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UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3273 / September 7, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14536

| In the Matter of<br><br>MONTFORD AND COMPANY, INC. d/b/a MONTFORD ASSOCIATES,<br><br>and<br><br>ERNEST V. MONTFORD, SR.,<br><br>Respondents. | RESPONDENTS' PETITION FOR REVIEW OF INITIAL DECISION |
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## RESPONDENTS' PETITION FOR REVIEW OF INITIAL DECISION

Pursuant to Rule 410 of the Commissioner's Rules of Practice, 17 C.F.R. § 201.410, Respondents Montford and Company, Inc. and Ernest V. Montford, Sr. (collectively "Montford") hereby submit a petition for review of the Initial Decision issued on April 20, 2012 in the above captioned proceeding ("Initial Decision").

### I. Background

Montford is an investment advisor with no record of any prior violations of law. In this case, Montford was charged with violations relating to the failure to disclose payment that Montford received from a fund manager for services unrelated to, and not contingent upon, advice that Montford gave his clients. The fund manager – Stanley J. Kowalewksi ("SJK") -- turned out to be a fraud. However, there was no evidence or even contention by Division that Montford had any role in, or knowledge of, the fraud.

Indeed, Montford himself was a victim of the fraud, having invested his own retirement funds with SJK.

The Division issued its Wells Notice to Montford on March 4, 2011. Under Dodd-Frank, Division had 180 days, until August 31, 2011, to file an action against Montford. Division missed the Dodd-Frank deadline, filing seven days late, on September 7, 2011. The ALJ refused to dismiss the action, however, and the case proceeded to trial.

In the Initial Decision, the Administrative Law Judge found that Montford had violated Sections 206 and 207 of the 1940 Act by failing to disclose the payment received from SJK. The sanctions imposed by the ALJ were stunning in their severity. The two extremes presented at the trial of the case by the litigants were as follows: Montford argued that he was not liable but, even if he were liable, it would be unjust to impose monetary sanctions above "Tier One." Division, at the other extreme, argued for the imposition of Tier Two monetary sanctions of $25,000 for *both* Montford and his company (for a total of $50,000), an amount far in excess of recoveries in similar cases. *See e.g., Sheer Asset Management,* 1995 CCH ¶ 85,609 ($10,000 civil penalty, and no disgorgement, for failure to disclose payments over a three year period from broker to investment advisor of $150,000). The ALJ did not rule between either extreme, and instead imposed Tier Three monetary sanctions *twenty times greater* than those sought by the Division, imposing monetary sanctions of $150,000 upon Montford and $500,000 upon Montford and Company, Inc. The ALJ also ordered that Montford "disgorge" the $210,000 that it had received from SJK for services rendered, refusing to deduct from that amount the reasonable value of the services Montford rendered or the $40,000 that Montford had already paid in restitution to a client who had been

defrauded by SJK. The ALJ also barred Montford from the business of investment advisor, even though there was no showing or contention that Montford had ever before violated any law.

For the reasons explained below, the Commission should grant this Petition for Review and reverse the judgment of the ALJ.

## II. Specific Findings and Conclusions as to Which Exception is Taken, Together with Supporting Reasons in Summary Form

Pursuant to Rule 201.410(b), Montford identifies below the specific findings and conclusions as to which exception is taken, together with supporting reasons in summary form.

### A. The ALJ Erred in Failing to Dismiss the Case for Failure of the Division to Comply with the Dodd-Frank 180 day Rule

Error: The ALJ erred by not dismissing the case after Division failed to comply with 180-day filing requirement of Section 929U of the Dodd-Frank Wall Street Reform and Consumer Protect Act ("Dodd-Frank"), 15 U.S.C. § 78d-5.

Supporting Reasons:

1. **The Dodd-Frank Deadline.** Dodd-Frank sets a statutory "[d]eadline for completing enforcement investigations" (the "Dodd-Frank Deadline"):

> Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff *shall either* file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

15 U.S.C. § 78d-5(a)(1) (emphasis added). If the Director of Enforcement determines that the investigation is "sufficiently complex," the Director of Enforcement may grant a 180-day extension of time within which to file an action. 15 U.S.C. § 78d-5(a)(2).

