

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4255/October 14, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17228

In the Matter of

DAVID S. HALL, P.C.
d/b/a THE HALL GROUP CPAs,
DAVID S. HALL, CPA,
MICHELLE L. HELTERBRAN COCHRAN, CPA,
and SUSAN A. CISNEROS

ORDER ON DIVISION OF
ENFORCEMENT'S
MOTIONS IN LIMINE

On October 11, 2016, the Division of Enforcement filed two motions in limine in this matter: a motion to exclude impermissible defenses and a motion to exclude character evidence. For the reasons that follow, I will deny the first motion and defer ruling on the second.

A. Motion to Exclude Impermissible Defenses

The Division anticipates that Respondent Michelle L. Helterbran Cochran may present evidence that Respondent David S. Hall “was a demanding or domineering boss or that she only engaged in the conduct [alleged in the order instituting proceedings] to preserve her job to support her family” and that Respondent Susan A. Cisneros may seek to show that Hall “forced her hand.” Div. Mot. at 2. According to the Division, this evidence should be excluded because “difficult personal or professional circumstances” do not excuse failure to comply with Public Company Accounting Oversight Board auditing standards. *Id.* The Division characterizes this anticipated evidence as supporting an “improper defense.” *Id.*

The Division recites auditing standards but cites no authority for why this evidence should be excluded, but its argument is implicitly based on relevance. Under the Rules of Practice, I “may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unreliable.” 17 C.F.R. § 201.320(a); *see* Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. 50212, 50229-30 (July 29, 2016). In administrative proceedings, relevance is construed broadly. *Charles P. Lawrence*, 43 S.E.C. 607, 612 (1967) (“[T]he generally accepted view favors liberality in the admission of evidence in administrative proceedings, and all evidence which ‘can conceivably throw any light upon the controversy’ [should] normally be admitted.” (quoting *Samuel H. Moss, Inc. v. FTC*, 148 F.2d 378, 380 (2d Cir. 1945))). The

Commission has instructed its administrative law judges to be “inclusive in making evidentiary determinations.” *City of Anaheim*, 54 S.E.C. 452, 454 & n.7 (1999) (“[I]f in doubt, let it in.” (quoting *Multi-Med. Convalescent & Nursing Ctr. v. NLRB*, 550 F.2d 974, 978 (4th Cir. 1977))).

Applying this broad standard, there is no reason to exclude this anticipated evidence before the hearing. If, as the Division argues, evidence of personal hardship or job pressure is not relevant to Helterbran’s or Cisneros’s liability, that type of evidence may still demonstrate mitigating circumstances and be relevant to their level of personal culpability and to what, if any, sanction is appropriate. The Division may object on relevance or other grounds to any specific evidence offered at the hearing, and I will rule on any such objections as they arise.

B. Motion to Exclude Character Evidence

The Division moved to preclude Helterbran or Cisneros from examining Hall about his character in the workplace and about a specific instance of alleged bad conduct by Hall. The Division asserts that evidence of Hall’s character, with the possible exception of his character for truthfulness if he testifies, is inadmissible. I will defer ruling on this motion because I would like to hear more from Helterbran and Cisneros about what testimony, if any, they intend to elicit from Hall and how that testimony relates to their defenses. I will address this motion orally at the beginning of the hearing.

C. Order

I ORDER that the Division’s motion to exclude impermissible defenses is DENIED and that ruling on the motion to exclude character evidence is DEFERRED until the hearing.

Cameron Elliot
Administrative Law Judge