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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3049/August 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16649

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| In the Matter of<br><br>IRONRIDGE GLOBAL PARTNERS, LLC,<br>IRONRIDGE GLOBAL IV, LTD. | ORDER ON MOTION FOR RECONSIDERATION |

In this Order, I DENY in part and GRANT in part Respondents' motion to reconsider an Order issued on July 28, 2015.

*Background*

On June 29, 2015, after the Securities and Exchange Commission instituted this proceeding, I issued an Order scheduling a prehearing conference for July 20, 2015. *Ironridge Global Partners, LLC*, Admin. Proc. Rulings Release No. 2876, 2015 SEC LEXIS 2669 (June 29, 2015). In that Order, I directed the parties to confer regarding where to hold the hearing in this matter. *Id.*

On July 17, 2015, Respondents filed an unopposed motion to continue the prehearing conference to July 27, 2015. Continuance Mot. at 1. In their motion, Respondents stated that they were asking for a continuance "[i]n order to provide the parties an opportunity to fully confer and provide . . . the written results of their discussion." *Id.* I granted Respondents' motion. *Ironridge Global Partners, LLC*, Admin. Proc. Rulings Release No. 2940, 2015 SEC LEXIS 2936 (July 17, 2015).

The parties filed separate letters in advance of the conference. Respondents suggested that the hearing in this matter should be held in Atlanta because all counsel are located there. Resp. Letter at 2. Because of this fact, they believed "[t]ransportation and bringing exhibits to the hearing will . . . be easier." *Id.* Respondents also asserted that, as compared to Washington, D.C., travel to Atlanta would be easier and hotels would be less costly. *Id.*

In its letter, the Division of Enforcement opposed holding the hearing in Atlanta and requested that it be held in Washington, D.C. It claimed to be "concerned" that Respondents' request was not genuine and was instead "designed to support an Atlanta venue for" a separate action they filed in district court "challenging the constitutionality of this proceeding." Div. Letter at 2; *see Ironridge Global IV, Ltd. v. SEC*, No. 15-2512 (N.D. Ga. filed July 14, 2015).

The Division also stated that none of Respondents' principals resides in Atlanta and only one of the potential witnesses in the case resides in Georgia. Div. Letter at 3. Finally, the Division averred that the fact Respondents' counsel's firm has an office in Washington "should minimize any inconvenience" related to holding the hearing in Washington. *Id.*

During the subsequent telephonic conference on July 27, 2015, I explained that under the Administrative Procedure Act, the two most important factors to consider in deciding where to hold a hearing are the location of the parties and the location of the witnesses. Prehearing Transcript (Tr.) 7-8. I then asked Respondents' counsel where Respondents' principals are located. Tr. 8. He responded that the four principals reside in various places and that "at least one" lives in the British Virgin Islands. Tr. 8. Division counsel then explained that the principals and the Division's witnesses are dispersed about the country. Tr. 9-10. When I then asked Respondents' counsel whether "anyone" in this matter is "actually connected to Atlanta," he said that he "believe[d] there's one witness in Atlanta." Tr. 10. Respondents' counsel explained, however, that the reason he "suggested Atlanta" was because all counsel are there and because Atlanta has "a very convenient airport." Tr. 10.

During the conference, Respondents' counsel did not dispute the Division's contention, *see* Div. Letter at 3, that any inconvenience related to holding the hearing in Washington would be mitigated because his firm has an office in Washington. Neither party addressed the Division's "concern[]" that Respondents' request was "designed to support an Atlanta venue for their . . . district court action challenging the constitutionality of this proceeding." Div. Letter at 2.