The Dodd-Frank Deadline is not onerous in any respect whatsoever. If the Division is not ready to prosecute an action by filing a complaint, then all it has to do is withhold issuing a written Wells notification until it is ready to do so. The Dodd-Frank Deadline does not hamper any investigation. It merely requires Division, if it is going to issue a written Wells notification, to get on with the filing of a formal complaint.

2. **Undisputed Facts.** The Atlanta Regional Office issued a Wells Notice to Respondents on March 4, 2011. Under Dodd-Frank, Division had 180 days, until August 31, 2011, to file an action. This action was not filed until September 7 – seven days late. The OIP does not allege compliance with the Dodd-Frank Deadline or that any extension had been granted by the Director of Enforcement because the investigation was "sufficiently complex."

3. **Respondents' Motion to Dismiss.** Since the OIP was filed in violation of Dodd-Frank Deadline, Respondents on September 8 filed a Motion to Dismiss. In response, Division conceded that the deadline was missed, but made two arguments against dismissal. First, Division argued that the Dodd-Frank Deadline was not a deadline that Montford could enforce. Second, Division argued that, even if the Dodd-Frank Deadline was, in fact, a "deadline," (which is what Congress calls it), Division met the deadline by obtaining a ten-day extension from the Director of Enforcement. But Division presented no evidence of such an extension apart from the self-serving hearsay affidavit of their lawyers. Further, Dodd-Frank does not give the Director of Enforcement the blanket authority to give Division an extension. Instead, Dodd-Frank requires that the Director of Enforcement, or his or her designee, determine that the particular investigation is "sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed" within the 180-day deadline.

15 U.S.C. § 78d-5(a)(2). Division did not even allege, much less present any evidence, that the Director of Enforcement made the determination required by Dodd-Frank.

It is critical to be very clear on these undisputed facts. This is not a case in which Division has taken the position that the Director of Enforcement made the complexity determination. *Division has never represented, in briefs or in the hearing before the ALJ, that the Director of Enforcement actually made the determination that Dodd-Frank requires.* This is also not a case in which the Director of Enforcement has in fact made the complexity determination, and the issue is whether and to what extent the ALJ or the Commission must defer to that determination. There is no evidence and, remarkably, no contention by the Division that the Director of Enforcement made the determination that the investigation is "sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed" within the 180-day deadline. 15 U.S.C. § 78d-5(a)(2).

4. **ALJ Denies the Motion to Dismiss.** Meanwhile, on October 5, 2011, the ALJ denied the Motion to Dismiss. The ALJ's analysis is contained in the following sentence: "the complex nature of the proceeding is demonstrated by the fact that the Commission directed that an Initial Decision be issued within 300 days, the time allowed for deciding the most complex proceeding" under 17 C.F.R. § 201.360.[1] No other fact or law was cited in support of the holding that the extension had been obtained in compliance with Dodd-Frank.

5. **Commission Denies Interlocutory Review.** The Commission issued an Order Denying Suggestion for Interlocutory Review on November 9, 2012.

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[1] The October 5, 2011 Order actually cites to 17 C.F.R. § 320, but that section deals with evidence. Respondents have assumed that the ALJ intended to cite to 17 C.F.R. § 360, which addresses the 120, 210 and 300-day time limits for the issuance of an Initial Decision.

6. **Trial.** At trial, Division presented no further evidence of compliance with Dodd-Frank.

7. **Initial Decision.** In the Initial Decision, the ALJ denied reconsideration of Montford's motion to dismiss. The ALJ stated: "Here, the Director extended the deadline, so one can deduce that he/she made the determination, which the Commission affirmed when it directed that an Initial Decision be issued within 300 days of service of the OIP, the time period for the most complex administrative proceedings." [Initial Decision, Page 13.]

8. **Reasons for review and reversal.** This holding constitutes reversible error for a number of reasons. First, there is no *admissible* evidence that "the Director extended the deadline." Instead, counsel for Division simply asserted that the Director had extended the deadline. The ALJ's uncritical acceptance of Division Counsel's unsupported hearsay statement was, with respect, entirely inappropriate and unjust. The undersigned counsel would never have expected the ALJ to accept at face value unsupported claims that Montford's counsel would make in support of Montford's position, but that is exactly what the ALJ did here with respect to Division Counsel. Had the Director actually made the determination that Dodd-Frank requires – that the action is "sufficiently complex" that it could not have been brought in 180 days – then certainly counsel for Division would have made a competent record showing to that effect. But counsel for Division did not do so, and there is no evidence, or even contention by the Division, that the Director ever made the determination that Dodd-Frank requires.

