

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-MC00136

SECURITIES AND  
EXCHANGE COMMISSION,

Applicant,

v.

TIMOTHY F. SEXTON, JR.

Respondent.

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**EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE AND  
FOR ORDER COMPELLING COMPLIANCE WITH ADMINISTRATIVE SUBPOENA**

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The Securities and Exchange Commission (“SEC” or “Commission”) applies for an *ex parte* Order to Show Cause why an Order should not issue requiring Respondent Timothy F. Sexton, Jr. (“Sexton”) to comply with an administrative subpoena served upon him for production of documents issued on May 16, 2016. Sexton, the chief executive officer and owner of Bantry Bay Capital LLC (“Bantry Bay”) an investment adviser formerly registered with the SEC, possesses the books and records of Bantry Bay that are the subject of the subpoena. Although Sexton was properly served with the subpoena, he has not responded to the subpoena. The SEC requests the Court issue an order to show cause requiring Sexton to comply with the administrative subpoena. In support of this Application, the SEC has submitted a Brief setting forth the applicable law, and the Declaration of Matthew Skidmore (“Skidmore Decl.”).

**JURISDICTION AND VENUE**

1. This Court has jurisdiction under Section 209(c) of the Investment Advisers Act of 1940, (the “Advisers Act”), 15 U.S.C. § 80b-9(c). Venue is proper in the District of Colorado

because this is the district where the SEC is conducting the relevant investigation. *Id.* Skidmore Decl. ¶ 4.

#### RESPONDENT

2. Timothy F. Sexton, Jr. is the owner and chief executive officer of Bantry Bay Capital, LLC (“Bantry Bay”). Bantry Bay is organized as a New York limited liability corporation and also registered as a foreign limited liability company to conduct business in Wyoming in 2014. Skidmore Decl. ¶ 6A, 6C, Exhibits 1 and 3. Bantry Bay registered as an investment adviser with the Securities and Exchange Commission when it filed a Form ADV on July 11, 2011. Skidmore Decl. ¶ 6B, Exhibit 2. Sexton executed the Form ADV for Bantry Bay as its chief executive officer, chief compliance officer, principal, and owner, and represented that the principle office and place of business for Bantry Bay in 2011 was at 28 Etna Lane, Dix Hills, New York. *Id.*

3. On June 19, 2015, Bantry Bay filed its annual Form ADV and represented that the address of its principle office and place of business was 3465 N. Pines Way, Suite 104, Jackson, Wyoming. Skidmore Decl. ¶ 6D, Exhibit 4. Bantry Bay also represented that it provided non-discretionary, investment advisory services to 11 accounts with \$309.9 million in assets under management.

#### THE SEC INVESTIGATION AND ADMINISTRATIVE SUBPOENA

4. Section 204(a) of the Advisers Act requires every investment adviser to make and keep such records as the SEC prescribes by rule. 15 U.S.C. § 80b-4(a). Rule 204-2 describes the books and records relating to the investment advisory business that every investment adviser registered with the Commission must make and keep. 17 C.F.R. § 275.204-2. In addition all

records of such investment advisers are subject at any time, to reasonable periodic, special, or other examinations by representatives of the Commission. 15 U.S.C. § 80b-4(a).

5. Bantry Bay filed its annual report on Form ADV with the SEC on June 19, 2015 (referred to as the June 2015 Form ADV), which Sexton executed. Skidmore Decl. ¶ 6D, Exhibit 4, p. 34. Bantry Bay represented that the address of its principle office and place of business was 3465 N. Pines Way, Suite 104, Jackson, Wyoming. They also represented that all of the books and records, which Bantry Bay was required under Section 204 of the Investment Advisers Act, 15 U.S.C. § 80b-4, were kept at its principal office and place of business, and that the firm provided non-discretionary investment advisory services to 11 clients with \$309,898,400 in assets under management. Exhibit 4 at p. 1 Item 1, F and p. 3. Item 1, L; p. 13 at Item 5, F.

6. On November 16, 2015, two examiners who were representatives of the Commission appeared at 3465 N. Pines Way, Suite 104, Jackson, Wyoming to conduct an examination of the books and records of Bantry Bay. The examiners found that the only business located at 3465 N. Pines Way, Suite 104, Jackson, Wyoming was a UPS Store. The employee at the UPS Store told the examiners that Bantry Bay did not operate, and had never conducted its business, from that location. Skidmore Decl. at ¶ 6E.

7. The examiners placed telephone calls to the contact number listed on the June 2015 Form ADV, but no one answered the calls; a recorded message indicated Sexton's voicemail box was full. In addition, the examiners sent emails to the email address for Sexton that was listed on the June 2015 Form ADV, and provided notice of the examiners' intent to conduct an examination and requested that Bantry Bay produce documents for an examination of Bantry Bay's investment advisory business. Exhibit 4. However, Sexton and Bantry Bay did not respond to the emails. Skidmore Decl. at ¶ 6F, 6G.

