

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT of 1934
Rel. No. 70120 / August 5, 2013

In the Matter of)
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)
ANWAR v. FAIRFIELD GREENWICH)
LIMITED, No. 09 Civ. 00118 (S.D.N.Y.))
)

ORDER DENYING PETITION FOR REVIEW

Pursuant to Rule 431(b)(2) of the Rules of Practice,¹ it is ORDERED that the Petition of Citco Fund Services (Europe) B.V.; Citco (Canada), Inc.; Citco Group Limited; Citco Global Custody N.V.; Citco Fund Services (Bermuda) Limited; Citco Bank Nederland N.V. Dublin Branch; PricewaterhouseCoopers Accountants N.V.; PricewaterhouseCoopers LLP; and GlobeOp Financial Services LLC (collectively, “Petitioners”) seeking review of the June 7, 2013 decision by delegated authority of the Office of the General Counsel (“Office”) declining to authorize testimony requested in subpoenas to nine former or current Commission staff members is hereby denied.

On February 27, 2013, the Petitioners asked the Office to authorize nine depositions of former or current Commission staff members who had worked on an examination or investigation of Bernard Madoff and/or Bernard L. Madoff Investment Securities, LLC (“BLMIS”). On June 7, 2013, the Office notified the Petitioners that it would not authorize any testimony because the burden on the SEC of providing the testimony outweighed the very limited relevance of the testimony sought. In their Petition for Review, the Petitioners contend that the information sought is relevant to litigation that is pending against the Petitioners and that there is no burden that would outweigh the relevance.

In considering whether to accept or reject the Petition, the Commission must consider the factors in Rule 411(b)(2) of the Rules of Practice,² that is, whether:

¹ 17 CFR 201.431(b)(2).

² 17 CFR 201.411(b)(2). Rule 431(b)(2) makes the factors in Rule 411(b)(2) applicable to a decision whether to review action taken pursuant to delegated authority.

(i) a prejudicial error was committed in the conduct of the proceeding; or

(ii) the decision embodies:

(A) a finding or conclusion of material fact that is clearly erroneous; or

(B) a conclusion of law that is erroneous; or

(C) an exercise of discretion or decision of law or policy that is important and that the Commission should review.

The Petition does not allege that any prejudicial error was committed in the conduct of the proceedings or that the Office's decision embodies a finding of material fact that is clearly erroneous, and the Commission finds that no such errors occurred.

With respect to conclusions of law, the Commission finds that the Petitioners have not shown that the Office's conclusions of law were incorrect. Because the Petitioners have not shown that any information the potential witnesses may provide about Madoff will affect any specific claims in the *Anwar* litigation, they have not countered the Office's conclusion that the testimony they seek is at most minimally relevant. The Petitioners also have not shown that the Office improperly concluded that the burden on the Commission outweighs the limited relevance of the testimony because of the burden giving testimony would place on the Commission. Authorizing the testimony would mean that at least three current staff members would each lose multiple days of work to prepare for and appear at a deposition. In addition, preparing for all of the depositions would place an additional burden on other staff members, particularly because of the complexity of determining what matters relating to Madoff remain privileged.

Finally, the Commission finds that the Office's decision does not embody an exercise of discretion or a decision of law or policy that is important and that the Commission should review. Although the underlying litigation is clearly large and significant, Commission policies and practices are at best tangentially involved, and staff depositions are not likely to address any significant issues of law or policy.

Because the Petitioners have not satisfied any of the factors in Rule 411(b)(2) of the Rules of Practice, their Petition for Review is denied.

By the Commission.

Elizabeth Murphy
Secretary