

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1928/October 21, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15764

In the Matter of :
: **ORDER ON MOTION**
GARY L. MCDUFF : **TO CORRECT MANIFEST**
: **ERRORS OF FACT**

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings on February 21, 2014, pursuant to Section 15(b) of the Securities Exchange Act of 1934. Motions for summary disposition were filed and fully briefed by both the Division of Enforcement (Division) and Respondent Gary L. McDuff (McDuff).

On September 5, 2014, I issued an Initial Decision, granting the Division's Motion for Summary Disposition, denying McDuff's Motion for Summary Disposition, and imposing a collateral bar against McDuff. *Gary L. McDuff* (Initial Decision), Initial Decision Release No. 663, 2014 SEC LEXIS 3207. On September 29, 2014, McDuff, through an agent, faxed to the Commission's Office of the Secretary a motion for an extension of time to file a motion to correct manifest errors of fact. I granted that motion and allowed McDuff until October 17, 2014, to file a motion. *Gary L. McDuff*, Admin. Proc. Rulings Release No. 1883, 2014 SEC LEXIS 3741 (Oct. 2, 2014). On October 17, 2014, McDuff filed a Rule 111(h) Motion to Correct Manifest Errors of Fact (Motion).

In granting McDuff's motion for an extension, I advised McDuff that his motion to correct "should clearly identify what he believes are the patent misstatement of facts in the Initial Decision." *Id.* Despite my advisement, McDuff fails to clearly identify the purported errors in the Initial Decision, and instead mostly attempts to relitigate issues and facts from the civil case underlying this proceeding and a related criminal case. As I explained in the Initial Decision, this proceeding is not an opportunity to collaterally attack or relitigate issues that have been decided and determined by district courts. Initial Decision, 2014 SEC LEXIS 3207, at *11 (citations omitted). As far as I can determine, the Motion only identifies three purported manifest errors from the Initial Decision:

First, McDuff claims that the civil case underlying this proceeding, *SEC v. McDuff*, No. 3:08-cv-526 (N.D. Tex. Feb. 22, 2013), "is not a valid final judgment; therefore Respondent has not been lawfully enjoined." Motion at 1. This is not a manifest error. A manifest error is "an

error that is plain and indisputable, and that amounts to a complete disregard of . . . the credible evidence in the record.” *Raymond J. Lucia Cos.*, Admin. Proc. Rulings Release No. 780, 2013 SEC LEXIS 2292, at *2 (Aug. 7, 2013) (citation and internal quotation marks omitted). To the contrary, the record clearly indicates that McDuff was lawfully enjoined in the civil case.

Second, McDuff claims that the judgment in a related criminal case, *USA v. Reese* (Reese), No. 4:09-cr-90 (E.D. Tex. May 20, 2014), “is not a valid final judgment, and therefore Respondent has not been lawfully convicted.” Motion at 1. Again, this is not a manifest error, because the record clearly indicates that McDuff was lawfully convicted in that proceeding.

Third, McDuff claims the finding that “McDuff created a prospectus for the Lancorp Fund that contained a number of affirmative false material representations and material factual omissions” is a manifest error. Motion at 6. McDuff contends that the Lancorp Fund was the idea of “a businessman from London,” and therefore he could have had no involvement with the Lancorp Fund prospectus. *Id.* This finding was one of many in the Initial Decision that went to the egregiousness of McDuff’s conduct for the purposes of a *Steadman* analysis.¹ Initial Decision, 2014 SEC LEXIS 3207, at *18-21. The finding was drawn from the allegations in the *McDuff* complaint and the *Reese* superseding indictment, and, as explained in the Initial Decision, reliance on the facts alleged in both documents is warranted. *Id.* at *16-17 (citing *Ross Mandell*, Exchange Act Release No. 71688, 2014 SEC LEXIS 849, at *10 n.13 (Mar. 7, 2014); *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *20-26 (Jan. 14, 2011)). Moreover, the only evidence McDuff submits are his own assertions, as well as a cursory reference to an affidavit by a third party, neither of which are remotely sufficient to show that the error “is plain and indisputable, and that [it] amounts to a complete disregard of . . . the credible evidence in the record.” Therefore, I find nothing manifestly erroneous about the finding at issue.

The rest of the Motion discusses facts and issues that may pertain to *McDuff* or *Reese*, but were not before me in this proceeding and were not discussed in and had no bearing on the Initial Decision. These facts and issues are not properly raised in a motion to correct, and there is no need to discuss them further.

Accordingly, it is ORDERED that McDuff’s Rule 111(h) Motion to Correct Manifest Errors of Fact is DENIED. Given the extension already granted to him to file the Motion, McDuff is instructed that any subsequent submissions, alluded to in his Motion to “complete this Motion with supplement pages,” will be deemed untimely and not considered. Motion at 17.

Cameron Elliot
Administrative Law Judge

¹ Even assuming that particular finding was manifest error, there remained sufficient findings supporting the conclusion that McDuff’s conduct was egregious and that a collateral bar was warranted.