U.S. Department of Labor

Office of Administrative Law Judges
2 Executive Campus, Suite 450
Cherry Hill, NJ 08002

(856) 486-3800
(856) 486-3806 (FAX)

Issue Date: 19 June 2019

Case No.: 2019-SOX-00040

In the Matter of:

COLLEEN A. GRAHAM
Complainant

v.

CREDIT SUISSE SECURITIES, et al.
Respondents

INITIAL PREHEARING ORDER AND NOTICE OF HEARING

1. This matter has been docketed for a hearing before the United States Department of Labor, Office of Administrative Law Judges ("OALJ") pursuant to Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 ("SOX"), as amended, 18 U.S.C. § 1514A, and the implementing regulations at 29 C.F.R. Part 1980.

This hearing will take place as follows:

DATE: **MONDAY, DECEMBER 16, 2019 AND TUESDAY, DECEMBER 17, 2019**

TIME: **10:30 AM**

PLACE: **U.S. DEPARTMENT OF LABOR**
201 VARICK STREET, ROOM 905A
NEW YORK CITY, NEW YORK

A request by a party to continue the hearing or to change the place of the hearing must be made by motion. 29 C.F.R. § 18.41(b).

NOTICE OF ASSIGNMENT

2. This matter has been assigned to Theresa C. Timlin, Administrative Law Judge ("ALJ") of the U.S. Department of Labor, for hearing and decision. All filings in this matter should be addressed to me at the address shown in the letterhead above. Telephone inquiries should be directed to Kelly Hossler, Legal Assistant, at (856) 486-3800 Ext. 122. When contacting my office, please note that parties, their representatives, or other interested persons

must not engage in ex parte communications on the merits of a case with the judge. 29 C.F.R. § 18.14.

3. This Initial Prehearing Order states the basic schedule for the proceeding and provides notice of several procedural matters and requirements. This Initial Prehearing Order does not purport to cover all applicable procedural rules and requirements, and therefore the parties must become familiar with and adhere to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges at 29 C.F.R. Part 18, Subpart A and with the SOX regulations at 29 C.F.R. Part 1980. These regulations, which were significantly revised effective June 18, 2015, may be found at www.ecfr.gov and at www.oalj.dol.gov/LIBRULES.HTM. *See* 80 Fed. Reg. 28767 (May 18, 2015).

NOTICE OF PREHEARING CONFERENCE

4. The parties shall be available, by telephone, to participate in a pre-hearing conference at **3:00 p.m.** (Eastern Standard Time) on **Thursday, September 5, 2019**.

At the designated time for the pre-hearing conference, please **dial 1-866-793-8793** (You must use a touch-tone phone to participate in this conference call). When prompted, use the ***Participant* Passcode 47228682 followed by a "#".**

The principal purposes of the pre-hearing conference are to discuss the progress of settlement discussions and, if settlement is not possible, to discuss the upcoming hearing. Consistent with their pre-hearing statements, the parties should be prepared to identify the witnesses they will call and state, in general terms, the substance of their testimony. The parties should also be prepared to discuss, in general terms, what documents will be proffered at the hearing.

ENTRY AND WITHDRAWAL OF APPEARANCE BY REPRESENTATIVES

5. When first making an appearance, each representative must file a notice of appearance that indicates on whose behalf the appearance is made and the proceeding name and docket number. Any attorney representative must include in the notice of appearance the license registration number(s) assigned to the attorney. 29 C.F.R. § 18.22(a). An individual who is not an attorney must obtain the presiding judge's approval to serve as a representative by filing a written request to serve as a non-attorney representative that sets forth the name of the party or subpoenaed witness represented and certifies that the party or subpoenaed witness desires the representation. 29 C.F.R. § 18.22(b)(2).

PRE-HEARING PROCEDURE

6. The following sets the schedule for the pre-hearing procedure:

a. **DISCOVERY**. A party may seek discovery immediately upon issuance of this Initial Prehearing Order. 29 C.F.R. § 18.50(a)(1). The time for responding to any discovery requests made prior the initial conference may be extended by the parties in the discovery plan agreed to during the initial conference referenced below.

