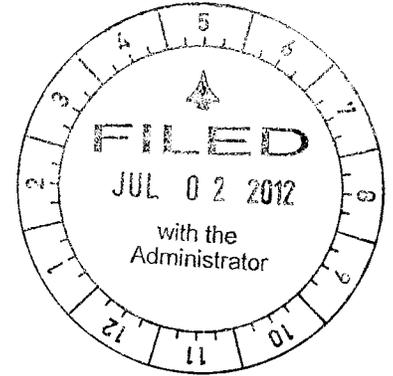


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of: Geary Securities, Inc., fka Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

ODS File No. 09-141

REPLY OF RESPONDENT, NORMAN FRAGER, IN SUPPORT OF HIS MOTION TO STRIKE THE DEPARTMENT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, MOTION TO EXTEND DEADLINE TO RESPOND

COMES NOW the Respondent, Norman Frager ("Frager"), and respectfully submits the instant reply in support of his Motion to Strike the Department's Motion for Reconsideration or, in the Alternative, Motion to Extend Deadline to Respond (the "Motion to Strike"). In support hereof, Frager would show the Hearing Officer as follows:

ARGUMENT

A. THE MOTION FOR RECONSIDERATION SHOULD BE STRICKEN.

a. The Motion for Reconsideration is an Entirely New Motion for Summary Decision and Should Not be Allowed at this Late Stage.

In his Motion to Strike, Frager showed that the Department should not be allowed to submit a new motion for summary decision disguised as a motion for reconsideration within only a few weeks of the final hearing on the merits. The Department attempts to defend its position by arguing that, because the Motion for Reconsideration addresses the "primary topic" of its previously filed Motion for Summary Decision ("MSD") (namely, the net capital requirement of Geary Securities, Inc.), it is not really a new motion for summary decision and should be allowed. Such a position is simply untenable.

First, the Motion for Reconsideration consists solely of new evidence which was not presented in the MSD. Even though it may address the same underlying legal issue as the MSD, the Motion for Reconsideration is clearly not a request to reconsider the previously submitted briefing and evidence. Instead, it is an attempt by the Department to file a new motion for summary decision, based on entirely new evidence, on the eve of trial.

Additionally, the Department's premise is demonstrably incorrect. Under the Department's logic, as long as a dispositive motion touches on the "primary topic" of a previously filed motion for summary decision, it should be considered a motion for reconsideration. This would mean that any time a new motion for summary decision is filed addressing the same claims that were at issue in a previous motion for summary decision, the new motion for summary decision should be considered a "motion for reconsideration." According to the Department, this would be true even if the new motion consists of entirely new legal theories and evidence. This is clearly a faulty premise as it would have the effect of transforming virtually every "second-filed" motion for summary decision into a motion for reconsideration regardless of how tenuously it might be connected to a previous motion for summary decision. Accordingly, the Department's reasoning fails.

In a further attempt to support the use of entirely new evidence in its Motion for Reconsideration, the Department asserts that such evidence would have been part of the MSD had it not believed it could rely on the admissions contained in Frager's Answer to support its positions.¹ The Department's own Motion for Reconsideration contradicts this position. Therein, the Department stated that the "new evidence" attached to the Motion for Reconsideration was only located after the hearing on the original MSD. *See* Motion for

¹ The Department contends that the reliance on Frager's admissions was based on some deception by Frager. There is no deception here. Instead, the Department is actually stating that it disagrees with the Hearing Officer's position regarding the use of the admissions contained in Frager's answer to support their MSD.

Reconsideration at p. 2, n. 2 attached hereto as Exhibit "A." According to the Department's own statements, then, the "new evidence" it submitted could not have been part of its MSD briefing.

More importantly, however, as was shown in Frager's Motion to Strike, the "new evidence" attached to the Motion for Reconsideration is not new at all; it had been available to the Department as early as the pre-litigation investigation of these matters. Accordingly, to the extent the Department argues that this information is "new" or "recently discovered," it is actually stating that it did not exercise the diligence necessary to locate and identify this information before the filing of the original MSD. The Department's failure to pay attention to this "new evidence" until now does not warrant the consideration of a new motion for summary decision at this late stage.

