

# HARD COPY

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



In the Matter of:

BENNETT GROUP FINANCIAL SERVICES,  
LLC and DAWN J. BENNETT

Administrative Proceeding  
File No. 3-16801

## **MOTION FOR A STAY OF THE COMMISSION'S ORDER IMPOSING REMEDIAL SANCTIONS PENDING JUDICIAL REVIEW**

On March 30, 2017, the Commission issued an opinion and order finding that Respondents Dawn J. Bennett and Bennett Group Financial Services, LLC ("Respondents") violated the antifraud provisions of the securities laws while associated with a registered investment adviser and broker-dealer, and rejecting Respondents' argument made on appeal that the administrative law judge who presided over Respondents' administrative hearing was appointed in a manner that violates the United States Constitution. The Commission ordered Respondents to cease and desist from violations of the securities laws, to disgorge ill-gotten gains, and to each pay a third-tier civil penalty. The Commission also imposed a permanent and collateral bar on Ms. Bennett.

Pursuant to the United States Securities and Exchange Commission's ("SEC") Rule of Practice 401(c), Respondents move for a stay of the Commission's order imposing remedial sanctions pending judicial review ("Respondents' Motion"). The Commission may grant Respondents' Motion based on the following four-factor standard:

(1) whether the stay applicant has made a strong showing that he or she is likely to

succeed on the merits;

(2) whether the applicant will be irreparably injured absent a stay;

(3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and

(4) where the public interest lies.

*In the Matter of Raymond J. Lucia Cos.*, Release No. 76241, 2015 WL 6352089, at \*1 (Oct. 22, 2015). The Commission has found “the first two factors are the most critical ...[and] ordinarily will be dispositive of the stay inquiry.” *In the Matter of Mohammed Riad*, Release No. 4446, 2016 WL 3648316, at \*2 (July 8, 2016).

Based on the present posture of similar cases, Respondents are likely to succeed on the merits in this case. As the Commission well knows, the Tenth Circuit Court of Appeals held in *Bandimere* that SEC Administrative Law Judges (“ALJ”) are inferior officers and therefore not constitutionally appointed. *David F. Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016). This is the only circuit court that currently has an opinion in effect on this issue. The Commission has expressed a preference for the D.C. Circuit’s opinion in *Raymond J. Lucia v. SEC*, 832 F.3d 277 (D.C. Cir. 2016), but that opinion is no longer in effect because the D.C. Circuit recently granted a petition for rehearing en banc. As the Commission knows, granting rehearing serves to vacate a court’s initial ruling. Therefore, at this time, the only United States Circuit Court of Appeals holding currently in effect is the Tenth Circuit’s decision in *Bandimere*.<sup>1</sup> Viewing the law as it presently stands, not as it did in the past or the Commission hopes it will in the future, it is more likely that Respondents prevail in their challenge because they are aligned with the only circuit

---

<sup>1</sup> While the Commission filed a motion for rehearing en banc in *Bandimere*, the Tenth Circuit has not yet ruled on it.

to have spoken on the issues with finality.<sup>2</sup>

Now that the D.C. Circuit has granted rehearing en banc, it will either reverse its initial ruling and align itself with the Tenth Circuit or it will affirm its initial ruling and create a circuit split. In either circumstance, a stay is warranted in this case. If the D.C. Circuit reverses, then of course staying the Respondents remedies stemming from the unconstitutional proceeding is only fair. But even if the D.C. Circuit affirms its initial decision, a stay should be granted. A circuit split on this important constitutional issue would likely cause the U.S. Supreme Court to grant a petition for certiorari to resolve this issue, which will undoubtedly take some time. Failing to grant a stay during this possibly extended time of uncertainty is unfair to Respondents, who have stated their intention to seek appellate review from the beginning of this process. Therefore, regardless of whether the D.C. Circuit creates a circuit split or aligns itself with the Tenth Circuit, a stay is warranted in this case.<sup>3</sup>

Because the equities weigh heavily in favor of granting a stay pending appeal, Respondents have less of a burden to show the remaining three factors. *See Riad*, Release No. 4446, at \*1-2. Nevertheless, it is beyond contestation that Respondents will be irreparably injured absent a stay, other parties interested in the proceeding will not be substantially injured by granting a stay, and the public interest lies in granting a stay.

First, Respondents will sustain irreparable injury if the Commission declines to grant a

---

<sup>2</sup> Respondents have set forth the reasoning behind its constitutional argument in previous submissions to the Commission.

<sup>3</sup> One additional yet unlikely possibility is that the D.C. Circuit adopts its previous position and the Tenth Circuit reverses its current position. However, there is no articulable reason to conclude that this possibility is likely because, as of the filing of this petition, the Tenth Circuit has not granted rehearing en banc, and may never do so. Thus, the only likely possibilities are that the D.C. Circuit agrees with the Tenth or that it disagrees and the Supreme Court resolves the issue.

stay. Respondents recognize that the Commission “has consistently found that the kinds of harms asserted by respondents—e.g., financial detriment, the loss of employment prospects, and the potential for collateral proceeding initiated by third parties—do not amount to irreparable injury.” *Id.* at 1. Respondents will indeed suffer these injuries that the Commission has, in past decisions, found unpersuasive. Financially, the massive disgorgement and penalties imposed by the ALJ in the uncontested proceeding will cause Respondents severe financial hardship, if not ruin. The enforcement of the judgment will lead to the potential for collateral proceedings, including FINRA arbitrations brought by customers who learn of the order – indeed, the publicity surrounding the proceeding has caused some such filings already. And the enforcement of the order negatively impacts the employment prospects of the Respondents. But it is the fact that the law is either as Respondents suggest or in total flux that makes the imposition of disgorgement and penalties unfair in the instant case. Were Respondents challenging well-settled law, perhaps the Commission could ignore the financial and reputational harm that would result from denying the stay. However, where the law is at least open to scrutiny, a conservative approach to dispatching remedies is the more prudent course of action.

