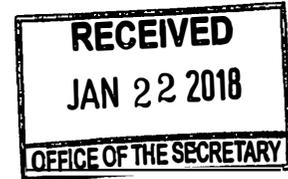


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**Administrative**  
**Proceeding File No. 3-**  
**17228**



**In the Matter of**

**Michelle L. Helterbran**  
**Cochran, CPA,**

**Respondent**

**RESPONDENT HELTERBRAN'S RESPONSE TO**  
**DEPARTMENT OF ENFORCEMENT'S RATIFICATION REQUEST**

The Department of Enforcement for the Securities and Exchange Commission ("SEC") has asked for the Securities and Exchange Commission's Administrative Law Judge ("ALJ"), Cameron Elliot, to ratify the Initial Decision after a de novo remand on the above mentioned manner.

**As outlined in detail in Michelle Helterbran Cochran's ("Helterbran") letter dated January 12, 2018, ALJ Elliot should not reconsider this case unless he is persuaded that the Commission has the legal authority to appoint and ratify the Appointment of ALJs. This authority is in question in many legal jurisdictions across the county and should be determined by the Supreme Court during this session.**

**A ratification of an unconstitutional appointment is in itself unconstitutional.**

**On January 12, 2018, a petition for writs of certiorari was granted to Raymond Lucia, et. al in his appeal to the Supreme Court on his argument that administrative law judges were unconstitutionally appointed at the Securities and Exchange Commission. The Supreme Court said it would review the Securities and Exchange Commission's in-house judicial system, agreeing to decide whether the commission's judges were selected in**

a way that violates the Constitution. **If ALJ Elliot makes a ruling other than to DISMISS this case, I ask that a stay be granted until the Supreme Court rules on Mr. Lucia's matter before them.**

The relevant time to examine is the time the ALJ acted on a particular case. Telling an ALJ to go back and reconsider their record, motion and possible liabilities and sanctions, now the SEC believes they are an officer, is simply not adequate. The ALJ's have been immersed in the proceedings prior to their ratification and it is unrealistic to think an ALJ would reconsider their past decisions now they have been anointed by the Commission and now see and think differently. This premise is not realistic and should not be accepted by the law. Reconsideration will be superficial and not meaningful. After being so immersed in these proceedings, it will be impossible for an ALJ to be *detached* from their previous thoughts, ideas, decisions, rulings, etc. and proceed with a de novo remand, as if no prior hearing had occurred.

The move to retroactively appoint the ALJs and reevaluate all pending matters, represents a total reversal of the SEC's prior position. Not only did the SEC argue in both *Bandimere* and *Lucia* that the Appointments Clause was inapplicable, but the ALJs themselves have issued decisions highlighting this position. This total 180 degree turn for the SEC should give the ALJs the precedent and confidence to boldly take a totally opposite stance versus their preliminary decisions in the *Initial Orders*.

#### Documentation of De Novo Review, Reexamination and Reconsideration

The SEC has ordered each ALJ to determine, based on a de novo reconsideration of the full administrative record, whether to ratify or review in any respect all prior actions taken by the ALJ during the course of each proceeding.

In order for the Commission and for each respondent, for whom due process is ensured, and cannot be denied, to conclude on the adequacy of each de novo review that has been instructed by the Commission, the following should be made publicly available:

- a list of actions taken by each ALJ on each of the 163 files under remand, including:
  - a list of all documents reviewed including the proper documentation for each point reviewed, reexamined and reconsidered,
  - the analysis of each piece of additional evidence submitted,
  - support for each conclusion reached and
  - the ALJ's signature, including date and time each action was performed and/or concluded.
  - any other considerations made

As per *Advanced Disposal Services East, Inc. v NLRN* 820 F.3d 592, 602-03 (3d Cir. 2016) the same person who made the initial decision can be the ratifying authority so long as:

- “the ratifier has the authority to take the action to be ratified” and
- “with full knowledge of the decision to be ratified” makes a
- “detached and considered affirmation of that earlier decision”

Therefore, each ALJ should also document how on each file under remand:

- how they have the authority to take the action to be ratified,
- the steps they took to have **full knowledge** of the decision to be ratified and
- **how they consider themselves detached from the original decisions.**

### **Not Detached – in Fact or In Appearance**

The ALJ has a constitutionally unacceptable risk of being biased in favor of the SEC. The ALJ and the SEC have an extensive relationship with many different facets. The risk of bias has been increased with the SEC’s claim that it has the power to appoint the ALJ.

### **SEC 219      RESPONDENTS 0**

In fact, between October 2013 and January 2015, the SEC won *EVERY ONE* of the 219 administration decisions they issued. Ryan Jones, *the Fight Over Home Court; An Analysis of the SEC’s Increased Use of Administrative Proceedings*, 68 *SMU L. REV.* 507, 509 (2015).