On July 28, 2015, I issued a scheduling order directing that the hearing would be held in Washington beginning on November 30, 2015. *Ironridge Global Partners, LLC*, Admin. Proc. Rulings Release No. 2987, 2015 SEC LEXIS 3075, at *3-7 (July 28, 2015) (relying on factors addressed in *Pope v. Dep't of Transp*., 10 M.S.P.B. 645, 648-649 (June 10, 1982)). Three days later, Respondents moved for reconsideration.[1] In their motion, they emphasized the fact that the Division's counsel are located in Atlanta. Recons. Mot. at 2. Without responding to the Division's allegation that, by seeking to have the hearing in Atlanta, Respondents were trying to support their venue argument in their district court case, Respondents then asserted that the Division has asked that the hearing be held in Washington in order to support the *Commission's* venue argument in Respondent's district court case. *Id*. at 3, 6. Respondents next discussed the logistical difficulties and increased costs associated with holding the hearing in Washington instead of Atlanta. *Id*. at 3-5. Among these difficulties, Respondents alleged that three of its principals reside in the United States Virgin Islands and would be required to take connecting flights. *Id*. at 4. Respondents requested that the hearing location be moved to Atlanta and that the hearing date be moved to December 7, 2015. *Id.* at 8.

The Division opposed reconsideration, noting that Respondents had "still . . . not articulate[d] . . . a connection to Atlanta." Opp. at 1. The Division also asserted that

[1] Respondents filed a motion for reconsideration, then withdrew it and submitted a substitute motion on the same day. I am considering only the substitute motion.

Respondents were trying to "support" a venue argument made in their district court case. *Id*. at 1-2.

In reply, Respondents reiterated their assertion that the Division is simply trying to gain advantage in regard to the Commission's venue argument in district court. Reply at 1. They also disputed the convenience that would result from the fact that their counsel's firm has an office in Washington. *Id*. at 2. Respondents additionally disputed that they have no connection to Atlanta. *Id*. at 3. In particular, they argued that "in connection with many of the exchanges at issue a fee was paid to an Atlanta-based broker dealer" and that they have identified "at least three potential third[-]party witnesses [who] reside in Atlanta."[2] *Id*. at 3.

*Discussion*

In the context of Federal Rules of Civil Procedure 59 and 60, it has been said that a motion to reconsider is "not a second opportunity to present argument upon which the Court has already ruled, nor is it a means to bring before the Court theories or arguments that could have been advanced earlier." *Niedermeier v. Office of Baucus*, 153 F. Supp. 2d 23, 28 (D.D.C. 2001) (citation omitted).[3] In other words, litigants should present their best arguments from the start because a motion to reconsider is "'not [a] replay[] of the main event.'" *Khan v. Holder*, 766 F.3d 689, 696 (7th Cir. 2014) (citation omitted).[4]

Granted, Respondents have not sought reconsideration of a final order and are not litigating in district court. But the logic behind the above decisions is nonetheless instructive. *Cf. KPMG Peat Marwick LLP*, Exchange Act Release No. 44050, 2001 SEC LEXIS 422, at *3 n.7 (Mar. 5, 2001) (discussing reasons motions to reconsider are disfavored in reference to federal district and appellate decisions). Motions to reconsider are disfavored because piecemeal

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[2] Among the principal reasons Respondents asserted to show that *they* have a connection to Atlanta were that the Division's staff in Atlanta investigated this matter and issued Wells notices. Reply at 3. Because these are not connections that *Respondents* have to Atlanta, they will not be addressed further in this Order.

[3] *See Estate of Gaither ex rel. Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 10 (D.D.C. 2011) ("motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier") (internal quotation marks and citations omitted); *cf. Richard G. Cody*, Exchange Act Release No. 65235, 2011 SEC LEXIS 3041, at *2-3 (Aug. 31, 2011) (ruling under Rule 470 that "we do not grant reconsideration to consider arguments previously addressed or authority previously available, and will only consider additional evidence if 'the movant could not have known about or adduced [such evidence] before entry' of the Opinion.") (brackets in original).

[4] *Khan* necessarily concerned a motion filed under 8 C.F.R. § 1003.2(b) (governing motions to reconsider), which the Supreme Court has analogized to Rule 60(b). *Stone v. INS*, 514 U.S. 386, 401 (1995).

litigation is inefficient and unfair. *See id*. Bearing the above in mind, I deny Respondents' motion to reconsider.