In addition, Respondent Dawn Bennett will suffer “actual and not theoretical” irreparable injury to Ms. Bennett’s private retail business, DJBennett.com. *Id.* Since leaving the securities industry in November 2015, Ms. Bennett has focused on growing DJBennett.com, which sells high-end sportswear online. Immediate enforcement of the Commission’s order for remedial sanctions will limit Ms. Bennett’s ability to secure lenders and partners for her private business because, who may withhold financing due to a concern over her ability to fulfill repayment obligations. Certain financial institutions already have discontinued business with Ms. Bennett, presumably in light of the publicity surrounding the case. To hamstring Ms. Bennett’s

fundraising efforts at a crucial time during a start-up's life cycle will irreparably injure DJBennett.com and Ms. Bennett. Therefore, this factor also weighs in favor of granting Respondents' Motion.

Second, no interested parties will be harmed by granting Respondents' Motion. The only interested parties here are DJBennett.com, which will only be harmed by denying Respondents' Motion, Ms. Bennett herself, who will suffer immediate and dramatic financial harm if the disgorgement and penalty are enforced before the Court of Appeals decides her case, and the SEC. While Ms. Bennett has asserted her innocence, it is also true that Ms. Bennett already has left both her positions at Bennett Group Financial Services and the securities industry, and therefore no clients or former clients of Bennett Group Financial Services will be harmed by granting a stay. Any harm done to the SEC by granting a stay in this matter is outweighed by its interest in seeing to the proper administration of justice before it metes out final punishment. Respondents know of no other interested parties in this case.

Lastly, as a matter of the public interest, parties should have an opportunity to have their non-frivolous, constitutional claims addressed by the courts before imposition of such a serious sanction as Respondents face here. Especially when, as here, Respondents raised the constitutional issue on the front end – by seeking judicial intervention, which was successfully opposed by the Commission, and by raising the constitutional issue directly with the Division of Enforcement and with the ALJ during the proceeding itself, and, on appeal, with the Commission itself.

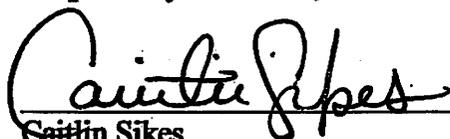
Moreover, the constitutional question at issue here has become one of national importance in recent months for a reason. Both the Tenth Circuit Court of Appeals and numerous United States District Courts found that the SEC unconstitutionally appointed its ALJs

under the United States Constitution not as a mere technicality but in efforts to assure that separation of powers and checks and balances are upheld as the Framers intended. *Bandimere* at 1172 (citing *Ryder v. United States*, 515 U.S. 177 (1995)). The public interest unequivocally lies in granting a motion to stay pending an appeal on whether the ALJ appointment process is constitutionally infirm.

For all the above reasons, Respondents have satisfied the four-factor standard and therefore request that the Commission grant Respondents' Motion.

April 20, 2017

Respectfully submitted,



Caitlin Sikes

Gregory Morvillo  
MORVILLO LLP  
500 Fifth Avenue, 43<sup>rd</sup> Floor  
New York, New York 10110  
212-796-6330

Eugene Ingoglia  
ALLEN & OVERY LLP  
1221 Avenue of the Americas  
New York, New York 10020  
212-610-6300

*Counsel for Petitioners Bennett Group  
Financial Services, LLC and Dawn J.  
Bennett*

**CERTIFICATE OF SERVICE**

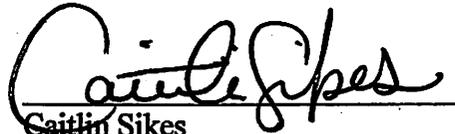
I, Caitlin Sikes, Esq., hereby certify that pursuant to Rule 150 of the Securities and Exchange Commission's Rules of Practice, I caused a true and correct copy of MOTION FOR A STAY OF THE COMMISSION'S ORDER IMPOSING REMEDIAL SANCTIONS PENDING JUDICIAL REVIEW to be filed and served on April 20, 2017, upon the following persons according to the method specified for each:

**VIA FACSIMILE AND OVERNIGHT FEDEX**  
Office of the Secretary  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
Fax (202) 772-9324

**VIA E-MAIL AND OVERNIGHT FEDEX**  
Julia Green ([greenju@sec.gov](mailto:greenju@sec.gov))  
Counsel for the Division of Enforcement  
United States Securities and Exchange Commission  
1617 JFK Boulevard, Suite 520  
Philadelphia, PA 19103

April 20, 2017

Respectfully submitted,



Caitlin Sikes  
Gregory Morvillo  
MORVILLO LLP  
500 Fifth Avenue, 43<sup>rd</sup> Floor  
New York, New York 10110  
212-796-6330

Eugene Ingoglia  
ALLEN & OVERY LLP  
1221 Avenue of the Americas  
New York, New York 10020  
212-610-6300

*Counsel for Petitioners Bennett Group  
Financial Services, LLC and Dawn J.  
Bennett*