

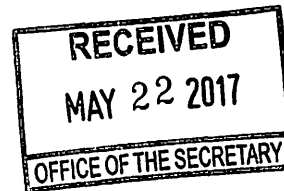
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. ("JAY") LATHEN, JR.,
EDEN ARC CAPITAL
MANAGEMENT, LLC,
and EDEN ARC CAPITAL
ADVISORS, LLC,

Respondents.



THE DIVISION OF ENFORCEMENT'S RESPONSES TO
RESPONDENTS' PROPOSED FINDINGS OF FACT
IN SUPPORT OF THEIR INABILITY TO PAY DEFENSE

DIVISION OF ENFORCEMENT
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May 19, 2017

**THE DIVISION OF ENFORCEMENT'S RESPONSES TO RESPONDENTS'
PROPOSED FINDINGS OF FACT
IN SUPPORT OF THEIR INABILITY TO PAY DEFENSE¹**

1. [REDACTED]

Division Response: Respondents never offered Lathen's Financial Disclosure into evidence, therefore there is no evidence supporting this proposed Finding.

2. [REDACTED]

Division Response: Respondents never offered Lathen's Financial Disclosure into evidence, therefore there is no evidence supporting this proposed Finding.

3. [REDACTED]

Division Response: Respondents never offered Lathen's Financial Disclosure into evidence, therefore there is no evidence supporting this proposed Finding.

4. [REDACTED]

Division Response: Respondents never offered Lathen's Financial Disclosure into evidence, therefore there is no evidence supporting this proposed Finding.

5. [REDACTED]

Division Response: Respondents never offered Lathen's Financial Disclosure into evidence, therefore there is no evidence supporting this proposed Finding.

6. [REDACTED]

Division Response: Admitted that Lathen so testified. However, Respondents never offered Lathen's Financial Disclosure into evidence, and therefore there is no documentary evidence supporting this proposed Finding.

7. [REDACTED]

¹ Respondents have waived their inability to pay affirmative defense by offering no evidence or argument in support (see Div. Reply at III), and should not be permitted to make a belated argument on this affirmative defense. As set forth in the Court's February 24, 2017 Scheduling Order, Respondents were required to argue their affirmative defenses in their Post-Hearing Brief, giving the Division an opportunity to respond to those defenses in its Reply. (Feb. 24, 2017 Order at 1; see also Tr. at 3711:14-19 (recognizing the inability to pay argument as an affirmative defense).) The Division would be unfairly disadvantaged if it were precluded from replying to arguments raised for the first time on sur-reply.

Division Response: Admitted that Lathen testified [REDACTED]. As to [REDACTED], Respondents never offered Lathen's Financial Disclosure into evidence, nor was there testimony on this point, and therefore there is no evidence supporting this proposed Finding.

8. [REDACTED]

Division Response: Admitted that Lathen so testified. However, Respondents never offered Lathen's Financial Disclosure into evidence, and therefore there is no documentary evidence supporting this proposed Finding.

9. [REDACTED]

Division Response: Admitted that Lathen so testified. However, Respondents never offered Lathen's Financial Disclosure into evidence, and therefore there is no documentary evidence supporting this proposed Finding. The Court should take note, as well, [REDACTED].

10. [REDACTED]

Division Response: Admitted that Lathen so testified. However, Respondents never offered Lathen's Financial Disclosure into evidence, and therefore there is no documentary evidence supporting this proposed Finding.

11. [REDACTED]

Division Response: Admitted that Lathen so testified. However, Respondents never offered Lathen's Financial Disclosure into evidence, and therefore there is no documentary evidence supporting this proposed Finding.

12. [REDACTED]

Division Response: Admitted that Lathen so testified. However, Respondents never offered Lathen's Financial Disclosure into evidence, and therefore there is no documentary evidence supporting this proposed Finding.

13. [REDACTED]

Division Response: Denied. [REDACTED] Finally, Lathen's recent resumption of his redemption of survivor's option securities for the Fund may generate Management Fees or Incentive Fees for him. (See Letter from Judith Weinstock, dated May 8, 2017.)

14. [REDACTED]

Division Response: Admitted that Lathen testified that [REDACTED].

15. [REDACTED]

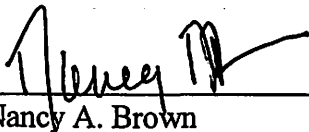
Division Response: Admitted that Lathen so testified. However, Respondents never offered Lathen's Financial Disclosure into evidence, and therefore there is no documentary evidence supporting this proposed Finding.

16. The Lathen Discl. and the associated schedules that Mr. Lathen prepared provides persuasive evidence of Mr. Lathen's inability to pay any disgorgement, interest, penalty or any other financial penalty herein. (Lathen Discl.)

Division Response: This proposed Finding is argument and should be stricken. (See Post-Hearing Order, p. 3, dated Feb. 24, 2017 "Any proposed finding of fact that contains argument will be stricken.") In any event, Respondents never offered Lathen's Financial Disclosure into evidence, therefore there is no evidence supporting this proposed Finding. In addition, the evidence adduced at trial of Lathen's inability to pay was not persuasive, and Respondents did not meet their burden on the defense. [REDACTED]

Dated: May 19, 2017
New York, New York

DIVISION OF ENFORCEMENT



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