

UNITED STATES OF AMERICA

Before the
SECURITIES AND EXCHANGE COMMISSION

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,

Respondents.

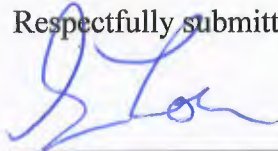
NOTICE

In response to a May 27, 2015 order from the Commission seeking information about administrative law judge (“ALJ”) hiring, the Division of Enforcement (“Division”) filed a Notice of Filing and Affidavit on June 4, 2015. The Affidavit stated that ALJ Elliot “was not hired through a process involving the approval of individual members of the Commission.” Aff. ¶ 4. The Notice of Filing that accompanied the Affidavit explained that this fact alone is sufficient for purposes of the Commission’s consideration of Respondents’ Appointments Clause claim. Notice at 1-2 & n.1. Nonetheless, in the Notice of Filing, the Division endeavored to provide some additional “background information regarding the selection and hiring of Commission ALJs” and also presented its understanding that this process was applied to Judge Elliot’s hiring. *Id.* at 2. As the Division noted, it was limited in its ability to collect this information given *ex parte* considerations. *Id.* at 2 n.1.

Recently, during a hearing in another case (*In re Laurie Bebo and John Buono, CPA*, File No. 3-16293), ALJ Elliot expressed his belief that, because he transferred to his current position from the Social Security Administration, he was hired pursuant to a different process from that described in the Division's Notice of Filing. ALJ Elliot did not question or otherwise undermine the view set forth in the accompanying Affidavit that he was hired without the involvement of individual Commissioners.¹ The Division remains of the view that the additional details of ALJ Elliot's hiring process are not necessary to resolve the claims in this case, but submits this Notice for purposes of supplementing the record.²

This 23d day of June, 2015.

Respectfully submitted,



M. Graham Loomis
Robert K. Gordon
Anthony J. Winter
Attorneys for Division of Enforcement
Securities and Exchange Commission
950 E. Paces Ferry Road NE
Atlanta, Georgia 30326-1232

¹ A transcript of ALJ Elliot's comments is attached.

² Accordingly, and given the *ex parte* considerations, the Division has not confirmed the details of the transfer process or the process for ALJ Elliot's hiring.

Assisted Living Concepts

Trial Transcript Day_18 - 6/18/2015

6/18/2015

Full-size Transcript

Prepared by:

Dora Morales
Securities & Exchange Commission

Friday, June 19, 2015

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. 3-16293

5 LAURIE BEBO AND JOHN BUONO, CPA)

6

7 ADMINISTRATIVE PROCEEDINGS - HEARING, VOLUME XVIII

8 PAGES: 4213 through 4463

9 PLACE: Milwaukee County Courthouse

10 901 North 9th Street, Courtroom 615

11 Milwaukee, WI 53202

12 DATE: Thursday, June 18, 2015

13

14 The above-entitled matter came on for hearing,

15 pursuant to notice, at 9:00 a.m.

16

17

18 BEFORE:

19 CAMERON ELLIOT, ADMINISTRATIVE LAW JUDGE

20

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22

23

24 Diversified Reporting Services, Inc.

25 (202) 467-9200

1 APPEARANCES:

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3 On behalf of the Securities and Exchange Commission:

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C O N T E N T S

WITNESSES: DIRECT CROSS REDIRECT RECROSS

Laurie Bebo

(Resumed)

 By Mr. Cameli 4224

 4429

Mary Zak-Kowalczyk

 Mr. Hayes 4329 4399

 4405

 Mr. Stippich 4363 4403

1 So the second issue -- I don't want to
2 take long on this, because I just want to flag this
3 for the parties, and we can talk about this once the
4 parties are prepared to address it.

5 I assume Respondents are going to argue in
6 post-hearing briefing what I'll call the Article 2
7 argument, that the proceeding's unconstitutional
8 because there's an Article 2 violation. Is that
9 true?

10 MR. CAMELI: I think the Court so far is
11 telling us that's what we have to do because they're
12 not entertaining it at a district court level, so,
13 yes, I believe -- yes.

14 JUDGE ELLIOT: All right. So let me just
15 tell you this then, and we can talk about this
16 tomorrow maybe.

17 As you're probably aware, the Commission
18 has a case pending before it called Timbervest,
19 which was also my case, and Timbervest is on
20 petition for review, and the same argument has been
21 presented by the Respondents in Timbervest.