Second, the ALJ erred by holding that the Director's failure to make the Dodd-Frank determination was retroactively excused by *the Commission's* selection in the OIP

of a 300-day schedule under Rule 360 ("the Rule 360 Guidelines"). If the case is sufficiently complex to deserve a 300-day schedule, the ALJ reasoned, the investigation leading up to the filing of the case must have also been complex. This non-sequitur, upon which the prosecution of this case depends, cannot be sustained by the Securities and Exchange Commission in the face of Congress's clear command.

The ALJ's analysis and holding is plainly incorrect for a number of reasons:

a. The Initial Decision confuses two separate deadlines: the Dodd-Frank Deadline, which addresses the time period between the issuance of the Wells Notice and the initiation of an action, and the Rule 360 Guidelines, which addresses the next time period, from the initiation of the action through the issuance of the Initial Decision. The stated considerations for determining the appropriate deadline are also different. Under the Rule 360 Guidelines, the Commission has the authority to specify one of three time periods (120, 210 or 300 days) running from the date of the issuance of the Order Instituting Proceedings until the issuance of the Court's Initial Decision. The Commission is to make this determination "after consideration of the nature, complexity, and urgency of the subject matter, and with due regard for the public interest and the protection of investors." Significantly, "complexity" is only one of the factors. The decision to specify a 300-day deadline could be made in a case that is *not* complex, particularly if the matter is not urgent and the longer period is in the public interest. Conversely, the Commission clearly has the discretion to specify a 120-day deadline in a very complex case if, for example, the matter is urgent and a quick decision is in the public interest. Obviously, the Commission's selection of the 300-day time period cannot, by any stretch of reasoning, be equated with a Commission finding that the matter is complex.

b. Dodd-Frank and Rule 360 address two entirely different phases of a case. Under the extension provisions of Dodd-Frank, the complexity determination relates to the "particular enforcement *investigation*" – a process that culminates in the filing of an action. Rule 360, on the other hand, picks up where the Dodd-Frank Deadline leaves off, and governs the time period running from the filing of an action until the Initial Decision. In many cases, a complex investigation could also mean a complex trial schedule, but in many cases a relatively straightforward investigation, *i.e.*, one that was not sufficiently complex under Dodd-Frank to warrant an extension of the 180-day deadline, could be followed by a complex hearing warranting a relatively long 300-day post-filing process. The reverse is also true: a complex investigation could culminate in an Order Instituting Proceedings in which the Commission determined that, because the facts of the case were straightforward or because the matter was urgent, a 120-day deadline for the issuance of the Initial Decision was in the public interest. The point is this: it is a clear mistake of law to apply the Commission's finding under Rule 360 to an entirely different issue under Dodd-Frank.

c. Dodd-Frank requires the complexity determination to be made by the Director of Enforcement, not the Commission itself. Congress might have written Dodd-Frank differently and given to the Commission the responsibility for assessing the complexity of a particular investigation – an odd delegation of day-to-day responsibility, to be sure. But Congress plainly (and sensibly) did not do so, delegating instead that responsibility to the Director of Enforcement. Thus, even if the Commission had decided that the matter was complex (it did not), and even if that decision applied to the investigation (it did not), there was no proper extension in this case under Dodd-Frank because the determination of complexity was not made by the Director of Enforcement.

d. The ALJ's conflation of the Rule 360 Guidelines and the Dodd-Frank determinations will have unintended consequences for the Commission. If the Commission's specification of a 300-day period under Rule 360 is the same as a finding that the investigation is complex (which is what the ALJ has ruled in this case), then the specification of a 120-day period under Rule 360 must mean that the investigation is *not* complex and that any prior extension taken under Dodd-Frank was improper. This is an absurd result, of course, but one required by the ALJ's decision. Or, if in a particular case the Director of Enforcement has determined that the investigation is complex and that an extension is warranted under Dodd-Frank, then the Commission in deciding between 120, 210 and 300 days *must* select 300 days, no matter how urgent the case, since the selection of a shorter period would be inconsistent with, and thereby invalidate, the prior extension. Again, an absurd result, but a necessary application of the Court's reasoning.

