

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Geary Securities, Inc., fka Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

File No. 09-141

ORDER GRANTING IN PART DEPARTMENT'S MOTION TO STRIKE WITNESS LIST OF RESPONDENT FRAGER, GRANTING THE DEPARTMENT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF DEPARTMENT'S COUNSEL, AND AMENDING THE SCHEDULING ORDER

This matter having come before the Hearing Officer on the Motion to Strike Witness List of Norman Frager, and Motion in Limine to Exclude Testimony of Department's Counsel and a Pershing Representative filed by the Oklahoma Department of Securities ("Department"), the Hearing Officer having considered argument of counsel, hereby finds as follows:

1. Pursuant to the Agreed Amended Scheduling Order filed on February 4, 2011, the Respondent Frager was required to file his final list of witnesses on or before April 5, 2011.
2. On April 5, 2011 Respondents filed a Joint Final List of Witnesses Subject to and Without Waiving Joint Application for Modification of Scheduling Order identifying the witnesses they would propose to call at the hearing on the merits.
3. On May 17, 2012, with the concurrence of the Department and Respondent, the Hearing Officer entered the Final Amended Scheduling Order ("Scheduling Order") setting a deadline for completion of discovery of June 11, 2012, with a hearing on the merits to be commenced on June 18, 2012.
4. On May 24, 2012 Respondent Frager submitted a revised Witness List of Norman Frager ("Witness List") that identified Melanie Hall and Terra Bonnell, both serving as legal counsel for the Department, and an unidentified representative of Pershing, LLC ("Pershing") as possible witnesses at the final hearing on the merits. Such persons had not previously been identified by Respondent as witnesses.

5. On May 24, 2012 the Department filed a Motion to Strike the Witness List of Norman Frager and Motion in Limine to Exclude Testimony of Department's Counsel and a Pershing Representative.

6. On May 29, 2012 the Department filed an Objection to Issuance of Deposition Subpoenas Duces Tecum to Terra Bonnell and Melanie Hall.

7. At all times during these proceedings Respondent Frager has been represented by independent legal counsel, who had the opportunity to conduct discovery on behalf of Respondent.

Motion in Limine to Exclude Testimony of Department's Counsel

8. Attorneys Bonnell and Hall engaged in telephone conversations and interviews of representatives of Pershing that were conducted by the Department as part of its investigation of Respondents. Also privy to such telephone conversations and interviews was Carrol Gruis ("Gruis"), the Department's Director of Licensing and Examinations.

9. Gruis has been identified as a witness for the Department since the filing of the Department's initial Witness List in April, 2011, and the Respondent has had ample opportunity since such date to depose Gruis to obtain information concerning the telephone conversations and interviews with Pershing representatives.

10. Respondent has represented that he needs to take the depositions of attorneys Bonnell and Hall for the limited purpose of identifying the representative of Pershing that potentially could be called as a witness by the Department, to identify representatives of Pershing who might possibly be able to serve as witnesses for the Respondent, and on the issue of whether Pershing made a loan to Respondent Geary Securities, Inc. ("Geary").

11. At all times relevant to the issues presented in the Enforcement Division Recommendation Pershing was acting as a clearing broker for Geary, and Respondent Frager was the CFO of Geary so that he has personal knowledge of the relationship between Geary and Pershing.

12. Respondent has other means available to determine which representatives of Pershing might be potential witnesses, including taking the deposition of Gruis, or simply calling Pershing. Additionally Respondent may call on witnesses from Geary already identified on the Witness List and previously deposed on the issue of whether Pershing made a loan to Geary to purchase the securities which are the subject to the Enforcement Division Recommendation.

13. Attorneys Bonnell and Hall have represented the Department since the inception of this administrative proceeding, and are familiar with the facts and legal issues to be represented on behalf of the Department at the hearing on the merits.

14. Allowing the testimony of attorneys Bonnell and Hall at the hearing raises ethical issues which could preclude attorneys Bonnell and Hall from further representing the Department in this proceeding, such that substitution of new counsel for the Department at this stage of the proceedings would cause significant delay, and will be highly prejudicial to the Department.