22 The Commission asked for some additional
23 briefing, and that has been provided. And one of
24 the things that they wanted and one of the things
25 that the Division provided was an explanation of how

1 I was hired.

2 Now, you may have this already. You can
3 download it from our website. Okay? What I wanted
4 to flag for the parties is that the Division's
5 description of how I was hired is erroneous. I
6 don't think it makes a difference. Okay? I think
7 in the end it's neither here nor there that they got
8 it wrong, but I can explain, but I think probably
9 the best way to explain is if everyone has in front
10 of them the Division's filing.

11 And I'm not blaming the Division for this,
12 believe me. The only -- there's no reason to think
13 they would have got it right without actually
14 talking to me, and quite properly, they didn't ask
15 me about it.

16 And what I'm referring to now is -- this
17 is Timbervest, LLC, the Administrative Proceedings
18 3-15519. The filing is dated June 4, 2015, and
19 entitled simply Notice of Filing.

20 And what -- the crucial language is in the
21 first full paragraph on page 2. So this is -- I
22 suppose it's mainly for the Respondent's benefit,
23 also for the Division's also if you want to know
24 about it. If everyone has that in front of them at
25 some point, I can explain to you exactly what is

1 erroneous about it. Okay?

2 MR. CAMELI: Okay.

3 JUDGE ELLIOT: So, you know, if anyone
4 wants to ask me about it and you're in a position to
5 do so, then we can do that, but we don't have to do
6 that now.

7 MR. HANAUER: And can I just -- this is
8 certainly without giving away anything. This is
9 certainly an issue that the Division is very
10 cognitive of given the challenges and things like
11 that.

12 Should I -- can I get some directive from
13 the Court about whether what you represent to us,
14 either now or at some other time, should be shared
15 with other people at the Division, you know, brought
16 to the attention of the Timbervest litigation team?

17 JUDGE ELLIOT: Well, I don't know. Look,
18 I don't know how to do it short of this context. So
19 I mean you do whatever you think is appropriate.
20 Okay?

21 I have -- I have informed the chief ALJ. I
22 brought it to her attention that it was wrong. Of
23 course she knew because she hired me, so she already
24 knew that it was wrong.

25 I also informed Jayne Seidman, who is the

1 woman who gave the affidavit that's attached to the
2 filing. Her affidavit is correct, as far as I know.
3 I don't take dispute with that.

4 But if Ms. Seidman told anybody, I have no
5 idea. I've made no effort to reach out to the
6 Division outside of the context of this case. This
7 is the first time I've said this to anyone outside
8 of Ms. Seidman and Judge Murray.

9 But if you want to share it with everyone
10 else in the Division, I encourage you to do so. I
11 certainly don't want the Division to be, you know,
12 embarrassing themselves by saying things that are
13 wrong. And, again, I don't think it makes a
14 difference. I really don't.

15 I think in the end, it's just neither here
16 nor there; but, you know, I want to make sure that
17 everyone's on the same page with it.

18 MR. HANAUER: Very good. And just for the
19 Court's record, for the In Re: Bebo litigation team,
20 this is the first time we are hearing anything about
21 this. We were not involved in any of the briefing
22 on these issues outside the context of this
23 particular case.

24 JUDGE ELLIOT: Right. Okay.

25 MR. CAMELI: How long are your typical

Assisted Living Concepts

Trial Transcript Day_19 - 6/19/2015

6/19/2015

Full-size Transcript

Prepared by:

Dora Morales
Securities & Exchange Commission

Monday, June 22, 2015

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. 3-16293

5 LAURIE BEBO AND JOHN BUONO, CPA)

6

7 ADMINISTRATIVE PROCEEDINGS - HEARING, VOLUME XIX

8 PAGES: 4464 through 4741

9 PLACE: Milwaukee County Courthouse

10 901 North 9th Street, Courtroom 615

11 Milwaukee, WI 53202

12 DATE: Friday, June 19, 2015

13

14 The above-entitled matter came on for hearing,

15 pursuant to notice, at 9:00 a.m.

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18 BEFORE:

19 CAMERON ELLIOT, ADMINISTRATIVE LAW JUDGE

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24 Diversified Reporting Services, Inc.

