

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF)	
)	
FR. EMMANUEL LEMELSON)	ADMINISTRATIVE PROCEEDING
)	FILE NO. 3-20828
Respondent.)	
)	

RESPONDENT’S REPLY MEMORANDUM IN SUPPORT OF HIS
APPLICATION TO CERTIFY
SUBPOENA ORDER FOR INTERLOCUTORY REVIEW

The Division’s opposition trivializes what is at stake here as just a “routine discovery order,” Opp. at 1, but it is anything but routine. The Division cites no precedent in which an administrative law judge has issued a sweeping document subpoena that purports to require the Respondent in a follow-on proceeding to search for and produce entirely new categories of personal information having no temporal or subject-matter connection to the investigation and litigation upon which the follow-on proceeding was predicated. The Division likewise cites no precedent for doing so nearly *three years* after the follow-on proceeding was instituted—and long after the Division spent nearly a decade thoroughly investigating the same Respondent, taking him to trial, and submitting its case for follow-on relief in a fully briefed motion for summary disposition.¹

¹ The Division also continues to insist that Respondent “perpetrated securities fraud,” Opp. at 5, despite the jury having unequivocally answered “no” when asked whether Lemelson “intentionally or recklessly engaged in a scheme to defraud, or any act, practice or course of business which operates or would operate as a fraud or deceit.” The Jury also responded “no” when asked whether Respondent defrauded his own investors under Rule 206, even under the lower negligence standard.

Using the pretext of a stalled, three-year-old follow-on proceeding to commence an entirely new fishing expedition into the Respondent's recent private affairs and constitutionally protected communications—supported by no articulated suspicion of a securities law violation and no formal order of investigation—is not just unprecedented. It is abusive and illegal—exactly the kind of agency tactic targeted by the Executive Orders cited in Respondent's motion to certify. Yet the Division seeks to prevent the Commission's current leadership from having the opportunity to weigh in on this unprecedented tactic before (unknowingly) allowing that fishing expedition to proceed on their watch.

What the Division seeks here is *not* business as usual and, in any event, business as usual has little currency these days, especially in the SEC enforcement context. *See, e.g., SEC v. Jarkesy*, 144 S. Ct. 2117 (2024); *Axon Enter., Inc. v. FTC* and *SEC v. Cochran*, 143 S. Ct. 890 (2023); *Liu v. SEC*, 591 U.S. 71 (2020); *Lucia v. SEC*, 138 S. Ct. 2044 (2018). The Commissioners should be informed of what the Division is trying to accomplish—especially in light of the ongoing parallel litigation in a nearby federal court that seeks to stop this proceeding entirely and have it declared unconstitutional. Interlocutory review should be certified. The Commissioners deserve that courtesy.

Respectfully submitted,

Fr. Emmanuel Lemelson

By his attorneys,

/s/ Douglas S. Brooks

Douglas S. Brooks

LIBBY HOOPES BROOKS & MULVEY, P.C.

260 Franklin Street

Boston, MA 02110

(617) 338-9300

dbrooks@lhbmlegal.com

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CERTIFICATE OF SERVICE

I, Douglas S. Brooks, do hereby certify that I served the foregoing document on counsel for the Commission, Marc Jones, Esq. and Alfred Day, Esq., by email on February 18, 2025.

/s/ Douglas S. Brooks

Douglas S. Brooks