On June 29, 2015, I directed the parties to discuss the hearing location in advance of the prehearing conference scheduled for July 20, 2015. *Ironridge Global Partners, LLC*, 2015 SEC LEXIS 2669, at *1. Respondents were thus on notice that the location of the hearing would be a topic of discussion at the prehearing conference. Respondents demonstrated their awareness of this fact on July 17, 2015, when they asked for a one-week continuance so the parties could confer about the matters listed in the order issued on June 29, 2015, *i.e*, where to hold the hearing. Continuance Mot. at 1.

During the conference, four relevant things happened. The parties were told what factors are most relevant to the decision of where to hold the hearing. Tr. 7-8. The parties' input as to the hearing location was solicited. Tr. 7-11. The parties were twice told that I would soon issue a decision regarding the hearing location. Tr. 11, 17. Finally, near the close of the conference, the parties were given the chance to address anything else they wanted to discuss. Tr. 19. Respondents thus had notice and an opportunity to address the hearing location before I ruled.

Having received the ruling establishing the hearing location, Respondents now present a mix of old and new arguments in their motion to reconsider and reply to the Division's opposition. Unlike during the prehearing conference, Respondents now feature the argument that the Division is trying to manipulate this proceeding in order to support the Commission's venue argument in Respondents' district court action. Recons. Mot. at 3, 6; Reply at 1. Maybe so. But, before the conference, the Division raised its concern that *Respondents* were trying to do the same. Div. Letter at 2. Respondents, however, did not address the issue. And now, they neither answer the Division's allegation nor explain why I should consider this issue for the first time after ruling. Because Respondents could have but did not present this argument before, there is nothing for me to reconsider on this point.

Moreover, any argument about the Division's motivation in recommending a hearing location is a double-edged sword because the argument presents the same concerns the Division has raised as to Respondents. Each side has now accused the other of trying to manipulate this proceeding in order to gain an advantage in Respondents' district court case. Div. Letter at 2; Recons. Mot. at 3, 6; Reply at 1.

Nonetheless, in seeking reconsideration, Respondents give two new reasons to favor Atlanta over Washington: (1) three of their principals will have to take a connecting flight; and (2) "it appears that some potential witnesses" reside in Atlanta. Recons. Mot. at 4; Reply at 2 (listing four "potential witnesses"), 3 (saying there are "at least three potential third[-]party witnesses"). But, Respondents did not raise the former point until they moved for reconsideration. Indeed, during the conference Respondents' counsel seemed uncertain where Respondents' principals were located. Tr. 8. In any event, the fact three people may have to take a connecting flight for what appears to be at least a week-long hearing, *see* Tr. 12, does not present a strong basis to reconsider. The latter point—that three or four *possible* witnesses *appear* to live in Atlanta—was not raised until Respondents replied to the Division's opposition, and Respondents do not represent that this information was previously unavailable to them or

make any attempts to explain why they waited to raise this point. Even considering this untimely point, the fact that a few witnesses who *might* testify live in Atlanta is not a sufficient reason to reconsider.[5]

Respondents also contest whether the public interest weighs in favor of selecting Atlanta as the venue. Recons. Mot. at 7. Inasmuch as Respondents failed to articulate any connection they have to Atlanta, it is difficult to see why the public interest weighs in favor of holding the hearing in Atlanta over Washington. Respondents say "[t]he public has no interest in seeing its government press an inconvenient forum in order to gain a tactical advantage in related litigation." *Id.* at 7. This argument confuses the Division's alleged motivation for favoring Washington with the basis for the ruling of which Respondents seek reconsideration. It thus does not present a basis to reconsider. In any event, Respondents' argument about the public interest is insufficient to warrant reconsidering where to hold the hearing in this matter.

For the foregoing reasons, Respondents' motion to reconsider the hearing location is DENIED. Respondents' unopposed motion to change the hearing date from November 30, 2015, to December 7, 2015, is GRANTED. The hearing in this matter will begin on Monday, December 7, 2015, in Washington, D.C.

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James E. Grimes
Administrative Law Judge

[5] In attempting to demonstrate a connection to Atlanta, Respondents argued for the first time in their Reply that "in connection with many of the exchanges at issue a fee was paid to an Atlanta-based broker dealer." Reply at 3. Even assuming Respondents are claiming they paid the referenced fee, they waived this point by waiting until the reply to their motion to reconsider to raise it.