

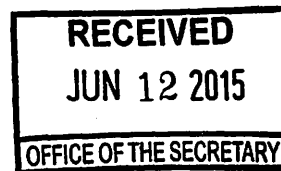
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15006

In the Matter of

RAYMOND J. LUCIA COMPANIES, INC.
and RAYMOND J. LUCIA, SR.,

Respondents.



**MOTION TO STAY APPEAL AND FOR LEAVE TO SUBMIT ADDITIONAL
BRIEFING**

June 11, 2015

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MOTION TO STAY APPEAL AND FOR LEAVE TO FILE ADDITIONAL BRIEFING

This matter, an appeal of an administrative law judge initial decision, is scheduled for oral argument before the Commission on June 29, 2015.

On June 8, 2015, a federal district court held that that the Commission's use of administrative law judges in administrative proceedings is likely unconstitutional. *Hill v. SEC*, No. 15-CV-1801-LMM (N.D. Ga, June 8, 2015) ("*Hill*"). The court thus preliminarily enjoined an ongoing SEC administrative proceeding pending a ruling from the court on the merits of the constitutional claim. As the *Hill* decision calls into question the constitutionality of the proceedings below, respondent Raymond J. Lucia, Sr., respectfully requests leave to submit additional briefing to the Commission regarding the issues presented by *Hill*, and further requests that the appeal be stayed pending review of such issues by the Commission.

In *Hill*, the Commission had instituted litigated administrative proceedings against a real estate developer alleging insider trading. The respondent filed a federal district court action against the agency, seeking an injunction against further action pending a judicial determination as to the constitutionality of the Commission's use of administrative law judges to adjudicate Commission enforcement actions. Among other claims, the plaintiff in the civil action argued that the Commission's use of administrative law judges violates the Appointments Clause of Article II of the U.S. Constitution. According to the plaintiff in *Hill*, such administrative law judges are inferior officers who must be appointed by the President, by courts of law, or by a head of a department. *See* U.S. Const. Art. II, § 2, Cl. 2.

The *Hill* court agreed with the plaintiff. According to the court, the Supreme Court’s decision in *Freytag v. Commissioner*, 581 U.S. 868 (1991), was directly controlling. In *Freytag*, the Supreme Court held that special trial judges (“STJs”) in the Tax Court were inferior officers under Article II. *Id.* at 880. The STJs’ powers in *Freytag* are “nearly identical to the SEC ALJs.” *Hill*, No. 15-CV-1801-LMM at 40. Hence, as did the *Freytag* Court, the *Hill* court held that the Commission’s administrative law judges are inferior officers, and as such must be “appointed by the President, department heads, or courts of law.” U.S. Const. Art. II, § 2, Cl. 2. Since the “SEC ALJ was not appointed by the President, a department head, or the Judiciary,” the *Hill* court held that “his appointment is likely unconstitutional in violation of the Appointments Clause.” *Hill*, No. 15-CV-1801-LMM at 42.

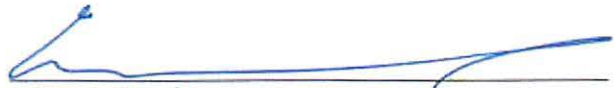
In the current matter, the administrative law judge who adjudicated Mr. Lucia’s administrative proceeding was, according to the findings of *Hill*, neither appointed by the president, the courts of law, nor the head of a department. As a result, the administrative proceeding below may be unconstitutional under *Hill* and *Freytag*.

For the reasons set forth above, Mr. Lucia requests that the present appeal be stayed, the June 29 oral argument be taken off calendar, and the Commission set a schedule for further briefing on the issues raised by *Hill*.

* * *

Respectfully submitted,

Dated: June 11, 2015



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CERTIFICATE OF SERVICE

On June 11, 2015, the foregoing **MOTION TO STAY APPEAL AND FOR LEAVE TO SUBMIT ADDITIONAL BRIEFING** and three copies were hand delivered via legal messenger to the following parties:

Securities and Exchange Commission
Brent J. Fields, Secretary
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549-1090

On June 11, 2015, a courtesy copy of the foregoing **MOTION TO STAY APPEAL AND FOR LEAVE TO SUBMIT ADDITIONAL BRIEFING** was delivered to the following via electronic and U.S. Mail:

The Honorable Cameron Elliot
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100 F Street, N.E.
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On June 11, 2015, the foregoing **MOTION TO STAY APPEAL AND FOR LEAVE TO SUBMIT ADDITIONAL BRIEFING** was served upon counsel for the following parties by electronic mail, pursuant to the parties' agreement, as follows:

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