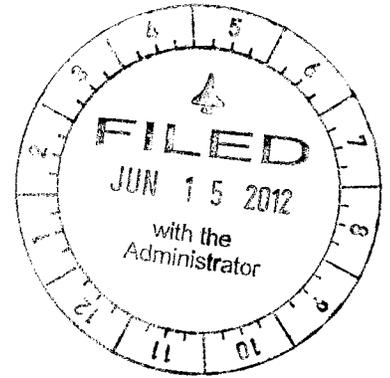


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



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

**MOTION OF RESPONDENT, NORMAN FRAGER, 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 requests that the Hearing Officer strike the Oklahoma Department of Securities' (the "Department") Motion for Reconsideration on Motion for Summary Decision (the "Motion") or, in the alternative, extend Frager's deadline to respond to the same. In support hereof, Frager would show the Hearing Officer as follows:

BACKGROUND

1. On November 1, 2011, the Department filed its Motion for Summary Decision (the "MSD").
2. In the MSD, the Department sought judgment against Frager on claims that he violated certain regulatory requirements as the Financial Principal for Geary Securities, Inc. ("Geary"). In particular, the MSD sought judgment against Frager related to alleged violations by Geary of Rule 660:11-5-17 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules), which incorporate by reference Rule 15c3-1 issued by the U.S. Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934. The allegations relate to the calculation and reporting of net capital at two distinct time periods: May 2009 and February 2010.

3. On December 1, 2011, Frager filed his Response to the MSD. Therein, Frager demonstrated that genuine issues of material fact existed as to the allegations involving violation of the net capital requirements.

4. On February 27, 2012, Frager filed his Supplemental Response to the MSD. Therein, Frager argued that certain recordings produced by the Department clearly showed that the Department had no basis for its claims of net capital violations for May 2009.

5. On April 1, 2012, the Department submitted its first requests for production of documents to Frager. Despite the fact that this matter had been pending for nearly eighteen months, the Department had never before issued discovery directly to Frager.

6. On April 27, 2012, Frager produced the documents requested by the Department.

7. On May 16, 2012, the Hearing Officer denied the MSD, finding that genuine issues of material fact existed which precluded the granting of the MSD.

8. On May 31, 2012, the Department filed its Motion. At the time the Motion was filed, the pre-hearing conference was scheduled to be conducted in less than two weeks, with the hearing on the merits scheduled just five days thereafter on June 18, 2012.¹

9. While the Department titles their Motion as one to reconsider the previous ruling on the MSD, the Motion consists of evidence which was not raised in the MSD and is, in effect, an entirely new Motion for Summary Decision.

10. In the Motion, the Department claims that new evidence has come to light which bears on the Department's claim of the net capital violations committed by Frager in February 2010.

¹ As the Hearing Officer is aware, following the filing of the Department's Motion, the hearing on the merits has been continued to an as of yet unscheduled time in August.

11. This claimed new evidence consists of (1) an affidavit of Carol Gruis based on a review of checks received by Geary during February 2010, and Geary's computations of net capital for the month of February, 2010; (2) the written supervisory policies of Geary purportedly in effect in February, 2010; (3) certain correspondence from Geary, related to Geary's net capital requirements; (4) an amendment to the membership agreement between Geary and FINRA; and (5) notices provided by Geary to FINRA in February 2010 related to Geary's net capital.

12. While some of this "new evidence" was produced by Frager on April 27, 2012, all of it was available to the Department well before that time. Not only could the Department have requested these items from Geary (the entity which generated the documents at issue) at any point during the eighteen (18) months this matter has been on file, but it had full access to these items during the Department's investigation of Geary prior to the initiation of this action.

13. For the reasons more specifically set forth below, the Motion should be stricken. In the alternative, Frager would request that his response deadline should be extended until ten (10) days after the date the deposition of the Department's expert, David Paulukaitis, is taken so that he may fully address the issues that have just now been raised.

ARGUMENT AND AUTHORITY

A. THE DEPARTMENT'S MOTION, FILED ONLY EIGHTEEN DAYS BEFORE THE SCHEDULED HEARING ON THE MERITS, SHOULD BE STRICKEN.

Despite the Department's attempt to frame their Motion as one simply urging the Hearing Officer to reconsider his ruling on the previously filed MSD, the truth is that the Motion actually presents entirely new evidence and raises new issues. In actuality, then, the Department's Motion is an entirely new request for summary decision. Accordingly, in order to properly respond to the Motion, Frager must do more than simply restate the arguments that were raised

in his response to the MSD. Instead, he must prepare a response to address this new evidence in the same fashion as if an entirely new motion for summary decision had been filed. As the Hearing Officer may guess, this is far from a minimal task.

