

HARD COPY



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
MIAMI REGIONAL OFFICE
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January 5, 2018

Honorable Cameron Elliot
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
(also via facsimile)

Re: **In the Matter of Alexander Kon**
AP File No. 3-17674



Dear Judge Elliot:

On November 30, 2017, the Commission issued an order ratifying the prior appointment of its administrative law judges to preside over administrative proceedings. See *In re: Pending Administrative Proceedings, Securities Act Release No. 10440* (Nov. 30, 2017). As applied to this proceeding, the order directs the administrative law judge to determine, based on a *de novo* reconsideration of the full administrative record, whether to ratify or revise in any respect all prior actions taken by any administrative law judge during the course of this proceeding. *Id.* at 1-2.

It is well-established that subsequent ratification of an earlier decision rendered by an unconstitutionally appointed officer remedies any alleged harm or prejudice caused by the violation. See *Doolin Sec. Sav. Bank, F.S.B. v. Office of Thrift Supervision*, 139 F.3d 203, 213-14 (D.C. Cir. 1998); *FEC v. Legi-Tech, Inc.*, 75 F.3d 704, 707-09 (D.C. Cir. 1996). That principle applies whether or not the ratifying authority is the same person who made the initial decision, 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 th[at] earlier decision.” *Advanced Disposal Services East, Inc. v. NLRB*, 820 F.3d 592, 602-03 (3d Cir. 2016).

Accordingly, to implement this remedy, it is our position that you should conduct a *de novo* review of the administrative record, engage in an independent evaluation of the merits through the exercise of detached and considered judgment, and then determine whether prior actions should be ratified and thereby affirmed. This process would ensure “that the ratifier does not blindly affirm the earlier decision without due consideration.” *Advanced Disposal Services East*, 820 F.3d at 602-03.

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Very truly yours,

A handwritten signature in black ink, appearing to read "Wilfredo Fernandez". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Wilfredo Fernandez
Senior Trial Counsel

Enclosure
cc: Alexander Kon

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

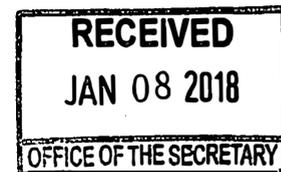
ADMINISTRATIVE PROCEEDING
File No. 3-17674

In the Matter of:

ALEXANDER KON,

Respondent.

**ORDER RATIFYING PRIOR
DECISION**



After a *de novo* review and reexamination of the record in these proceedings, I have reached the independent decision to ratify and affirm all prior actions made by me law judge in this proceeding. This decision to ratify and affirm is based on my detached and considered judgment after an independent evaluation of the merits.

The Honorable Cameron Elliot
Administrative Law Judge