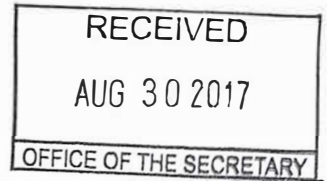


COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



HARD COPY

Administrative Proceeding
File No. 3-17228

In the Matter of

David S. Hall, P.C. d/b/a The Hall
Group CPAs,
David S. Hall, CPA,
Michelle L. Helterbran Cochran,
CPA, and
Susan A. Cisneros

Respondents.

**DIVISION OF ENFORCEMENT'S
BRIEF IN OPPOSITION TO
RESPONDENT MICHELLE L.
HELTERBRAN'S REQUEST TO FILE
UNTIMELY PETITION FOR REVIEW OF
INITIAL DECISION**

More than four months after being properly served with the Initial Decision in this matter—and more than a month after the decision became final—Respondent Michelle Helterbran seeks an opportunity to petition the Commission for untimely review of that Initial Decision. Because Helterbran was properly served with the Initial Decision, actually received it, and failed to timely pursue an appeal, her request should be denied.

**I.
BACKGROUND**

Administrative Law Judge Cameron Elliot entered an Initial Decision on March 7, 2017, denying Helterbran the privilege of appearing or practicing before the Commission as an accountant, with the right to reapply after five years; ordering her to cease and desist from causing violations of Rule 2-02(b)(1) of Regulation S-X and Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder; and ordering her to pay a civil penalty of \$22,500.

David S. Hall, P.C. d/b/a The Hall Group CPAs, David S. Hall, CPA, Michelle L. Helterbran

Cochran, CPA, and Susan A. Cisneros, Initial Decision Release No. 1114 (Mar. 7, 2017), 116 SEC Docket 05, 2017 WL 894965. The Office of the Secretary served the Initial Decision by certified mail the same day it was entered. On March 11, 2017, a notice of the mailing was left at Helterbran's residence. Exhibit A.

On March 20, the Texas State Board of Public Accountancy (the "TSBPA") emailed Helterbran to request that she respond to certain prior TSBPA correspondence in light of the Initial Decision. Exhibit B. Helterbran told the TSBPA that she was aware that the Initial Decision had been issued but she had not yet been served. *Id.* That same day, the TSBPA emailed Helterbran a copy of the Initial Decision, and she thanked them for the copy. *Id.*

A week later, Helterbran emailed the Division regarding the Initial Decision, again indicating that she was aware of it, but had not yet received it from the Office of the Secretary. Exhibit C. The next day, the Division advised Helterbran that it had received its copy of the Initial Decision on March 10, 2017, and suggested that she reach out to the Office of the Secretary with any questions regarding service. *Id.*

Instead of immediately contacting the Office of the Secretary, Helterbran waited almost a full week, until April 3, 2017, to leave a voicemail with the Office of the Secretary regarding her deadline to file a petition for review of the Initial Decision. Helterbran's Brief, ¶ 7; Exhibit D. The Office of the Secretary emailed Helterbran, advising her that it could not answer any legal questions, but referred her to relevant rules from the Commission's Rules of Practice. Exh. D. The Office of the Secretary also sent a link to the Commission's public website where Helterbran could obtain a copy of the decision and provided her with the specific release number for the Initial Decision. *Id.* On April 5, the post office in Coppell, Texas, classified Helterbran's

service copy of the Initial Decision as unclaimed and designated it for return to the Office of the Secretary. Exh. A.

