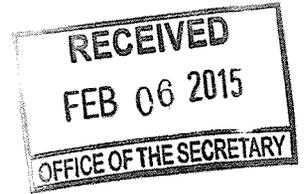


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO, and
JOHN BUONO, CPA,

Respondents.

THE DIVISION OF ENFORCEMENT'S REPLY IN
SUPPORT OF ITS MOTION TO INTRODUCE
PRIOR SWORN STATEMENTS OF ALC
PERSONNEL INCLUDED IN COVENANT
CALCULATIONS

In her response brief, Bebo objects to the introduction of evidence *that she does not dispute*. Indeed, Bebo makes no claim that any evidence in the prior sworn statements is untrue. She does not contest that the subject matter of the statements – dates of employment and attendance at the Ventas facilities – is basic, background evidence, that is uniquely within the knowledge of the declarant. She does not proffer any information to show that any witness statement is incomplete. Similarly, she does not explain how the information contained in the sworn statements is subject to legitimate cross-examination. Nor does she challenge the credibility of any declarant or the reliability of their testimony. And she offers no suggestion that any witness would be impeached. For all of these reasons, the interests of justice support the admission of the prior sworn statements.

On the other hand, given that veracity, reliability, and credibility are not at issue, the interests of justice would not be furthered by disrupting the lives of nearly 20 witnesses to provide mere minutes of undisputed testimony. Bebo proposes that the Division wait some indefinite period for the possibility that she may stipulate to admitting some or all of prior sworn statements.¹ But Bebo may

¹ In her attorney's January 23 email, attached as Exhibit A to her response, Bebo stated that she could likely proffer information from the witnesses to supplement their declarations within two to three weeks. Two weeks have since passed, and Bebo has not provided any such information to the Division. Moreover, her response suggests that a proffer will not be coming in the near future.

ultimately refuse to stipulate, or wait until the eve of trial to inform the Division of her decision. For this reason, basic fairness to the witnesses necessitates that they receive sufficient notice should the Division be required to call them as witnesses.² The witnesses will need to take time off from work, procure child care, and make other logistical and travel arrangements.³ When weighed against the brief, uncontested nature of their testimony, the interests of justice do not support subjecting these witnesses to such unnecessary disruptions in their lives.

In her response, the primary authority Bebo cites is *Del Mar Fin. Servs, Inc.*, AP File No. 3-9959, 2001 SEC LEXIS 1737 (Aug. 14, 2001). The law judge in that case found that the prior sworn statements in dispute were “unreliable,” involved testimony that was subject to impeachment, and that witness credibility was at issue. *Id.* at *11-15. None of those concerns are present with the witness statements the Division now seeks to introduce.

Moreover, Bebo neglected to inform the Court that, following the *Del Mar* initial decision, the Division petitioned the Commission to review the law judge’s exclusion of the prior sworn statements. On appeal, the Commission “expressed [its] preference for inclusiveness” and held that “the law judge should have admitted the [statements] insofar as they contained evidence that was relevant to the issues in this case.” *Del Mar Fin. Servs.*, 56 S.E.C. 1332, 1349-51 (Oct. 24, 2003).

Finally, unlike in *Del Mar*, should Bebo seek to elicit testimony from these witnesses, she is free to do so. If she feels that any of these witnesses have testimony that refutes the Division’s allegations or supports her defenses, she can subpoena them to testify in her case-in-chief. Or, should she proffer additional evidence from these witnesses that the Division does not dispute, she can

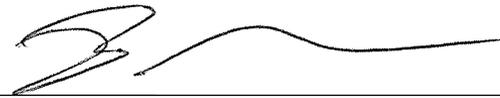
² For this reason, the Division has already notified the other witnesses it presently intends to call to testify at the hearing.

³ More than half of the declarants reside outside of Wisconsin, and would be required to travel from states such as Oregon, Texas, and Florida.

introduce that evidence through stipulation. Accordingly, Bebo would not be prejudiced by the introduction of the prior sworn statements.

WHEREFORE, for these reasons and the reasons cited in its motion, the Division respectfully requests that the Court admit into the record in these proceedings the prior sworn statements.

Respectfully submitted:



Dated: February 5, 2015

Benjamin J. Hanauer
Scott B. Tandy
Division of Enforcement
U.S. Securities and Exchange Commission
175 West Jackson Blvd, Suite 900
Chicago, IL 60604
Phone: 312-353-8642
Email: hanauerb@sec.gov