

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-12559

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

OCT 01 2007

FIRST CLASS

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
September 27, 2007

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In the Matter of	:	
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TRAUTMAN WASSERMAN &	:	
COMPANY, INC.,	:	PREHEARING ORDER ON TELEPHONE
GREGORY O. TRAUTMAN,	:	TESTIMONY AND OTHER ISSUES
SAMUEL M. WASSERMAN,	:	
MARK BARBERA,	:	
JAMES A. WILSON, JR.,	:	
JEROME SNYDER, and	:	
FORDE H. PRIGOT	:	

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The Securities and Exchange Commission (Commission) initiated this proceeding on February 5, 2007. I have received several pleadings and requests in anticipation of the hearing that will begin on Tuesday, October 9, 2007, at 9:00 a.m. EDT in the 19th Floor Hearing Room, U.S. Commodity Futures Trading Commission, Eastern Region, 140 Broadway, New York, New York 10005.

In a letter dated September 21, 2007, the Division of Enforcement (Division) requests, among other things, the ability to elicit telephone testimony from Kelly Hollingsworth (Hollingsworth), Seth Gersch, representatives of various mutual funds, and Warren Lammert (Lammert). As to Lammert, the Division alternatively requests that I provide guidance as to when Lammert, who is a Respondent in a separate administrative proceeding, should be scheduled to testify in this proceeding.

In a letter dated September 25, 2007, Respondent Gregory O. Trautman (Trautman) objected to telephone testimony from Hollingsworth and either reserved his right to object or did not take a position on the Division's other requests to present testimony via telephone. Respondent Trautman also submitted a subpoena duces tecum to Jeffrey Augen (Augen) for Augen's medical records from January 1, 2003, to date, concerning an accident on March 16, 2005, and its medical consequences.

On September 25, 2007, Respondent Mark Barbera (Barbera) filed a Motion for Summary Disposition and a Memorandum of Points and Authorities in Support (Motion), requesting a ruling that the Division not be allowed to introduce evidence or argument at the hearing that Respondent Barbera engaged in manipulative market timing.

## Rulings

I will allow a witness to testify by telephone or video only if there are no objections from an opposing party.

I interpret the Commission's Rules of Practice to favor in-person testimony where the parties do not agree on an alternative. See 17 C.F.R § 201.235(a)(5). The Commission's Rules of Practice give a party the right to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. 17 C.F.R § 201.326. I defer to Respondents that having these three witnesses testify by telephone would not provide them with an opportunity to make a full and true disclosure of the facts. I know of no instance where telephonic or video testimony has been allowed in a Commission proceeding where a party has objected to its use. At least one other federal agency has faced the issue. Louthen v. United States Postal Service, EEOC Appeal No. 01A44521, 2006 EEOPUB LEXIS 2183 (May 17, 2006).

Thomas C. Bridge, Admin. Proc. No. 3-12626 (Order on Motion) (Sept. 6, 2007),

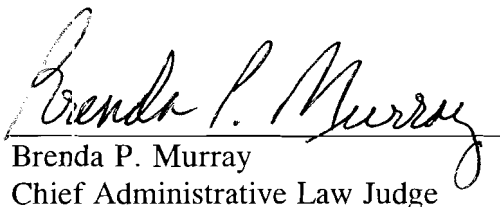
In Louthen, the Equal Employment Opportunity Commission held that telephonic testimony was not permissible in the absence of exigent circumstances (more than mere inconvenience and expense) or a joint request by the parties. 2006 EEOPUB LEXIS 2183 at \*15.

I deny the Division's request that it be allowed to introduce telephonic testimony from Hollingsworth because I accept the standard established in Louthen as reasonable and I find that the Division has not shown a need that outweighs the objection of Respondent Trautman.

We will discuss the order of witnesses at the start of the hearing. If the parties do not agree that Lammert may present testimony by telephone, we will decide when he should be subpoenaed to testify.

I deny Respondent Trautman's request for the medical records of Augen. I find the request to be unreasonable and unduly burdensome. See 17 C.F.R. § 201.232(b).

I will consider and rule on Barbera's Motion and any replies, and any other motions received before the hearing begins on October 9, 2007, at the start of the hearing.

  
Brenda P. Murray  
Chief Administrative Law Judge