



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

AUG 07 2015

To: Mary Jo White
Chair

From: Carl W. Hoecker 
Inspector General

Re: Transmittal of Interim Report of Investigation: 15-ALJ-0482-I

Attached is our Interim Report of Investigation into allegations of bias on the part of Administrative Law Judges in the Commission's Administrative proceedings.

As a result of heightened interests in ongoing SEC administrative proceedings, this interim report provides the status of this investigation to date. We are still gathering additional facts and completing investigative steps, and we will report new information accordingly.

Because this is an interim report, please coordinate with my office before releasing the report's contents.

Attachment

cc: Andrew J. Donohue, Chief of Staff, Office of the Chair
Erica Y. Williams, Deputy Chief of Staff, Office of the Chair
Luis A. Aguilar, Commissioner
Paul Gumagay, Counsel, Office of Commissioner Aguilar
Daniel M. Gallagher, Commissioner
Benjamin Brown, Counsel, Office of Commissioner Gallagher
Michael S. Piwowar, Commissioner
Jaime Klima, Counsel, Office of Commissioner Piwowar
Kara M. Stein, Commissioner
Robert Peak, Advisor to the Commissioner, Office of Commissioner Stein

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INTERIM
REPORT OF INVESTIGATION
CASE# 15-ALJ-0482-I



Office of Inspector General

U.S. Securities and Exchange Commission



U.S. Securities and Exchange Commission
Office of Inspector General



Interim Report of Investigation

Subject: Undetermined
Title: Administrative Law Judges
Level: Undetermined
Office: Administrative Law Judges
Region: Washington, D.C.

Case #: 15-ALJ-0482-I

Origin: Office of the Chair

Security Clearance: Y / N

Investigation Initiated: June 30, 2015

Interim Investigation as of: August 5, 2015

As a result of heightened interests in ongoing U.S. Securities and Exchange Commission (SEC or Commission) administrative proceedings, this interim report is provided to keep the Commission fully informed of the status of this investigation to date. The Office of Investigations is still gathering additional facts and completing investigative steps, and new information will be reported accordingly.

Relevant Authorities

- Inspector General Act of 1978, §§ 4 and 6
- 5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 5372 and 7521, Administrative Procedure Act
- 17 C.F.R. § 200.14, Office of Administrative Law Judges
- 17 C.F.R. § 200.30-9, Delegation of authority to hearing officers
- 17 C.F.R. § 200.30-10, Delegation of authority to Chief Administrative Law Judge
- 5 C.F.R. § 2635.101 (b)(5) and (8) Standards of Ethical Conduct for Employees of the Executive Branch

Basis and Scope

This investigation was initiated on June 30, 2015, based on information provided by Erica Williams, Deputy Chief of Staff, Office of the Chair, concerning alleged potential issues of fairness and bias in the SEC's administrative proceedings, including those introduced in the Timbervest, LLC (Timbervest) matter.

The OIG determined it would investigate allegations of bias on the part of Administrative Law Judges (ALJ) in the Commission's administrative proceedings.

During the course of the investigation to date, the OIG interviewed the following individuals:

- Cameron Elliot, ALJ, Office of the ALJ
- Brenda Murray, Chief ALJ, Office of the ALJ
- (b) (6), (b) (7)(C), Office of the Secretary
- Erica Williams, Deputy Chief of Staff, Office of the Chair

In addition, the OIG reviewed documents relevant to the investigation, including:

- “SEC Wins With In-House Judges; Agency prevails against around 90% of defendants when it sends cases to its administrative law judges,” *The Wall Street Journal*, dated May 6, 2015; retrieved on July 10, 2015
- “Fairness Concerns About Proliferation of SEC Administrative Prosecutions Documented by Wall Street Journal,” *Securities Diary*, dated May 7, 2015; retrieved on July 2, 2015
- “SEC Bumbles Efforts To Figure Out How Its Own Administrative Law Judges Were Appointed,” *Securities Diary*, dated June 30, 2015; retrieved on July 2, 2015
- Records held by the SEC Office of the Secretary
- Elliot’s personnel records
- E-mail files of the ALJs related to Timbervest

Investigative Activity

The OIG interviewed Erica Williams, Deputy Chief of Staff, Office of the Chair, concerning alleged potential issues of fairness and bias in the SEC’s administrative proceedings.

In conjunction with the referral, Williams provided (via e-mail) a *Securities Diary* article, titled “SEC Bumbles Efforts To Figure Out How Its Own Administrative Law Judges Were Appointed.” She further referenced a May 6, 2015, *The Wall Street Journal (WSJ)* article, which addressed the SEC’s reported favoring of administrative proceedings over presenting cases in Federal District Court, and the SEC’s increased use of the administrative process.

