

COPY

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.

**DIVISION OF ENFORCEMENT'S
OBJECTION TO RESPONDENT
MICHELLE L. HELTERBRAN
COCHRAN'S PETITION FOR REVIEW**

The Division of Enforcement objects to Respondent Michelle L. Helterbran Cochran's ("Helterbran") Petition for Review (the "Petition"). First, the Petition is untimely. And second, the Petition does not meet the requirements of Commission Rule of Practice 411(b)(2), which governs discretionary review by the Commission. Consequently, the Division asks the Commission to reject the Petition. In the alternative, the Division asks that the Commission summarily affirm the initial decision.

As detailed in the Division's August 4, 2017 objection to Helterbran's original petition for review, she did not timely file a petition for review after Judge Elliot entered the initial decision. Now, she is improperly attempting to get a second bite at the apple by again asking the Commission to review the initial decision. The Commission should reject this tactic. The petition for review was untimely the first time it was filed. It remains so now.¹

¹ It is worth noting that Helterbran continues to engage in gamesmanship. When it serves her purposes, she acknowledges that she has "received" orders and other documents from the proceeding. However, when seeking to avoid the deadlines imposed by the Commission's Rules of Practice, she claims that she has not been "served." But the reason she has not been "served" (putting aside the fact that service is complete upon mailing, as detailed in the Division's August 4, 2017 Objection) is that she refuses to go to her local post office and pick up the letters sent to her by the Office of the Secretary.

The Petition is also defective for a second reason. It does not provide an adequate basis for discretionary review by the Commission. Under Rule of Practice 411(b)(2), which governs discretionary review,² the Commission shall consider whether the petition for review makes a reasonable showing that:

- (i) A prejudicial error was committed in the conduct of the proceeding; or
- (ii) The decision embodies:
 - (A) A finding or conclusion of material fact that is clearly erroneous; or
 - (B) A conclusion of law that is erroneous; or
 - (C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

The Petition makes no such showing. Instead, Helterbran summarily requests a "de novo review of her open proceeding by the members of the Commission." This request is defective. It does not allege a prejudicial error in the conduct of the proceeding. Nor does it allege that the initial decision embodies a clearly erroneous error of fact or law or that it touches on important areas of law or policy.³ Thus, the Commission should reject it.

Setting aside this obvious breach of the Rules of Practice, a discretionary review is especially inappropriate here. Judge Elliot has considered the relevant facts and law not once, but twice. Pursuant to the Commission's November 30, 2017 Order (Securities Act Rel. No. 10440), he allowed Helterbran to submit new evidence supporting her case and to challenge his rulings, findings, and conclusions. In fact, he gave her an extra week to do so. *A.P. Rulings Rel. No. 5412* (Dec. 20, 2017).

² This proceeding does not fall into any of the categories outlined in Rule of Practice 411(b)(1)—which covers mandatory review by the Commission.

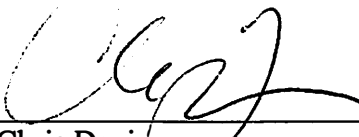
³ The Petition also fails to "set forth a statement of the issues presented for review under Rule 411(b)," as required by Rule of Practice 410(b).

Given this opportunity, Helterbran submitted two briefings but offered "no new evidence." *A.P. Rulings Rel. No. 5524* (Jan. 26, 2018).⁴ Despite the lack of new evidence, Judge Elliot "scrutinized the record" and determined that the initial decision should be ratified. In light of these facts, discretionary review is particularly inappropriate—and the Commission should reject the Petition.

In the alternative, the Commission should summarily affirm the initial decision. The Petition fails to identify any issues for review. It also fails to identify any prejudicial error committed during the proceeding, which would preclude summary affirmance under Rule of Practice 411(e)(2). Rather, Helterbran appears to be attempting to re-litigate the entire administrative proceeding. This would be a tremendous waste of Commission resources. It would also be particularly inappropriate here—where Helterbran has been given not one, but two opportunities to present evidence and arguments to the administrative law judge.⁵

Dated: February 22, 2018

Respectfully submitted,



Chris Davis
Texas Bar No. 24050483
David D. Whipple
D.C. Bar No. 999495
New York Registration No. 402565
United States Securities and
Exchange Commission
Fort Worth Regional Office

⁴ Helterbran focused much of her argument on "issues unrelated to the merits"—including whether Commission ALJs have been properly appointed. *A.P. Rulings Rel. No. 5524* (Jan. 26, 2018). This issue is improper for appeal and has been rendered moot by the Commission's ratification of the ALJ appointments.

⁵ It is true that summary affirmance is rare. *See, e.g., Theodore W. Urban*, Exchange Act Rel. No. 63456, 2010 SEC LEXIS 4054, *6 (Dec. 7, 2010). But this proceeding is the rare case where it is appropriate, since: (1) the Petition is both late and defective; (2) it does not articulate any basis at all for disturbing the initial decision; and (3) the respondent has been the recipient of an exceptionally fair process—having had two opportunities to present evidence and argument to the ALJ.

Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 900-2638
(817) 978-4927 (facsimile)
davisca@sec.gov

LEAD 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 February 22, 2018 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]



Chris Davis