The Commission entered its Notice That Initial Decision Has Become Final in this matter on June 15, 2017. *Michelle Helterbran Cochran, et al.*, Securities Exchange Act Release No. 80949 (June 15, 2017). In light of this notice, the TSBPA sent Helterbran a letter dated July 5, again requesting that she respond to their prior correspondence. Exhibit E. In response, Helterbran sent a letter to the Office of the Secretary, dated July 15 and received by the Office of the Secretary on July 25, stating that she wanted an opportunity to have the Commission review the Initial Decision and that she had never been served. *Id.* Helterbran forwarded a copy of this letter to the TSBPA in a letter dated July 29, requesting an extension of her deadline to respond to the TSBPA's correspondence. *Id.*

The Office of the Secretary forwarded the July 15 letter from Helterbran to the Division on July 28. Although the Division was never served a copy of the letter, and it was not styled as a motion, out of an abundance of caution the Division construed the July 15 letter as a motion for leave to file an untimely petition for review of the Initial Decision (the "Motion") and filed an objection. On August 8, 2017, the Commission issued an Order Scheduling Briefs, requiring Helterbran to file in support of her request by August 22, 2017, and set a deadline of August 29, 2017 for the Division's response. *Michelle Helterbran Cochran*, Securities Exchange Act Release No. 81349 (Aug. 8, 2008) (order scheduling briefs).

Helterbran failed to file her brief before the August 22 deadline; the Office of the Secretary did not receive it until August 28. The Division received an unsigned copy of "Respondent Helterbran's Brief In Support of Opportunity to Respond As Yet Not Served,"

which was dated August 21, noted that service was made on August 22, but was postmarked August 23.

II. ARGUMENT

In her brief, Helterbran effectively makes a single argument: she was not served with the Initial Decision because the Office of the Secretary's mailing was never successfully delivered to her. This argument misstates the Commission's rules regarding service and ignores the undisputed facts that she actually received the Initial Decision and delayed in pursuing any appeal. Thus, there is no basis for the Commission to permit an untimely appeal.

A. Helterbran Was Properly Served with the Initial Decision

Under Commission Rule of Practice 141(b), service of the Initial Decision is to be made by the Office of the Secretary and can be served by any method of service authorized under Rules 141(a) and 150(c)(1)-(3). 17 C.F.R. § 141(b). Under Rule 150, service can be made by certified mail and, if so, is complete on mailing. 17 C.F.R. § 201.150(c)(2), (d). If service is made by mail, an additional three days is added to a response period. 17 C.F.R. § 201.160(b).

The Office of the Secretary informed the Division that it mailed the Initial Decision to Helterbran by certified email on March 7, 2017, the same day it was entered. Thus, Helterbran was served that day. 17 C.F.R. § 201.150(d). The Initial Decision ordered that any petition for review was to be filed within 21 days from service of the Initial Decision. Because the Office of the Secretary served Helterbran by mail, she had 24 days from March 7—until Friday, March 31, 2017—to file her petition for review. She failed to do so.

The Office of the Secretary provided the Division a copy of the tracking information for its mailing of the Initial Decision to Helterbran. Exhibit A shows that a notice was left with

Helterbran on March 11, 2017, but she left the Initial Decision unclaimed for more than three weeks. In her brief, Helterbran alleges that she went to the post office on April 3 to pick up the Initial Decision but that it was unavailable.¹ Helterbran's Brief, ¶ 8. But postal records show that the letter was available in the Coppell post office until at least April 5, when it was deemed unclaimed and designated to be returned. Exh. A.

Regardless of her failure to timely accept delivery of the Initial Decision, service on Helterbran was complete when the Office of the Secretary mailed it to her on March 7. *Brian J. Ourand*, Investment Adviser Act Release No. 4482, 2016 WL 4258138, at *2 n.13 (August 12, 2016) ("But the fact that the mailings were returned does not have an effect on whether service was completed.") (citing 4B Wright & Miller, Fed. Prac & Proc. Civ. § 1148 (4th ed.)). Thus, Helterbran was properly served with the Initial Decision, and her March 31 deadline to petition for review has long since passed.

B. Helterbran Received the Initial Decision.

Even if she had not been properly served with the Initial Decision, Helterbran has had the Initial Decision for months. Helterbran acknowledged she knew the Initial Decision had been entered as early as March 20 and that she had received a copy of it by email from the TSBPA on the same day. Exh. B. She also acknowledged the entry of the Initial Decision to the Division on March 27. Exh. C. Finally, she was directed to a public copy of the Initial Decision on April 3 by the Office of the Secretary. Exh. D. Helterbran's brief does not dispute any of these facts. Thus, it cannot be disputed that she had the Initial Decision since at least March 20, 2017.