29 C.F.R. § 18.50(a)(1)(i). Parties must complete all discovery at least 40 days prior to the date of the evidentiary hearing. Parties should note that most discovery requests and responses are not filed with the presiding judge until they are used in the proceeding or the judge orders filing. 29 C.F.R. § 18.30(b)(1).

b. **INITIAL CONFERENCE**. Within fourteen (14) days from the date of this Initial Prehearing Order, the parties must meet and confer regarding the matters set forth in 29 C.F.R. § 18.50(b)(2). The initial conference may be held in person, via telephone or video conference, or other means mutually acceptable to the parties. The representatives of record and any unrepresented parties that have appeared in the case are jointly responsible for arranging the conference. For the instant case, the parties will not be required to submit a written discovery plan to the presiding judge.

c. **INITIAL DISCLOSURES**. Within twenty-one (21) days from the date of this order, and without awaiting a formal discovery request, the parties must provide to all other parties the documents and information set forth in 29 C.F.R. § 18.50(c)(1)(i).

All disclosures must be made in writing, signed, and served. The parties must supplement the disclosures when required by 29 C.F.R. § 18.53(a). A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. 29 C.F.R. § 18.50(c)(1)(vi).

The initial disclosures are not filed with the presiding judge unless used in supporting a motion or other request, or if the judge orders filing.

d. **PRE-HEARING DISCLOSURES AND EXCHANGES.** At least thirty (30) days before the date of the hearing the parties must:

(1) Pre-mark and exchange copies of exhibits, along with a preliminary exhibit list. Each page of multi-page exhibits must be numbered. Exhibits must be offered at the hearing. This evidence should **not** be submitted to the presiding judge before trial. An extra set of exhibits for witnesses to use as they testify must be provided at trial.

(2) Stipulate as to the authenticity and content of all documents which they agree should be made a part of the record. Each of the stipulated documents must be properly marked for identification at the bottom of each page as Joint Exhibit 1, 2, 3, etc., paginated, and either placed in a three-ring binder or be bound together in some other acceptable form. Stipulated joint exhibits must be offered at the hearing unless the presiding judge directs earlier submission.

(3) Exchange preliminary witness lists along with a precise statement of what the testimony of each will prove.

(4) Designate expert witnesses on the witness list, with a brief statement concerning the field of expertise and proposed testimony. Any testifying expert must have submitted a written report, which is to be marked and exchanged as indicated above. 29 C.F.R. § 18.50(c)(2).

(5) Confer on agreed facts and execute "Joint Stipulation of Agreed Facts" as appropriate. 29 C.F.R. § 18.83.

Objections to any of the proposed testimony or documentary evidence exchanged must be filed within seven (7) days from the date of receipt of the pre-hearing exchange of materials. **Failure without good cause to file an objection within the prescribed period may result in a waiver of all objections with respect to the introduction of the testimonial or documentary evidence.**

e. **PREHEARING STATEMENT.** For receipt by **no later than November 16, 2019**, each party must complete and deliver to the other parties ***and the presiding judge*** a Prehearing Statement containing all the information and the signature required by 29 C.F.R. § 18.80.

MOTIONS AND OTHER REQUESTS FOR RELIEF

7. All written motions and other requests for relief from the presiding judge, including requests for extensions of time or continuances, must be submitted in motion form, with a caption, and not by letter. The motion or other request must conform to the rules governing captions and other matters of form. 29 C.F.R. §§ 18.33, 18.34 and 18.35.

8. If the motion is opposed, the motion must contain a declaration that the parties have made a good faith effort but were unable to resolve the dispute giving rise to the motion before filing such motions with the presiding judge. Any motion failing to contain the required declaration may be summarily denied. The declaration is not required for unrepresented parties and for motions specified in 29 C.F.R. § 18.33(c)(3).

9. Motions for Summary Decision are required to be filed **at least six (6) weeks** prior to the date fixed for formal hearing. 29 C.F.R. § 18.72.

