

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2290 / February 6, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO and
JOHN BUONO, CPA

ORDER GRANTING MOTION TO
INTRODUCE PRIOR SWORN
STATEMENTS

The Securities and Exchange Commission (Commission) commenced this proceeding on December 3, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) pursuant to Securities Exchange Act of 1934 (Exchange Act) Sections 4C and 21C and Commission Rule of Practice (Rule) 102(e).¹ The hearing in this proceeding is set to commence on April 20, 2015, in Milwaukee, WI.

On January 27, 2015, this Office received the Division of Enforcement's (Division's) Motion to Introduce Prior Sworn Statements (Motion), to which were attached sixteen declarations (Ex. 1) and three deposition transcript excerpts (Exs. 2-4). Respondent Laurie Bebo (Bebo) timely submitted an Opposition (Opp'n) to the Motion, to which was attached an email string between counsel for Bebo and counsel for the Division (Ex. A). The Division timely submitted a Reply (Reply).

The OIP alleges, among other things, that Bebo, the former chief executive officer of Assisted Living Concepts, Inc. (ALC), schemed to falsify ALC's records by fraudulently reporting certain ALC employees and friends and family members of Bebo as residents of the senior residence facilities ALC operated. OIP at 1-2. The Division seeks the admission of sixteen sworn declarations from former employees of ALC (Declarants), each of which is two pages long. Motion at 2. Fifteen declarations comprise three or four paragraphs, with the first paragraph briefly summarizing the Declarant's employment with ALC, the second paragraph listing eight ALC facilities, and the third and fourth paragraphs briefly summarizing the Declarant's experiences visiting or staying at the eight listed ALC facilities. *See generally* Ex. 1. A sixteenth declaration is similar, but has seven paragraphs describing the Declarant's experiences visiting, staying at, or living at the listed ALC facilities. *See* Ex. 1 (Declaration of Stacy Cromer). The Division also seeks the admission of excerpts of the deposition transcripts

¹ The proceeding has ended as to Respondent John Buono, CPA (Buono). *Laurie Bebo*, Exchange Act Release No. 74177, 2015 SEC LEXIS 347 (Jan. 29, 2015).

of Gale Bebo (Bebo's mother), Nick Welter (Welter) (Bebo's husband), and Kevin Schweer (Welter's friend) (collectively, Deponents). Motion at 3. The excerpts all pertain to the witnesses' experiences visiting, staying at, or working at various ALC facilities, and all depositions took place in September or October 2013. *See generally* Exs. 2-4.

Under Rule 235(a), the prior sworn statement of a witness, other than a party, may be admitted if one of five prerequisites is met. 17 C.F.R. § 201.235(a). The Division relies on the fifth prerequisite, that "it would be desirable, in the interests of justice, to allow the prior sworn statement to be used." *Id.* at § 201.235(a)(5); Motion at 4. The Division represents that: (1) approximately two-thirds of the Declarants do not live in Wisconsin; (2) many of the Declarants were listed as residents of multiple ALC facilities at the same time in ALC's records, even though the declarations show that most Declarants did not visit or stay at those facilities; (3) Welter, in particular, was listed as a resident of four ALC facilities for months or years at a time; and (4) Bebo's counsel was present during the depositions of Gale Bebo, Welter, and Kevin Schweer. *See* Motion at 1-4 & n.1.

Bebo does not dispute any of the Division's representations, nor does she dispute the truth of the Declarants' statements or of the Deponents' testimony. *See generally* Opp'n; *see also* Ex. A at 1. Instead, Bebo argues that: (1) admitting the prior sworn testimony violates her due process rights; (2) she cannot stipulate to the admission of the prior sworn statements until she has had an opportunity to review the investigative file; and (3) the Division seeks, in effect, to shift the burden of calling the Declarants and Deponents onto Bebo. *See* Opp'n at 5-6, 8. Bebo represents in this regard that her counsel did not participate in any interviews of the Declarants, and so far has been able to speak to only one Declarant. *See id.* at 8.

Even giving due regard to "the presumption that witnesses will testify orally in an open hearing," it is in the interests of justice to admit the testimony of the Deponents. 17 C.F.R. § 201.235(a)(5). Bebo concedes that her counsel was present for the Deponents' depositions, which took place over a year before the OIP issued. As discussed at the prehearing conference on January 5, 2015, Bebo's counsel was actively involved in the Wells process, including presentation of a lengthy submission before the Wells notice even issued. *Laurie Bebo*, Admin. Proc. 3-16293 (Jan. 5, 2015) (prehearing conference transcript at 10-11). The subject matter of the Deponents' statements is narrow, and determining the veracity of the Deponents' testimony should be straightforward – indeed, under the circumstances one would expect Bebo to have already done just that. Bebo could surely muster some basis for contesting the truth of the proposed Deponent testimony, if such a basis exists.

If Bebo discovers such a basis, or wishes to call the Deponents in her own case, it will not be unreasonable or unduly burdensome to place on Bebo the burden of calling the Deponents as witnesses. Bebo offers no authority for the proposition that placing the onus of introducing exculpatory testimony on her violates her due process rights. Nor is it a violation of due process to admit undisputed hearsay. *See EchoStar Commc'ns Corp. v. FCC*, 292 F.3d 749, 753 (D.C. Cir. 2002) ("If the Commission could not rely upon the uncontested, sworn affidavit of a witness speaking from personal knowledge, then one would be hard-pressed to understand why a district court may, upon the basis of a sworn declaration, grant summary judgment"); Opp'n at 8-9.

As for the Declarants, the Division does not dispute Bebo's representation that she has had only extremely limited contact with them. *See generally* Reply. Nonetheless, Bebo is apparently more concerned about what additional testimony they can provide than about the veracity of their declarations. *See* Ex. A at 1; *see also* Reply at 1 n.1. Indeed, Bebo's principal concern on this point is that she wants to stipulate, if possible, to more than just the contents of the declarations. *See* Opp'n at 7 (expressing a "willingness to stipulate to specific facts once counsel had an opportunity to complete its review of the Division's voluminous production"). I encourage the parties to work toward such a stipulation, of course, and applaud their current efforts.

Notably, though, Bebo does not complain that she has had insufficient opportunity to evaluate the veracity of the declarations, as opposed to the usefulness to her of any other testimony the Declarants might provide. Also, it would be judicially inefficient to require witnesses to travel potentially long distances to testify for just a few minutes.

Accordingly, it is in the interests of justice to admit the prior sworn statements. If the parties reach a stipulation on additional testimony any Declarant or Deponent might provide, I will take that up in due course. If the parties cannot reach a stipulation, and Bebo seeks a testimonial subpoena for any Declarant or Deponent, I will take that up in due course, also.

Accordingly, the Division's Motion to Introduce Prior Sworn Statements is GRANTED.

Cameron Elliot
Administrative Law Judge