¹ Helterbran claims that it was the Office of the Secretary that first alerted her on April 3 that the Initial Decision was waiting for her at the post office. Helterbran's Brief, ¶ 7. But such a statement appears nowhere in their correspondence. Exhibit D. Further, Helterbran claims that she attempted to pick up the Initial Decision only after her correspondence with the Office of the Secretary, and then immediately responded with an email saying that it had already been returned. Helterbran's Brief, ¶¶ 8-9. But given that the timestamps show only 3 minutes passed between the two emails, this seems impossible. Exh. D.

Not only is it undisputed that Helterbran had the Initial Decision since at least March 20, her own emails suggest she received a copy even earlier. In her March 20 email with the TSBPA, she said that she “believe[d] their [sic] are factual and judgmental issues with the ruling and will be appealing.” Exh. B. It is possible that Helterbran was misrepresenting to the TSBPA that she had reviewed the decision and formed opinions about it when she had not even seen it. But if her assertion to the TSBPA is true, she must have received a copy of the Initial Decision even before March 20.

C. The Rules of Practice Do Not Provide for Late Appeals and No Exception Is Warranted.

Commission Rule of Practice 410 governs appeals of initial decisions. 17 C.F.R. § 410. It makes no provisions for challenging a final order once the period for seeking reconsideration has expired. Although Rule 100(c) would allow the Commission to waive the filing deadline if it finds that doing so “would serve the interests of justice and not result in prejudice to the parties to the proceeding,” there is no basis for making such a finding here. 17 C.F.R. § 100(c).

It is undisputed that Helterbran had the Initial Decision by at least March 20, if not earlier, was properly served with the Initial Decision, and failed to file a timely appeal. Even after her appeal deadline passed, she did nothing to attempt an appeal in the two months before the decision became final. And she waited another month after the decision became final before finally writing a letter to the Commission suggesting she might want to appeal, and then only after the TSBPA renewed its efforts to seek action against her. Exh. E. Her brief does nothing to explain these months of delays.

As previously noted by the Commission, it does not serve the interest of justice to permit a late appeal and reward a respondent who sits on their rights, as Helterbran did here. *Walter V.*

Gerasimowicz, et al., Securities Exchange Act Release No. 72133, 2014 WL 1826641, at *2 (May 8, 2014). Nor does Helterbran's *pro se* status excuse her failure to actively pursue her right to an appeal. Indeed, a respondent's "pro se status does not justify an extension of time." *John Vincent Ballard*, Exchange Act Release No. 77452, 2016 WL 1169072, at *3 (Mar. 25, 2016). Accordingly, the interests of justice would not be served by allowing Helterbran to benefit from her decision not to actively pursue an appeal, and her request should be denied.

III. RELIEF REQUESTED

Despite being properly served under the Commission's Rules of Practice, Helterbran asks the Commission to allow her to make an untimely petition for review of an Initial Decision that became final more than two months ago. She argues that because the Office of the Secretary's mailing was not delivered to her, she has not been served and her time to seek review has not passed. The Commission has previously held otherwise. And she ignores the undisputed fact that she received a copy of the Initial Decision almost four months before finally attempting an appeal without providing any reason for her delay. Her request should be denied.

