities and Exchange Commission
1961 Stout Street, Suite 1700
Denver, CO 80202
Telephone (303) 844-1108
Fax (303) 844-1068
voorhees@sec.gov;
ricchiutem@sec.gov

² The website compiles “significant pleadings, orders and decisions for a particular administrative proceeding.” <https://www.sec.gov/litigation/admin.shtml>.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Division of Enforcement's OPPOSITION TO MOTION FOR RECONSIDERATION** was served on the following on this 10th day of August, 2016, 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)

Honorable Brenda P. Murray
Chief Administrative Law Judge
100 F Street, N.E.
Mail Stop 2582
Washington, D.C. 20549
(By Email)

David A. Zisser, Esq.
Jones & Keller, P.C.
1999 Broadway, Suite 3150
Denver, CO 80202
(By Email)


Marla Pinkston