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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
Terry Givens, an individual;	)	HPA Docket No. 17-0117
	)	
Respondent.	)	

ORDER POSTPONING FURTHER DISCRETIONARY ACTIONS BY THE PRESIDING JUDGE PENDING CERTAIN UNITED STATES SUPREME COURT ACTION OR UNTIL JULY 2, 2018

Appearances:

Colleen A. Carroll Esq., with the Office of General Counsel, United States Department of Agriculture, Washington D.C., for Complainant, the Administrator of the Animal and Plant Health Inspection Service; and

Thomas Kakassy, Esq., Gatonia, North Carolina, Counsel for Respondent, Terry Givens.

On December 28, 2017 Respondent filed a Motion for Summary Judgement and/or Motion to Dismiss and/or Motion to Vacate; Motion to Disqualify Administrative Law Judge and Judicial Officer with Supporting Memorandum; Motion to Stay. On February 6, 2018, Complainant filed a Response to Motions (1) For Summary Judgment/to Dismiss/Vacate: (2) To Disqualify ALJ and Judicial Officer; and (3) To Stay.

On November 29, 2017, the Solicitor General, on behalf of the United States, submitted a brief in *Lucia v. SEC*, No. 17-130, in which the Solicitor General took the position that administrative law judges of the Securities and Exchange Commission are inferior officers under the Appointments Clause, U.S. Const. Art. II, § 2, cl. 2.1.

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[1] Certiorari was granted by the Court in that case on January 12, 2018. The oral argument was held on April 23, 2018, and an opinion or opinions expected to be issued in the case by the end of June 2018.

On July 24, 2017, the Secretary of Agriculture ratified the United States Department of Agriculture's prior written appointment of then Chief Administrative Law Judge Bobbie J. McCartney, Administrative Law Judge Jill S. Clifton, and Administrative Law Judge Channing D. Strother and renewed their oaths of office.

Respondent's motion, p. 82, contends

> the Administrative Law Judge in this proceeding should abate further proceedings until the disposition of the petitions filed in the Supreme Court in *Bandimere* and *Lucia* and the D.C. [Circuit Court of] Appeals [, Haselden, et al. v. USDA, No. 17-1235 (HPA Nos. 17-120, 17-123, 17-124, 17- 127 and 17-128),] have been finally resolved.

Complainant responds, p. 27,

> the complainant respectfully requests that an order be issued denying respondent's motions, and stating that the ALJ will forbear from taking action in connection with this case until such time as the Supreme Court issues an opinion in *Lucia* and/or *Bandimere*; provided, however, that the complainant and the respondent are not themselves precluded from continuing to act on, or to engage with each other in, the instant administrative case.

The parties appear to both agree to at least some postponement of substantive discretionary activity in this proceeding by the undersigned pending certain action by the Supreme Court.[2] I, thus, postpone any substantive discretionary activities in the proceeding by me, such as issuing further orders addressing the substantive issues of the proceeding, pending the issuance of a Supreme Court opinion in *Lucia* or until July 2, 2018, whichever comes first. I do not order any limitation on the parties from continuing to act on or interact regarding this

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[2] Complainant advocates postponing until the Supreme Court issues an opinion in *Lucia* and/or *Bandimere.* Respondent seeks a postponement until the Supreme Court decides both *Lucia* and *Bandimere,* and the DC Circuit decides *Haselden.* I note that to date, the *Bandimere* cert petition, No. 17-475, has not been acted upon by the Supreme Court. Revisiting this postponement is not contingent on any action in *Bandimere* or *Haselden,* or for that matter, a "resolution" of *Lucia,* which may or may not be the result of actions by the Supreme Court in *Lucia.*

proceeding. Indeed, I encourage the parties to continue to interact. This postponement would not affect, for instance, my signing and entry of any consent decision to which the parties or a subpart thereof might agree.

WHEREFORE, a postponement of substantive activities by me, as described above, pending the issuance of a Supreme Court opinion in *Lucia* or until July 2, 2018, whichever comes first, is implemented in this docket.

Copies of this Order shall be served by the Hearing Clerk upon each party with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 24th day of May 2018

Channing D. Strother
Acting Chief Administrative Law Judge

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