Dated: August 29, 2017

Respectfully submitted,



Timothy L. Evans
Texas Bar No. 24065211

David D. Whipple
D.C. Bar No. 999495
New York Registration No.4902565

United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 978-5036
(817) 978-4927 (facsimile)
EvansTim@sec.gov
COUNSEL FOR
DIVISION OF ENFORCEMENT


SERVICE LIST

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing was served on the following on August 29, 2017 via United Parcel Service, Overnight Mail:

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Michele L. Helterbran Cochran, CPA
[REDACTED]
Coppell, TX [REDACTED]

Ms. Susan A. Cisneros
[REDACTED]
Flower Mound, TX [REDACTED]


Timothy L. Evans

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In-Transit

Product & Tracking Information

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Postal Product:

Features:

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DATE & TIME	STATUS OF ITEM	LOCATION
April 23, 2017, 1:03 pm	Business Closed	WASHINGTON, DC 20549
<p>Your item is being held at the Post Office in WASHINGTON, DC 20549 on April 23, 2017 at 1:03 pm because the business was closed. The item will be delivered the next delivery day that the business is open.</p>		
April 23, 2017, 12:09 pm	Arrived at Hub	WASHINGTON, DC 20018
April 5, 2017, 9:46 am	Unclaimed/Being Returned to Sender	COPPELL, TX 75019

EXHIBIT A

DATE & TIME	STATUS OF ITEM	LOCATION
March 11, 2017, 11:00 am	Notice Left (No Authorized Recipient Available)	COPPELL, TX 75019

See More 

Available Actions

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(http://about.usps.com/who-we-

(http://about.usps.com/forms-

National Postal Museum

are/foia/welcome.htm)

publications/welcome.htm)

(http://www.postalmuseum.si.edu/)

FO FEAR Act EEO Data

Government Services

Resources for Developers

(http://about.usps.com/who-we-

(https://www.usps.com/gov-

(https://www.usps.com/webtools/welcome.html)

services/gov-services.htm)

Careers

(http://about.usps.com/careers/welcome.htm)

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Virginia C. Moher

Halter Bran

From: Michelle Cochran <[REDACTED]@gmail.com>
Sent: Monday, March 20, 2017 2:45 PM
To: John D. Moore
Subject: Re: SEC Original Decision March 7th.

Thank you.

Sent from my iPhone

On Mar 20, 2017, at 2:41 PM, E. Lance Fitzgerald <LFitzgerald@tsbpa.texas.gov> wrote:

Attached is the initial decision.

From: Michelle Cochran <[REDACTED]@gmail.com>
Sent: Monday, March 20, 2017 2:40 PM
To: E. Lance Fitzgerald
Subject: Fwd: SEC Original Decision March 7th.

Mr. Fitzgerald -- I have not been served with their decision yet -- but heard through the grapevine it was out there.

I believe their are factual and judgmental issues with the ruling and will be appealing.

I've met (over the phone) with five of the countries too SEC appellate attorneys and will be engaging one soon.

Please let me know what additional information you need from me.

Sincerely,

Michelle Cochran

Sent from my iPhone

Begin forwarded message:

From: "E. Lance Fitzgerald" <LFitzgerald@tsbpa.texas.gov>
Date: March 20, 2017 at 2:30:21 PM CDT
To: "Michelle Cochran" <[REDACTED]@gmail.com>
Subject: SEC Original Decision March 7th.

Ms. Cochran, are you going to contest the SEC's original administrative decision? Let me know either way. If you will not be contesting the original decision, then please respond to my letter.

Lance Fitzgerald
Staff Attorney - Enforcement Division

Texas State Board of Public Accountancy

P: (512) 305-7840

LFitzgerald@tsbpa.texas.gov

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<id1114ce.pdf>

From: [Evans, Timothy](#)
To: [Michelle Cochran](#); [Minnick, Deborah](#)
Subject: Re: Initial Decision
Date: Tuesday, March 28, 2017 10:23:04 AM

Michelle,

We were served a copy of the Initial Decision via mail on March 10.

If you have any questions regarding the service of the Initial Decision, you should reach out to the Commission's Office of the Secretary.

Thank you,

Timothy Evans
Trial Counsel - SEC
817-978-5036
Original Message
From: Michelle Cochran
Sent: Monday, March 27, 2017 2:14 PM
To: Evans, Timothy; Minnick, Deborah
Subject: Initial Decision

Hi Tim & Deborah --

I have heard through the grapevine that an Initial Decision has been made. I have not received a copy of it either through email or certified mail.