The ALJ's decision reflects a clear error of law and should be reversed.

**B. The ALJ Erred in Imposing Third Tier Monetary Sanctions**

Error and supporting reasoning: The ALJ erred by imposing "Third Tier" sanctions against Respondents in the amount of $150,000 for Mr. Montford and $500,000 for Montford and Company, sanctions that were, respectively, *six* and *twenty times* the sanctions sought by the Division. [Initial Decision at 23 (imposing sanctions); *id.* at 17 (stating that Division requested sanction requiring each respondent to pay $25,000)].

Related error and supporting reasoning: The ALJ erred by imposing "Third Tier" sanctions against Respondents because Division, having sought only "Second Tier" sanctions, presented no evidence and no argument that "Third Tier" sanctions were

appropriate. Since Division did not present any evidence in support of Third Tier sanctions, Montford had no opportunity or occasion to present evidence or argument to rebut any finding that Third Tier sanctions were appropriate.

Related error and supporting reasoning: In light of her holding that Third Tier sanctions were appropriate, the ALJ made a number of evidentiary rulings that were incorrect in that she excluded evidence relevant to Third Tier sanctions, evidence that would have shown that Montford's clients were not injured by Montford's acts and omissions (and that the injury, instead, was caused by others), and, when such evidence was admitted, it was ignored in the Initial Decision. For example, the ALJ excluded evidence that Montford's largest client itself received valuable gifts from SJK and was not relying upon Montford to invest in SJK, evidence clearly relevant to the issue of whether Montford's "act or omission directly or indirectly resulted in substantial losses" - a key Third Tier consideration. 15 U.S.C. § 15 U.S.C. § 80b-3(i)(2)(C)(ii). In addition, where the ALJ did allow such testimony, she ignored it in the Initial Decision. For example, the cross-examination of GPA established that GPA was never injured by Montford; in fact, Montford consistently outperformed expectations. The Initial Decision omits reference to this evidence entirely, focusing only on the testimony obtained in Division's direct examination. [Initial Decision at 10.]

Related error and supporting reasoning: Even if the Third Tier sanctions might otherwise have been appropriate, the imposition of sanctions on Montford and Company that were *twenty times* greater than the amount sought by Division, and against Mr. Montford that were *six times* the amount sought by Division, was error of law. *See e.g., Sheer Asset Management,* 1995 CCH ¶ 85,609 ($10,000 civil penalty, and

no disgorgement, for failure to disclose payments over a three year period from broker to investment advisor of $150,000).

Related error and supporting reasoning: The ALJ imposed a monetary sanction of $150,000 upon Mr. Montford [Initial Decision at 23], but the statutory cap on Third Tier monetary sanctions on individuals is $100,000. 15 U.S.C. § 80b-3(i)(2). In addition, the ALJ stated incorrectly that the maximum sanction for corporations was $750,000 [Initial Decision at 23]; the statute caps Third Tier monetary sanctions at $500,000. *Id.*

Related error and supporting reasoning: In imposing the Third Tier sanctions, the ALJ did not cite, recite, or apply the express statutory considerations of the public interest found at 15 U.S.C. § 80b-3(i)(3). Instead of following the statute, the ALJ listed "criteria most often used to assess the public interest." [Initial Decision at 17]. Among other omissions, the ALJ failed to consider "the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior." *Id.* In considering monetary sanctions, the ALJ should have taken into account, among other things, that the ALJ was separately ordering full restitution in the form of the disgorgement remedy. The ALJ also did not take into consideration that Montford had never "been found by the Commission [or any other regulatory agency] to have violated the Federal securities laws." *Id.* The ALJ's failure to apply the correct statutory considerations of the public interest is clear reversible error.

### C. The ALJ Erred in Ordering "Disgorgement" of $210,000

Error: The ALJ erred in ordering disgorgement of $210,000 [Initial Decision 20-21]. This is the amount that Montford received from SJK for the work Montford did

assisting SJK set up his new company. There was no evidence that the payments were related to any advice that Montford had given or would give his clients.