8. On December 22, 2015, Bantry Bay and Sexton filed with the SEC a notice of withdrawal from registration as an investment adviser on Form ADV-W. Skidmore Decl. ¶ 6I, Exhibit 6, Form ADV-W. They represented that Bantry Bay had ceased conducting its advisory business on April 4, 2015, which was contrary to their representations in the June 2015 Form ADV that they were providing investment advisory services to 11 accounts with \$309.9 million in assets under management. They also listed Sexton as the person with custody of Bantry Bay's books and records, which are required to be kept under Section 204 of the Investment Adviser Act. Exhibit 5, Form ADV-W at p. 4-5, Item 8. However, they did not submit any response to the examiners' requests for documents.

9. Pursuant to Section 209(b) of the Advisers Act, Congress conferred upon the SEC the authority to conduct investigations. *See* 15 U.S.C. § 80b-9(b) ("For the purpose of any investigation or any proceeding under this title, any member of the Commission or any officer thereof designated by it is empowered to administer oaths and affirmations, subpoena witnesses, . . . and require the production of any books, . . . or other records which are relevant or material to the inquiry.")

10. On April 13, 2016, the Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony in an investigation entitled *In the Matter of Bantry Bay Capital, LLC* (the "Formal Order") pursuant to Section 209(a) of the Advisers Act [15 U.S.C. § 80b-4(a)]. Skidmore Decl. ¶ 3.

11. The Formal Order authorizes the Commission's staff to investigate whether Bantry Bay, Sexton and others have violated or are violating Section 204 of the Advisers Act and Rule 204-2 [15 U.S.C. § 80b-4, 17 C.F.R. § 275.204-2].

12. Pursuant to Section 209(b) of the Advisers Act, 15 U.S.C. § 80b-9(b), the Formal Order designates members of the Commission's staff in its Denver Regional Office as officers of the Commission. Skidmore Decl. ¶ 4. As officers, the Commission's staff is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which are relevant or material to the inquiry, and to perform all other duties in connection therewith as prescribed by law. 15 U.S.C. § 80b-9(b)

13. In connection with the Commission's investigation, the Commission staff is seeking information regarding, among other things, whether Bantry Bay, Sexton, and others failed to make, keep and preserve books and records as prescribed by the Commission, and failed to make such records available for reasonable periodic, special or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors. Skidmore Decl. ¶ 9.

14. On May 16, 2016, pursuant to the Formal Order, an officer of the Commission for this investigation by the Denver Regional Office issued a subpoena to Sexton requesting that he produced certain of the books and records of Bantry Bay to the SEC. Skidmore Decl. at ¶ 9, Exhibit 7, subpoena. The officer properly served the subpoena upon Sexton by causing a process server to deliver the subpoena to Kathleen Sexton, who identified herself as Sexton's wife and a resident at 28 Etna Lane, Dix Hills, New York. Skidmore Decl. at ¶ 10, Exhibit 8, affidavit of service. The subpoena required Sexton to produce the requested documents by May 31, 2016. Exhibit 7. The officer also sent the subpoena to Sexton by email to the address that Sexton listed on the Form ADV-W on May 16, 2016. Skidmore at ¶ 11.

15. Sexton did not respond to the subpoena or produce any of the required documents by May 31, 2016, or as of the date of this application. Skidmore at ¶ 12.

THE COURT SHOULD ENFORCE THE SUBPOENA

16. The Court should enforce the May 16, 2016 subpoena to Sexton. The Commission's investigation is being conducted for a proper purpose, the subpoena was issued in accordance with required administrative procedures, and the information sought is relevant to the pending investigation and is necessary to determine whether violations of the federal securities laws have occurred or may be occurring. *See, e.g., United States v. Powell*, 379 U.S. 48, 57-58 (1964) (enforcing administrative subpoena).

17. Sexton's continued refusal to comply with the subpoena is hindering the Commission staff's efforts to determine what, if any, violations of the securities laws have occurred or continue to occur. Accordingly, the Commission requests an order requiring Sexton to promptly comply with its obligations to produce documents.

WHEREFORE, based on the foregoing, the Commission respectfully requests that the Court:

1. Forthwith issue an *ex parte* Order to Show Cause directing Sexton to show cause, if there be any, why this Court should not order him to comply with the SEC's May 16, 2016 subpoena and produce the requested documents in the investigation entitled *In the Matter of Bantry Bay Capital, LLC*;

2. Issue an Order directing Sexton to comply with the May 16, 2016 subpoena and produce non-privileged documents in the investigation entitled *In the Matter of Bantry Bay Capital, LLC* within 20 days of the date of the Order; and

3. Grant the Commission such other and further relief as may be appropriate.

DATED: June 27, 2016.

Respectfully submitted,

/s/ Leslie J. Hughes

Leslie J. Hughes

Mark L. Williams

Matthew L. Skidmore

U.S. Securities and Exchange Commission

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