

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 4103 / June 4, 2015

INVESTMENT COMPANY ACT OF 1940  
Release No. 31660 / June 4, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-15519

In the Matter of

TIMBERVEST, LLC, JOEL BARTH  
SHAPIRO, WALTER WILLIAM ANTHONY  
BODEN, III, DONALD DAVID ZELL, JR., and  
GORDON JONES II

ORDER CONCERNING  
ADDITIONAL SUBMISSION AND  
PROTECTIVE ORDER

On May 20, 2015, Respondents filed a Motion to Allow Submission of Additional Evidence and for Leave to Adduce Additional Evidence.<sup>1</sup> Asserting that additional evidence is needed to resolve their claim that the Commission's "administrative forum lacks impartiality," Respondents seek, among other things, to take the deposition of the administrative law judge who presided over the hearing and issued the Initial Decision here, ALJ Cameron Elliot. In support of their Motion, Respondents identify a recent newspaper article in which a former administrative law judge of the Commission alleges that during her tenure she experienced pressure from the Chief ALJ to rule in favor of the Division of Enforcement in pending cases.<sup>2</sup> Respondents recognize that the former ALJ "departed the Commission years before the hearing in this matter[.]"

We believe that our consideration of Respondents' Motion would be assisted by the submission of certain additional material for inclusion in the record.<sup>3</sup>

---

<sup>1</sup> Available at: [www.sec.gov/litigation/apdocuments/3-15519-event-130.pdf](http://www.sec.gov/litigation/apdocuments/3-15519-event-130.pdf)

<sup>2</sup> See Jean Eaglesham, *SEC Wins With In-House Judges*, THE WALL STREET JOURNAL (May 6, 2015) (referring to allegations by former ALJ that during her tenure at the Commission, the former ALJ came "under fire" for finding in favor of respondents, had her "loyalty" to the Commission "questioned" on account of her rulings, and was "expected to work on the assumption" that "the burden was on the [respondents] to show that they didn't do what the agency said they did").

<sup>3</sup> We emphasize that this order is not to be construed as expressing the Commission's view as to the substance of the allegations identified in the newspaper article. Nor should this order be

(continued . . .)

Accordingly, we are hereby inviting ALJ Elliot to file by July 1, 2015, an affidavit addressing whether he has had any communications or experienced any pressure similar to that alleged in the May 6, 2015 *The Wall Street Journal* article, "SEC Wins With In-House Judges," and whether he is aware of any specific instances in which any other Commission ALJ has had such communications or experienced such pressure. ALJ Elliot is also invited to include in his affidavit any other matter pertaining to allegations of bias or partiality that he may consider pertinent or wish to address.<sup>4</sup> We request that ALJ Elliot not consult with anyone at the Commission in the preparation of his affidavit concerning the substance thereof, and that he confirm in his affidavit that no such consultations or discussions occurred.

It is ORDERED that the Office of the Secretary shall promptly notify ALJ Elliot of this invitation by providing a copy of this document to him.

It is further ORDERED that, if ALJ Elliot submits the above-referenced affidavit, then:

1. The Office of the Secretary shall promptly serve copies of ALJ Elliot's affidavit on the parties;<sup>5</sup>

2. The Office of the Secretary shall maintain the affidavit under seal and provide it only to the Commission and any staff of the Commission directly advising the Commission in its deliberative processes with respect to this proceeding or acting for the Commission in connection with any subsequent appeal;

---

(...continued)

construed to express the Commission's views on the disposition of Respondents' Motion (including with respect to the materiality of the discovery sought therein), the Division's Opposition to the Motion, or the merits of Respondents' underlying claims. Respondents' Motion remains pending before the Commission.

<sup>4</sup> Although we believe that the information that ALJ Elliot could provide concerning these topics could significantly assist us, we emphasize that any submission by him would be voluntary on his part. Should ALJ Elliot determine not to submit an affidavit, we respectfully request that he notify the Commission's Secretary on or before July 1, 2015. The Secretary shall thereafter promptly notify the parties.

<sup>5</sup> The Commission is directing that the affidavit be maintained under seal in order to provide the affiant confidentiality. Accordingly, the Commission finds that, at the present juncture, the harm resulting from disclosure of the affidavit would outweigh the benefits of disclosure and that the issuance of a protective order accordingly is appropriate. *See* Rule of Practice 322, 17 C.F.R. § 201.322(a). The Commission reserves the authority to reach a different conclusion regarding confidentiality at any time before it finally determines the issues raised in this proceeding, and the terms of this protective order are subject to modification upon a showing of good cause.

3. Any person receiving access to ALJ Elliot's affidavit shall take reasonable steps to maintain its confidentiality and shall not divulge its contents to any other person; and

4. Two versions of any filing containing or referencing information subject to this order shall be prepared: (a) a complete version of the document marked "CONFIDENTIAL" for filing under seal under the terms of this protective order, and (b) a redacted version of the same document for the public file.

By the Commission.

Brent J. Fields  
Secretary