PUBLIC HEARING

10. OALJ conducts public hearings. 29 C.F.R. § 18.81. A presumption of public access applies to the entire hearing process. Transcripts and documents filed with OALJ are subject to inspection under the Freedom of Information Act regardless of whether those documents are moved into evidence at the formal hearing. The judge's final decision and selected orders are published on the agency website. **Parties are responsible for redacting filings and exhibits as required under 29 C.F.R. § 18.31**. Failure to redact or to obtain an order sealing a record prior to filing with the judge may result in waiver of protection from disclosure of information contained in those documents. For good cause, the judge may order protection of material pursuant to 29 C.F.R. §§ 18.85 (privileged, sensitive or classified material) and 18.52 (protective orders). In limited circumstances authorized by law, the judge may close a hearing.

29 C.F.R. § 18.81(a). *See also* 29 C.F.R. § 70.26(b) (designation of confidential business information at time of submission or reasonable time thereafter).

SERVICE ON OSHA, THE ASSOCIATE SOLICITOR, AND THE SEC

11. In Sarbanes-Oxley Act Section 806 proceedings, parties are required to send a copy of their hearing request and objections to the OSHA official who issued the findings and order, the Assistant Secretary for OSHA, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. 29 C.F.R. § 1980.106(a). However, after the matter is docketed at OALJ, parties must send copies of documents to OSHA and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, *only* upon request of OSHA, or when OSHA is participating in the proceeding. 29 C.F.R. § 1980.108(a)(2).

12. At the request of the Securities and Exchange Commission, copies of all documents in a case must be sent to the Commission, whether or not the Commission is participating in the proceeding. 29 C.F.R. § 1980.108(b).

SUBPOENAS

13. Requests for subpoenas must be in writing and comply with the provisions of 29 C.F.R. § 18.56. Information about obtaining subpoenas can be found at www.oalj.dol.gov/SUBPOENAS.HTM. Parties, and not OALJ, are responsible for preparing and serving subpoenas upon any witness and for tendering any required costs and expenses.

ALTERNATIVE DISPUTE RESOLUTION

14. OALJ offers two forms of court-sponsored alternative dispute resolution: settlement judges or mediation by a neutral. *See* 29 C.F.R. § 18.13 (settlement judge rule); Alternative Dispute Resolution Act of 1996, 5 U.S.C. §§ 572 and 573 (agency may appoint employee as a neutral to conduct mediation). For additional information see www.oalj.dol.gov/SETTLEMENT_JUDGE.HTM. Any requests for appointment of a settlement judge or a mediator in this case must be a joint request, submitted in writing to the Chief Judge Administrative Law Judge. By mail, send the request to U.S. Department of Labor, Office of Administrative Law Judges, 800 K St. NW - Suite 400N, Washington, DC 20001. By fax, send the request to (202) 693-7365. By email, send the request to oalj-settlement-judge@dol.gov.

SETTLEMENT AGREEMENTS

15. Any settlement agreement must be filed with the presiding judge for review and approval. 29 C.F.R. § 1980.111(d)(2).

TRANSLATORS AND INTERPRETERS; REASONABLE ACCOMMODATIONS

16. The parties must advise the undersigned promptly if a translator or an interpreter will be needed at the hearing. Parties may provide their own translator or interpreter or may request provision of a translator or an interpreter by the Department of Labor. Parties needing assistance with translation or interpretation services, or a reasonable accommodation, must inform the undersigned no less than 30 days before the date of the hearing.

LEGIBLE COPIES

17. The parties are directed to conduct a review of all documents which are to be made a part of the formal record. Any documents received which are not clearly legible will have limited evidentiary value, and may be given no weight.

Documents sent by FAX to this office are limited to twelve (12) pages, including cover sheet. 29 C.F.R. §§ 18.30(b)(3)(i).

CONSEQUENCES OF FAILURE TO COMPLY

18. Failure to comply with the provisions of this prehearing order may result in the imposition of sanctions including, but not limited to, the following: the exclusion of evidence, the dismissal of the claim, the entry of a default judgment, or the removal of the offending representative from the case. 29 C.F.R. §§ 18.12(b), 18.35(c), 18.57 and 18.87.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill New Jersey