Williams advised that a number of injunctive actions have been filed on behalf of respondents, alleging that administrative proceedings before the SEC’s ALJs were unconstitutional. Additionally, claims of bias have been asserted within the administrative proceedings. According to Williams, both claims have been raised in Federal District Court in an effort to enjoin the SEC’s administrative proceedings.

Williams stated that Lillian McEwen, former SEC ALJ, alleged bias, which was reported in the May 6, 2015, *WSJ* article. According to the *WSJ* article, McEwen claimed that Chief ALJ Brenda Murray pressured McEwen to make rulings in certain ways. Williams was not aware of

any other forum in which McEwen had made these allegations. According to Williams, McEwen left the SEC in 2007.

Williams stated that in a particular case involving Timbervest, ALJ Cameron Elliot's initial decision was appealed to the Commission, and the respondent sought to depose ALJ Elliot. In support of those efforts, the respondent asserted the aforementioned claims of bias as described in the *WSJ* article.

Subsequently, the Commission issued an order (dated June 4, 2015), inviting ALJ Elliot to file an affidavit addressing the allegations of inappropriate pressure or bias in the administrative proceedings. On June 9, 2015, ALJ Elliot notified Brent Fields, SEC Secretary, that he "respectfully declined to submit the affidavit" requested in the order. Williams advised it was unclear why ALJ Elliot declined the invitation to provide an affidavit.

According to Williams, Chair Mary Jo White requested an OIG investigation of the alleged bias issue because the identified concerns could impact all ALJs and the SEC administrative proceedings.

The OIG reviewed the *Securities Diary* and *WSJ* news articles that Williams identified, which included the following statements attributed to former ALJ McEwen: she thought the system was slanted against defendants at times; she came under fire from Chief ALJ Murray for finding too often in favor of defendants; Chief ALJ Murray questioned McEwen's loyalty to the SEC; McEwen retired as a result of the criticism; and SEC judges were expected to work on the assumption that "the burden was on the people who were accused to show that they didn't do what the agency said they did."

The OIG interviewed ALJ Elliot concerning allegations of potential issues of fairness and bias in the SEC's administrative proceedings. Elliot denied bias during his reviews and rulings and stated that he independently made his decisions. Concerning his decision not to provide an affidavit after being invited to do so by a Commission order, Elliot said he received the invitation to provide an affidavit from the Office of the Secretary. He said that he informed Chief ALJ Murray of the existence of the invitation. However, he said he adhered to the instructions in the order which requested him to "not consult with anyone at the Commission in the preparation of his affidavit concerning the substance thereof." Elliot said that he strictly followed those instructions and that he informed Chief ALJ Murray of the existence of the instructions. At an office meeting, he informed everyone in the Office of ALJ that he had responded to the order. When asked, Elliot said he did not receive any direction or guidance from anyone, including Chief ALJ Murray, on how he should respond to the invitation. Elliot said he had declined to provide an affidavit, stating he had "multiple reasons why [he] decided not to provide a response" but declined to provide any of those reasons to the OIG. Furthermore, Elliot denied being influenced by anyone on "how to decide [his] cases or suggest or make [him] biased in any fashion."

The OIG interviewed Chief ALJ Murray concerning alleged potential issues of fairness and bias in the SEC's administrative proceedings. Murray denied influencing Elliot's decision with respect to the Commission's invitation for him to provide an affidavit. Furthermore, she denied influencing matters before the ALJs and explained that she is responsible only for assigning the ALJs' workload. She also stated that she does not review the ALJs' work and sees the decisions only after they are formally issued by the respective ALJ. Murray stated that the ALJs independently render decisions on matters which are assigned to them. Finally, Murray stated that there was no merit to the allegations of bias as alleged in the *WSJ* article.

The OIG reviewed select ALJ e-mails directly related to the Timbervest matter and did not develop any information to corroborate the allegations of bias in this matter.

Status

This investigation remains ongoing. The Office of Investigations is still gathering additional facts and completing investigative steps, and new information will be reported accordingly. However, as of this date, the OIG has not developed any evidence to support the allegations of bias in ALJs' decisions in the Commission's administrative proceedings.

Distribution

Mary Jo White, Chair

Andrew J. Donohue, Chief of Staff, Office of the Chair

Erica Y. Williams, Deputy Chief of Staff, Office of the Chair

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Interim Report of Investigation as of August 5, 2015

Case Title: Undetermined

Case # 15-ALJ-0482-I

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Signatures

Case Agent:

(b) (6), (b) (7)(C)

08/07/15
Date

Concurrence:

(b) (6), (b) (7)(C)

08/07/15
Date

Approved:



P. Brian Crane, Assistant Inspector General
for Investigations

08/07/2015
Date