I am concerned about the ability to have a time to respond.

Please advise.

Michelle Cochran

Sent from my iPhone

EXHIBIT C

From: Michelle Cochran
To: [Evans, Timothy](#)
Subject: Fwd: message on telephone
Date: Friday, August 04, 2017 1:34:02 PM

Mr. Evans,

Pursuant to our conversation this afternoon, attached is the communication I had with Ms. Baldwin after you suggested I contact her to get served with the Initial Decision.

Sincerely,

Michelle Helterbran

Sent from my iPhone

Begin forwarded message:

From: Michelle Cochran <[REDACTED]@gmail.com>
Date: April 3, 2017 at 11:37:54 AM CDT
To: Margaret Baldwin <baldwinm@sec.gov>
Subject: Fwd: message on telephone

Ms. Baldwin --

I attempted to pick up the certified letter at my post office and they said it had been returned to sender. Would you please have it resent and let me know when to expect it?

Thank you for the information below.

Sent from my iPhone

Begin forwarded message:

From: "Baldwin, Margaret" <baldwinm@SEC.GOV>
Date: April 3, 2017 at 11:34:57 AM CDT
To: [REDACTED]@gmail.com"
[REDACTED]@gmail.com>
Subject: message on telephone

Dear Ms. Cochran,

I received your voice mail asking about the deadline to file a petition for review of the initial decision.

EXHIBIT D

I am unable to answer any legal questions, including specifying any due dates, but would refer you to Rules 410 and 411 of the Rules of Practice. The Rules of Practice are available on [sec.gov](http://www.sec.gov) and the link is below.

<https://www.sec.gov/about/rules-of-practice-2016.pdf>

Additionally, initial decisions are posted on [sec.gov](http://www.sec.gov), and the link to that page is below. Your initial decision release number is 1114.

<https://www.sec.gov/alj/aljorders.shtml>

Thank you,

Maggie

Margaret Baldwin
Senior Program Information Specialist
U.S. Securities and Exchange Commission
Office of the Secretary
100 F Street, NE, Room 10914B
Mail Stop 1090
Washington, DC 20549
Office: 202-551-7875
Cell: [REDACTED]



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RECEIVED
2017 AUG -1 AM 11:03
TEXAS STATE BOARD OF
PUBLIC ACCOUNTANCY

July 29, 2017

Mr. John Moore, Attorney
Enforcement Division
The Texas State Board of Public Accountancy
333 Guadalupe, Tower 3
Suite 900
Austin, TX 78701-3900

ENF
AUG 01 2017

In Re: File No. 16-11-05L

Dear Mr. Moore:

I am responding to your letter dated July 5, 2017 regarding the filing of an Initial Decision by the Securities and Exchange Commission.

Attached is a letter sent to Mr. Brent Fields at the Securities and Exchange Commission informing him that I have not been served with the Initial Decision as required to affect a Final Order. I have been working with appellate counsel and intend on filing a response and requesting the Commissioners have an opportunity to review the case as well.

Therefore, I request that the deadline for the response to your November 1, 2016 Initial Investigation is postponed until this matter is properly concluded.

Please do not hesitate to give me a call with any questions.

Respectfully submitted,



Michelle L. Helterbran

[REDACTED]
[REDACTED]

Coppell, TX [REDACTED]

EXHIBIT E

July 15, 2017

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549

Admin Proc. File No. 3-17228

Dear Mr. Fields:

I am writing to you regarding your notice titled "Notice That Initial Decision Has Become Final" in the above referenced matter.

I would like the opportunity to respond, and for the Commission to review the decision, however, I have never been served with the Initial Decision.

My address for service remains the same, as indicated below.

Respectfully submitted,



Michelle Helterbran

██████████
Coppell, TX ██████████

Cc: Eduardo A. Aleman
Assistant Secretary