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(202) 467-9200

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C O N T E N T S

WITNESSES: DIRECT CROSS REDIRECT RECROSS

Laurie Bebo

(Resumed)

By Mr. Cameli 4475 4731

4508

By Mr. Hanauer 4512

4528

4690

Laurie Bebo

(Resumed)

Testimony under Seal

By Mr. Cameli 4506

By Mr. Hanauer 4526

John Buono

By Mr. Cameli 4594 4686

By Mr. Hanauer 4669 4687

1 PROCEEDINGS

2 JUDGE ELLIOT: We're here in the matter
3 of Laurie Bebo, Securities and Exchange Commission,
4 administrative proceeding, File No. 3-16293. My
5 name is Cameron Elliot, presiding administrative
6 law judge.

7 May I have appearances from counsel,
8 please.

9 MR. HANAUER: Good morning, Your Honor.
10 Ben Hanauer, Dan Hayes, Scott Tandy and Tim
11 Stockwell for the Division of Enforcement.

12 MR. CAMELI: And for the last time, good
13 morning, Your Honor. The Respondent appears in
14 person and by her counsel, Mark Cameli and Ryan
15 Stippich.

16 JUDGE ELLIOT: All right. Anything we
17 need to take up before we start in again?

18 MR. HANAUER: Yes. Very briefly, Your
19 Honor, hopefully it won't take more than a couple
20 minutes, and I have raised this with counsel.

21 This has to do with the Court's
22 statements yesterday about the notice of filing in
23 the Timbervest case.

24 JUDGE ELLIOT: Yes.

25 MR. HANAUER: I've had a chance to speak

1 with others in the Division. The Division very
2 much appreciates you alerting us to inaccuracies in
3 the Division's filings.

4 We were hoping, and counsel has agreed,
5 if it pleases the Court, for you to let us know, if
6 now is an appropriate time, what you believe the
7 inaccuracies to be, and if there's any information
8 you can share with us that you feel would make the
9 Division's filing more accurate.

10 JUDGE ELLIOT: Right.

11 MR. CAMELI: The only thing I'll add is
12 when you brought this up yesterday, you had asked
13 that the witness not be in the courtroom.

14 Do you care?

15 JUDGE ELLIOT: Oh, no, I don't -- I
16 didn't -- if I said that, I didn't mean that. No,
17 I don't think this matters.

18 MR. CAMELI: All right.

19 JUDGE ELLIOT: Okay. So it might be
20 helpful if you pull up the notice. Okay, you got
21 it? Okay. So go to the second page.

22 MR. HANAUER: Does the Court need a copy,
23 Your Honor?

24 JUDGE ELLIOT: I'm sorry?

25 MR. HANAUER: Does the Court need a copy?

1 JUDGE ELLIOT: No. I'm looking at it on
2 my computer.

3 So if you look at the first full
4 paragraph on the second page, that's where the
5 method of hiring is described.

6 And just by way of background, there's
7 two ways for a federal agency to hire an
8 administrative law judge. One is in the manner
9 described in this paragraph, and that is in fact
10 how I was hired by Social Security, and it's also
11 how Judge Patil and Judge Grimes were hired at the
12 SEC, within the past year, roughly.

13 However, the other way of being hired is
14 if you are already an administrative law judge for
15 a federal agency, then you don't have to go through
16 this process. Instead, you just go through the
17 process that essentially everyone else with the
18 federal government goes through, which is you have
19 USA Jobs, which is the federal government's
20 job-posting website, you respond to the
21 advertisement, and then you get hired in the usual
22 fashion.

23 So in my case, for example, I saw a
24 posting on USA Jobs when I was at Social Security.
25 I sent in my resume, I had an interview, I got an

1 offer; it's as simple as that.

2 What's described in the Division's notice
3 of filing in Timbervest is if you've never been an
4 ALJ before. And as I said, I did in fact go
5 through that process, just not when I was hired by
6 the SEC.

7 So let's see if there's anything more
8 specific. Oh, I think when I was hired by the SEC,
9 the Office of Personnel Management did have to
10 approve my transfer from Social Security to SEC. I
11 believe that's the case, I'm not sure, but I think
12 that's the case. So OPM does actually get involved
13 in every ALJ's hiring, to my knowledge.

14 Other than that, I think that's really
15 the important things. Yes?

16 MR. HANAUER: Could I inquire? Was the
17 interview with -- who was the interview with, Your
18 Honor?

19 JUDGE ELLIOT: Oh, who did I interview
20 with? I interviewed with Judge Murray, with Jayne
21 Seidman, who at that time was -- I think she was
22 with human resources, and an attorney with the
23 general counsel's office, whose name escapes me at
24 the moment. I was supposed to interview with the
25 general counsel himself at the time, but he didn't

1 bother to show up.