As administrative proceedings before ALJs differ from federal court cases in several ways that meaningfully impact the ability of defendants to present a full defense. Defendants have limited ability to obtain pre-hearing discovery, have a short period of time to prepare for a hearing, are not protected by the evidentiary safeguards of the Federal Rules of Evidence, and no right to a jury trial. See Joseph A. Grundfest, *Fair or Foul? SEC Administrative Proceeds and Prospects for Reform Through Removal Legislation*, 85 *FORDHAM L. REV.* 1143, 1156-65, 1169-74 (2016) (“Grundfest”); see also H.R. Rep. No. 114-697, at 3; U.S. Chamber of Commerce, *Examining U.S. Securities and Exchange Commission Enforcement: Recommendation on Current Processes and Practices* (2015).

By utilizing Administrative Law Judges, such as ALJ Elliot, who are “employed” by or even appointed by the SEC, they are no way independent in fact **or in appearance**, when they preside over cases brought forward to them by the SEC’s Department of Enforcement.

**The rights to due process and a “fair trial” have been taken away from Helterbran by having the SEC as the prosecutor AND the judge in the proceedings against her.**

**Utilizing a judge who is not independent in fact or in appearance, violates the core values of the SEC and deprives respondents such as Helterbran with due process and the right to a fair trial.**

**Facts were Ignored – There is Insufficient Evidence**

Judge Elliot does not (and will not during his remand) have **full knowledge** of the decisions to be ratified in Helterbran’s Initial Order, as **the DOE did not present sufficient evidence to counter alternative theories presented in the hearing that are consistent with Helterbran’s innocence.**

For example, there was no evidence presented by the DOE that showed beyond a preponderance of the evidence that Cisneros was an employee of the firm and therefore, subject to the requirement of being a Certified Public Accountant. The DOE did not present sufficient evidence to counter the fact that she was indeed a contractor and not required to be a CPA.

**Not Full Knowledge -- Alternative Situations were Not Considered**

In the Initial Order, the DOE failed to present sufficient facts to prove its theory of the case and to counter alternative theories that were consistent with Helterbran’s innocence.

It was clear in the Initial Order that alternative situations were not considered. For example, during the hearing, Helterbran and Cisneros both gave numerous examples of where documentation was made outside of a non-required/optional checklist. It is obvious by the Initial Order that these alternative situations were dismissed, not considered and no facts have been presented to counter the alternative theories presented during the hearing. For this reason alone, this case should be dismissed.

**Preponderance Hurdle Not Cleared**

These decisions highlight the SEC’s failure to develop evidence in scienter as well as their reliance too heavily of individual pieces of circumstantial evidence that tell an incomplete story or are negated by equally plausible and persuasive evidence. The SEC’s circumstantial evidence is not sufficient to clear the preponderance hurdle, particularly when countered by Helterbran and Cisneros’ explanations for their conduct. This evidence, when viewed in context **and independent**, can demonstrate a completely different, plausible and innocent story.

I urge ALJ Elliot, should it be determined that he has the authority to proceed with these remands and he is able to demonstrate the steps to ensure a detached review can be done, to strongly consider this evidence in his *detached* and independent de novo review, reexamination and reconsideration of the record and earlier decisions.

For any cases in which no changes are made to the Initial Order and sanctions are recommended by the ALJ, a de novo review by the entire Commission is warranted for each Respondent.

### **In Closing**

*“The glory of justice and the majesty of law are created not just by the Constitution – nor by the courts – nor by the officers of the law – nor by the lawyers – but by the men and women who constitute our society – who are the protectors of the law as they are themselves protected by the law.” -- Robert Kennedy*

*“The liberties of our country, the freedom of our civil constitution, are worth defending against all hazards: And it is our duty to defend them against all attacks”. – Samuel Adams*

*“The Constitution is the guide which I never will abandon”. – George Washington*

*A ratification of an unconstitutional appointment is in itself unconstitutional.*

### **CONCLUSION**

For the reasons stated herein, the only remedy is to DISMISS this case.

Dated: January 10, 2018

Respectfully submitted,



Michelle L. Helterbran Cochran  
Pro Se Respondent

[REDACTED]  
Coppell, TX [REDACTED]

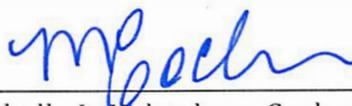
[REDACTED]@gmail.com

## 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 January 19, 2018 via FedEx Overnight Mail and/or Email:

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

Timothy L. Evans  
David D. Whipple  
Securities and Exchange Commission  
Burnett Plaza, Suite 1900  
801 Cherry Street, Unit 18  
Fort Worth, Texas 76102  
EvansTim@sec.gov



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Michelle L. Helterbran Cochran

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**ORDER DISMISSING**

After a de novo review and reexamination of the record in these proceedings, I have reached the independent decision to DISMISS all prior sanctions, penalties or claims, made by an administrative law judge in these proceedings, including nullifying the initial decision issued on March 7, 2017.

This decision to DISMISS is based on my detached and considered judgement after an independent evaluation of the merits.

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Cameron Elliot  
Administrative Law Judge