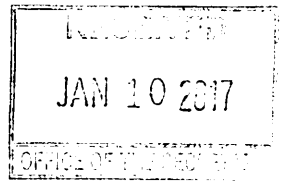


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17674

In the Matter of

ALEXANDER KON,

Respondent.

MOTION FOR WITHDRAWAL

The Respondent, by and through undersigned counsel, respectfully moves this Hearing Officer to withdraw from the above captioned proceedings pursuant to Commission Rules of Practice 112 Hearing Officer Disqualification and Withdrawal. The grounds for this Motion are set forth below in the accompanying Affidavit below.

AFFIDAVIT SUPPORTING GROUNDS FOR DISQUALIFICATION

Pursuant the Commission's Rules of Practice to Rule 112(a) Notice of disqualification. At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefore. and to 112(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.102(d), any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for

disqualification.”

In support of this Motion, relevant new case law was published by the 10th circuit on December 27, 2016. See *Bandimere v. U.S. Securities and Exchange Commission*, 10th U.S. Circuit Court of Appeals, 15-9586 December 27, 2016. In *Bandimere*, the 10th Circuit holds that SEC Administrative Law Judges (“ALJ”) are appointed in violation of the appointments clause of the U.S. Constitution. In particular, SEC ALJs are classified as “inferior officers” rather than “employees” and must be constitutionally appointed. *Id* at 30. Further, the SEC ALJ’s decision in *Bandimere* was set aside as the ALJ was not constitutionally appointed.¹

In light of the *Bandimere* decision, Respondent in this matter respectfully requests the Hearing Officer withdraw from the above captioned proceedings. The SEC ALJ was not appointed by the President, a department head, or the Judiciary. Because he was not appropriately appointed pursuant to Article II, his appointment is unconstitutional in violation of the Appointments Clause.

Respectfully Submitted,

January 4, 2017



Todd S. Feinstein
Direct Line: [REDACTED]
Todd@feinsteinlawfirm.com

Feinstein Law, P.C.
[REDACTED]
Sequim, Washington [REDACTED]

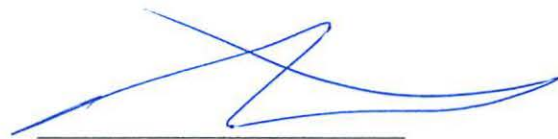
¹ The Administrative Law Judge who presided in the initial *Bandimere* decision is ALJ Cameron Elliot, the same ALJ appointed in this matter. The various penalties sought by the Commission in *Bandimere* were almost exactly the same as here. The Respondent resides within the coverage area of the 10th Circuit.

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing Motion For Withdrawal were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by U.S. Mail and email, on this 4th day of January, 2017, on the following persons entitled to notice:

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E. Room 2557
Washington, D.C. 20549
(also via email to alj@sec.gov)

Russell Koonin, Esq.
Senior Trial Attorney
Division of Enforcement
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
(also via email to kooninr@sec.gov)



Todd S. Feinstein