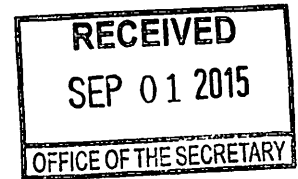


HARD COPY
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15519

In the Matter of :
: :
: :
Timbervest, LLC, :
Joel Barth Shapiro, :
Walter William Anthony Boden, III, :
Donald David Zell, Jr., :
and Gordon Jones II, :
: :
Respondents. :
: :
:

**Division of Enforcement’s Opposition to Respondents’ Motion Seeking
Removal of ALJ Elliot’s Initial Decision from the Commission’s Website or,
in the Alternative, Affixing upon the Initial Decision the Label “Null and Void”**

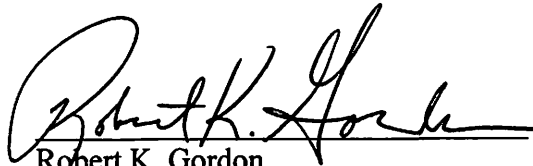
Respondents “request that the Commission remove from its website ALJ Elliot’s Initial Decision in this matter or, in the alternative, label the Initial Decision as ‘null and void.’” That request should be denied.

The Commission’s Rules of Practice provide that, in public proceedings, ALJs’ initial decisions must be published. 17 C.F.R. § 201.360(c). The Commission should not deviate from this prescribed approach and remove from its website ALJ Elliot’s initial decision in this matter. The Rules of Practice also provide that once a petition for review is filed, the initial decision does “not become final as to that party.” *Id.* § 201.360(d)(1). Thus, the Rules themselves provide the very notice Respondents appear to seek as to the limited import of an initial decision. Again, there is no reason for the Commission to deviate from its established practice by affixing a label to that effect on the initial decision, as Respondents propose.

Respondents also suggest that the Commission should post a “disclaimer” on its ALJs’ initial decisions noting that two district courts have asserted jurisdiction over, and found plaintiffs likely to prevail on, claims that the Commission’s use of its ALJs is unconstitutional. Mot. at 4. That too is unwarranted. As the Division has explained, the reasoning underlying those district court decisions is wrong and the government has appealed; the process for appointing Commission ALJs is entirely consistent with the ALJs’ long-standing existence and function as Commission employees and does not violate the Appointments Clause. Moreover, the Commission is actively considering this issue and, if it were to rule in Respondents’ favor (which it should not for all of the reasons previously discussed), it would then have the opportunity to consider appropriate relief.

This 31st day of August, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert K. Gordon", written over a horizontal line.

Robert K. Gordon
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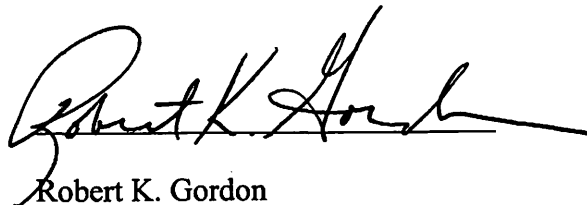
CERTIFICATE OF SERVICE

The undersigned counsel for the Division of Enforcement hereby certifies that he has served the foregoing document by electronic mail and by UPS overnight mail this day addressed as follows:

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