Based on the foregoing, it is clear that the Motion for Reconsideration is actually nothing more than a new motion for summary decision and that the Department has no adequate justification for raising new evidence so close to the final hearing on the merits. Because of this, and because these final weeks should be spent in preparation for the final hearing on the merits, not on addressing new evidence which the Department had access to for over eighteen months, the Motion for Reconsideration should be Stricken.

b. The Department's Motion for Reconsideration is Untimely Based upon the Department's Own Authority.

Additionally, the Department takes the position that the Final Amended Scheduling Order, dated May 17, 2012, did not provide a deadline for filing dispositive motions and, therefore, the Motion for Reconsideration is timely filed. The Department apparently fails to recall, however, that it took exactly the opposite position when it attempted to strike the Witness List filed by Frager herein on May 24, 2012. In that instance, despite the fact that the Final

Amended Scheduling Order contained no reference to a deadline within which to file witness or exhibit lists, the Department argued that the previous scheduling order, entered on February 14, 2011, contained such a deadline and it governed. In the present case, while the Final Amended Scheduling Order contained no deadline for filing dispositive motions, the February 14, 2011, Scheduling Order did. *See* February 14 Scheduling Order, attached hereto as Exhibit "B." In that order, the deadline for filing dispositive motions was April 8, 2011, more than a year before the Motion for Reconsideration was ever filed. How can the Department argue with any credibility the exact opposite position that it took less than a month ago? It is clear that the Department is simply manipulating the facts to suit its purpose.

More importantly however, even if the Hearing Officer believes no dispositive motion deadline is in effect, the authority cited by the Department for the allowance of a motion to reconsider shows that the Department's Motion for Reconsideration was, in fact, untimely. The Department cites to Rule 660:2-9-9 for the proposition that the Motion for Reconsideration is allowed in this matter. While there are serious questions as to whether or not Rule 660:2-9-9 is even applicable to this situation,² assuming for the moment that Rule 660:2-9-9 applies, it requires that any motion for reconsideration be filed within ten (10) days of the entry of the order sought to be reconsidered. The Order on the Department's MSD was entered on May 16, 2012. *See* Order on MSD, attached hereto as Exhibit "C." Accordingly, any motion for reconsideration was due by May 26, 2012. However, the Department's Motion for Reconsideration was not filed until May 31, 2012, and is, therefore, untimely. Accordingly, the Motion for Reconsideration should be stricken.

² By its terms, Rule 660:2-9-9 allows for a party to seek reconsideration of a "final order." While that term is not specifically defined by the Rules, the context in which the term "final order" is used throughout the Rules indicates that it refers to the order issued after the final hearing on the merits and not any interlocutory order issued prior to final hearing.

B. IN THE ALTERNATIVE, FRAGER'S DEADLINE TO RESPOND TO THE MOTION FOR RECONSIDERATION SHOULD BE EXTENDED.

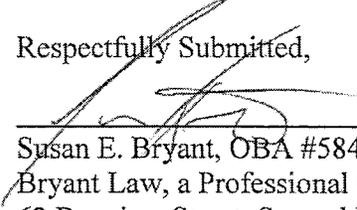
In his Motion, Frager asked that, if the Hearing Officer were unwilling to strike the Motion for Reconsideration, Respondent's deadline to respond to the same be continued until after the depositions of Carol Gruis (whose affidavit was largely the basis for the Motion for Reconsideration) and the Department's expert, David Paulukaitis, could be concluded.³ The deposition testimony of both of these individuals undoubtedly bears on the underlying argument at issue in the Motion for Reconsideration. Despite this, the Department wants to argue that Frager should have deposed Mr. Paulukaitis and Ms. Gruis before now even though these depositions are being conducted in accordance with the scheduling order herein. The Department is clearly trying to block the Hearing Officer from considering all relevant evidence before ruling on the Motion for Reconsideration. Accordingly, there is no merit to the Department's argument and, at a minimum, Frager should be afforded an opportunity to provide all relevant evidence to the Hearing Officer for consideration.

CONCLUSION

For the reasons set forth above, as well as contained in the Motion to Strike, it is clear that the Motion for Reconsideration should be stricken. In the alternative, should the Hearing Officer not strike the Motion for Reconsideration, the Department has provided no compelling argument for requiring Frager to respond to the same before he has concluded the deposition of Mr. Paulukaitis.

³ Following the filing of Frager's Motion to Strike, Ms. Gruis was deposed.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July ^{2nd}, 2012, a copy of the foregoing document was served on the following via electronic mail:

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