While the Final Amended Scheduling Order did not contain a specific deadline to file dispositive motions, most courts set a deadline to file the same that expires months before trial. The purpose of such a deadline is to insure that, in the last few weeks prior to trial, the parties are focused on preparing their case, not addressing dispositive motions which may render all of their preparation moot. Even absent a set deadline for filing dispositive motions in this case, the same reasoning applies and should limit a party's ability to file dispositive motions in the final days before the hearing on the merits. At the time the Motion was filed, the pre-hearing conference on this matter was set to be conducted in thirteen days with the final hearing on this matter set only five days beyond that. Accordingly, Frager's response would have been due only three days prior to the scheduled hearing on the merits. Even though the hearing on the merits has been continued for a short time, Frager must still spend the remaining few weeks conducting the final depositions in this case and preparing his case for the hearing on the merits. Accordingly, the Motion only serves to distract Frager from the final preparation of his case which is prejudicial and unfair.

The late filing of the Motion was the clear result of the Department's lack of diligence in prosecuting its case. The Department has argued that the documents attached to the Motion consist of "new evidence" that was only recently obtained. While Frager produced copies of these documents in late April, 2012, the Department clearly had access to the same since well before this proceeding even began. This is so because this supposed "new evidence" is actually nothing more than the documents that were in Geary's possession throughout the entirety of the

Department's pre-litigation investigation as well as during the course of this action. Puzzlingly, while these new documents go to the very heart of the Department's claims, it has never seen fit to obtain these documents during the course of discovery with either Geary or Frager, or during the extensive pre-litigation audit of Geary's records. Instead, the Department waited until barely two months prior to the hearing to even request these documents and waited until eighteen days before the hearing on the merits to submit this Motion.

The lack of diligence on behalf of the Department in prosecuting this case should not be rewarded by allowing it to raise new issues and evidence in the last few weeks before trial. At this late stage, Frager should be allowed to focus his efforts on preparing his case for the hearing on the merits, not addressing claims that the Department could have raised at any time over the previous eighteen months. For this reason, the Motion should be stricken.

B. IN THE ALTERNATIVE, FRAGER'S DEADLINE TO RESPOND TO THE MOTION SHOULD BE EXTENDED UNTIL TEN (10) DAYS AFTER THE DEPOSITION OF MR. PAULUKAITIS.

In the alternative, should the Hearing Officer decide that the Motion should not be stricken, Frager asks that he be granted an extension of time in which to respond to the same.

Frager's response to the Motion is currently due on June 15, 2012. As the Hearing Officer is aware, there are four depositions scheduled to be taken between now and July 30, 2012. The first, that of Carol Gruis, will not take place until June 20, 2012.² The remaining three depositions, those of the experts for both the Department and Frager, and the deposition of James Roth, Managing Director of Pershing, LLC, have yet to be scheduled. Frager believes that

² Frager sought, and the Hearing Officer issued, a subpoena compelling the attendance of Ms. Gruis at a deposition that was scheduled to occur on June 11, 2012. In order to accommodate all parties' schedules, however, this deposition has been moved and will not occur until June 20, 2012, more than five days after Frager's response deadline.

information obtained in the depositions of Ms. Gruis and the Department's expert, David Paulukaitis, will be relevant to the issues raised in the Motion.

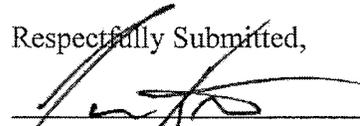
The Motion relies heavily on an affidavit from Carol Gruis to support the allegations contained therein. Accordingly, to effectively rebut Ms. Gruis' testimony, Frager should be afforded an opportunity to question Ms. Gruis under oath. In addition, the deposition of the Department's expert, David Paulukaitis is not scheduled to take place until July 16, 2012. It is expected that Mr. Paulukaitis will provide testimony related to compliance with the net capital rule and the related reporting requirements and, to the extent Frager elicits testimony which is contrary to the position taken by the Department in the Motion, such testimony would be relevant to a determination thereon.

For these reasons, Frager would ask that the Hearing Officer extend his deadline to respond to the Motion until ten (10) days after the deposition of Mr. Paulukaitis is completed. At that point, all relevant discovery will have been completed by Frager and he will be able to provide a more complete brief to the Hearing Officer for consideration.

CONCLUSION

As shown above, the filing of the Motion only eighteen days before the hearing on the Merits is nothing more than a reflection of the Department's lack of diligence in prosecuting this case. Frager should not be forced to respond to the Motion at such a late stage when the Department has had more than eighteen months to obtain the "new evidence" it claims it has recently received. For these reasons, the Motion should be stricken. However, in the alternative, Frager would ask that the Hearing Officer extend his deadline to respond to the Motion until ten (10) days after the deposition of Mr. Paulukaitis is taken so that Frager may more fully address the issues raised against him.

Respectfully Submitted,



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Attorneys for Respondent Norman Frager

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2012, a copy of the foregoing document was served on the following via electronic mail:

Hearing Officer:

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Oklahoma Department of Securities

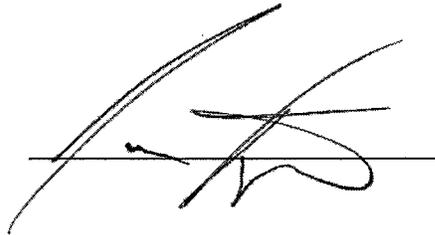
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A handwritten signature in black ink, appearing to be 'T. Bonnell', is written over a horizontal line.