15. Because other means exist for the Respondent to obtain the necessary information, and because allowing the testimony of attorneys Bonnell and Hall will cause unnecessary delay in these proceedings and be highly prejudicial to the Department, the Hearing Officer has concluded that an order should be granted striking them from the Witness List and excluding their testimony at the hearing on the merits.

Motion to Strike Witness List of Respondent Frager

16. The Hearing Officer has concluded that attorneys Bonnell and Hall should be stricken from the Witness List.

17. The Department has represented that it does not intend to call a representative of Pershing in its case in chief but instead may only call such representative as a rebuttal witness, so that at this time the Department is unable to identify who the Pershing witness might be.

18. Respondent has argued that he should have the right, even at this late stage of the proceedings, to amend his witness list to reflect newly determined evidence found as a result of discovery, although he has failed to present an offer of proof as to what such newly discovered evidence might be.

19. In the interest of fairness the Hearing Officer will allow Respondent until June 18, 2012 to amend the Witness List to identify to the Department a representative of Pershing who is proposed to be allowed to testify on behalf of Respondent at the hearing on the merits. Otherwise the "unknown representative of Pershing, LLC" (item no. 11 on the Witness List) will be stricken from the Witness List and shall not be allowed to testify at the hearing on the merits. If a representative of Pershing is identified by Respondent in accordance with this Order, the Department will have the right to depose such person as provided below.

Amendment to Scheduling Order

20. Contemporaneous with the entry of this Order the Hearing Officer has entered an Order Granting Motion of Respondent Frager to Continue Hearing, which requires the amendment of the Scheduling Order.

21. The discovery deadline of June 11, 2012 as set forth in the Scheduling Order shall remain in effect, and no further discovery shall be had after such date except as follows:

A. The depositions of Samuel Luque, Jr. and David Paulukaitis by the respective parties will be allowed, and shall be concluded by July 31, 2012.

B. The deposition by the Department of a representative of Pershing as may be identified by Respondent pursuant to paragraph 19 above will be allowed, and shall be concluded by July 31, 2012.

22. Other deadlines contained in the Scheduling Order shall be amended by the Hearing Officer once he has been notified by the parties of an available date for a hearing on the merits as required by the Order Granting Motion of Respondent Frager to Continue Hearing.

Wherefore it is ORDERED as followed:

1. Respondent's Witness List shall be stricken so far as the names of attorneys Terra Bonnell and Melanie Hall, and such persons shall not be allowed to testify at the hearing.

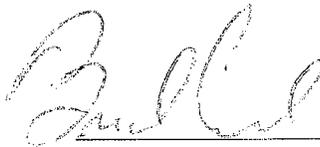
2. Respondent Frager shall have until June 18, 2012 to amend the Witness List to identify the representative of Pershing proposed to be called as a witness in accordance with Paragraph 19 above.

3. If Respondent Frager shall fail to amend the Witness List to identify the representative of Pershing as allowed by this Order, then such "unknown representative of Pershing LLC" shall be stricken from the Witness List and not be allowed to testify at the hearing.

4. Discovery in this proceeding shall be concluded by June 11, 2012, except as to those depositions set forth in Paragraph 21 above.

5. Once the Department and Respondent Frager have agreed on an available date for the hearing on the merits as required by the Order Granting Motion of Respondent Frager to Continue Hearing, the Scheduling Order shall be amended as required.

Dated: June 1, 2012.



Bruce R. Kohl
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of June, 2012, a true and correct copy of the *Order Granting in Part Department's Motion to Strike Witness List of Respondent Frager, Granting the Department's Motion in Limine to Exclude Testimony of Department's Counsel and Amending the Scheduling Order* was emailed and mailed, with postage prepaid, to:

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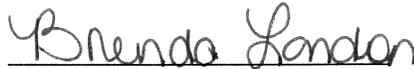
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