2 And then once -- and this goes to the
3 last sentence in this paragraph that I'm referring
4 to -- once I accepted the offer, I don't know for
5 sure exactly what the process was, but when I -- I
6 pulled out one of my forms that I got from HR, and
7 it appears that someone in HR did sign off on my
8 hiring, okay?

9 Now, as far as I'm concerned, this
10 doesn't make any difference. The bottom line, for
11 purposes of the Article II arguments, is that I
12 was -- I was not appointed by the Commission. The
13 Commission, as far as I know, did not issue any
14 sort of order appointing me as an ALJ.

15 MR. CAMELI: Is the 2011 date correct, as
16 far as interview and start?

17 JUDGE ELLIOT: Yes. Let me check here.
18 Yes, that's correct.

19 MR. CAMELI: I just see the year there.

20 JUDGE ELLIOT: Yes, 2011. I was
21 interviewed in 2011, and I began work in 2011.

22 MR. HANAUER: Is it permissible if we
23 share the transcript of this portion of the
24 proceedings with others within the Division and
25 commission, Your Honor?

1 JUDGE ELLIOT: Please, yes.

2 MR. HANAUER: We will get -- in that
3 case, we will get them -- the rough with this
4 morning's session around the lunch hour.

5 JUDGE ELLIOT: Very well.

6 MR. HANAUER: Thank you, Your Honor.

7 JUDGE ELLIOT: Okay. Anything else?

8 MR. CAMELI: I think that's fine.

9 JUDGE ELLIOT: All right. Go ahead, Mr.
10 Cameli.
11 Whereupon,

12 LAURIE BEBO
13 was recalled as a witness and, having been
14 previously duly sworn, was examined and testified
15 further as follows:

16 DIRECT EXAMINATION BY COUNSEL

17 FOR THE RESPONDENT

18 (RESUMED)

19 BY MR. CAMELI:

20 Q Ms. Bebo, before we continue where we
21 were sequentially, I just want to cover a couple
22 odds and ends. I want to look at Exhibit 1389.

23 Do you recognize this document?

24 A I think -- pardon me, I think this
25 monitor is not on.

1 had just put it in -- put it in with other cash
2 that he had, and so he thought it was
3 200-and-something dollars was his estimate.

4 Q And do you have a recollection that our
5 firm then did provide that information to the SEC
6 upon learning it?

7 A Yes. Once I could confirm it, yes.

8 MR. CAMELI: Your Honor, I have nothing
9 further at this time.

10 JUDGE ELLIOT: Very well.

11 Okay. I want to say one thing before we
12 get started with Mr. Hanauer. I want to make
13 something clear.

14 I mentioned about my hiring, that someone
15 in HR had signed a paper, and I want to make it
16 clear. I'm not saying that the person who signed
17 the paper or the paper itself was my appointment.
18 It was simply an SF50, a Standard Form 50, which is
19 the customary document for the federal civil
20 service -- the document changes to personnel
21 status, and it was signed by someone in HR, because
22 they always are signed by someone in HR.

23 Whether that constitutes my appointment
24 or not, I don't know. But in any event, I don't
25 mean to suggest that this person in HR appointed

1 me. I don't know whether he did or not.

2 MR. CAMELI: That actually raises an
3 interesting question, and you may have already
4 answered it, but do you know who, or how you were
5 appointed then, or who appointed you, or what the
6 actual act was that constituted your
7 hiring/appointment?

8 JUDGE ELLIOT: I would have to say no, I
9 don't know. I have an educated guess, but it's
10 really just an educated guess. No, I don't know
11 the answer.

12 MR. CAMELI: Thank you for that
13 clarification.

14 JUDGE ELLIOT: All right. Go ahead, Mr.
15 Hanauer.

16 MR. HANAUER: Thank you, Your Honor.

17 CROSS-EXAMINATION BY COUNSEL FOR THE
18 DIVISION OF ENFORCEMENT

19 BY MR. HANAUER:

20 Q Good morning, Ms. Bebo.

21 A [REDACTED]

22 Q [REDACTED]

23 [REDACTED]

24 A [REDACTED]

25 [REDACTED]

CERTIFICATE OF SERVICE

The undersigned counsel for the Division of Enforcement hereby certifies that he has served the foregoing document by electronic mail and by UPS overnight mail this day addressed as follows:

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M Graham Loomis
Attorney for the Division of Enforcement