Supporting Reasoning: The "disgorgement" remedy authorized by Section 203(j) is an equitable remedy and is appropriate only if the elements of that equitable remedy have been established by the Government. At bottom, the disgorgement of the $210,000 was incorrect because Montford did nothing wrong by receiving the $210,000; the statutory violation charged was in failing to disclose that payment to his clients. Further, disgorgement is never applied to reverse payments received from the ultimate wrongdoer; here, there was no dispute that SJK defrauded everyone and was not entitled to restitution of the $210,000 payment that he had made to Montford. Additional grounds for reversal include the following:

(a) Disgorgement is appropriate to reverse a payment *from* the victim *to* the perpetrator; here, the payment came from SJK, the perpetrator, and was made to Montford, one of the SJK's. *See SEC v. Collello,* 139 F.3d 674 (9th Cir. 1998) (disgorgement applies to funds defrauding party took from victims).

(b) Division contended that disgorgement applies to the "fruit of the fraud." But the payments from SJK were not the "fruit of the fraud" but the fruit of Montford's labor. The ALJ did not find that Montford committed fraud by working for and receiving money from SJK. That was *not* a fraud, and the fruits of that labor are not subject to disgorgement.

(c) Disgorgement is an appropriate remedy when the amount of the money disgorged is equal (or at least related) to the damages caused by the receipt of the money. The ALJ made no finding of any relationship between the amount of money

SJK paid to Montford and any damage caused by Montford's failure to disclose the payment to his clients.

(d) The purpose of the disgorgement remedy is to protect the public. *SEC v. Cavanaugh,* 445 F.3d 105, 117 & n. 25. The ALJ did not find that disgorgement will protect the public.

(e) Disgorgement only applies to *profits* that Montford derived. Here, the ALJ disgorged the gross amount of payments Montford received. *See SEC v. Haligiannis,* 470 F. Supp.2d 373 n. 10 (rejecting the SEC's position that it could recover gross payments); *SEC v. Blatt,* 583 F.2d 1325, 1335; *SEC v. Amerifirst Funding, Inc.,* 2008 WL 1959843.

(f) Disgorgement is to "prevent unjust enrichment." *SEC v. Banner Fund Int'l,* 211 F.3d 602, 617 (D.C.Cir. 2000). The ALJ did not find that that SJK's payments to Montford unjustly enriched Montford.

### D. Sanctions Extreme for Isolated Infraction.

Error and supporting reasoning: In the Initial Decision, the ALJ barred Montford from the industry. This sanction was unwarranted, and the ALJ erred by, among other reasons, failing to take into account that if Montford had no prior record of any violation of law, a factor that the ALJ was bound under the law to take into account. *Monetta Financial Serv., Inc. v. S.E.C.,* 390 F.3d 952, 957 (7th Cir. 2004) (vacating Commission's order imposing sanctions because the Commission failed to consider, *inter alia,* the isolated nature of the violation). Courts and the Commission have emphasized the importance of the advisor's state of mind. *Steadman v. S.E.C.,* 603 F.2d 1126 (5th Cir. 1979). What Judge Tjoflat said in *Steadman* applies directly to this case:

"It would be a gross abuse of discretion to bar an investment adviser from the industry on the basis of isolated negligent violations." 603 F.2d at 1141. Here, Montford did not know of the SJK fraud, did nothing to advance any of the fraudulent schemes, did not benefit from the fraud, and did not have any incentive to deceive its clients into investing in SJK. If Ernie Montford did not believe in SJK, Ernie Montford would never have invested his entire retirement account with SJK. Montford had no intent to harm anyone. *See S.E.C. v. Slocum, Gordon, & Co.,* 334 F.Supp.2d 144, 185, 187 (D. R. I. 2004) (for "non-scienter based, technical violations" refused to impose injunctive relief, instead imposed $3,000 civil penalty).

In addition, Mr. Montford has paid dearly. At 64, he has lost his retirement funds and, most important, lost his business. He has paid one client $40,000 in restitution already, and has incurred well over a hundred thousand dollars in legal fees, not only defending himself but trying to help the Government prosecute SJK. There is no need to punish Mr. Montford further.

**E. There Was No Violation of Section 206 under *Capital Gains*.**

Error: Montford did not violate the Act because the payments Montford received from SJK were not "fees" and did not, as a matter of fact and as a matter of law, cause or reflect any conflict of interest.

Supporting Reasoning: In its holdings, the ALJ accepted the Division's argument that, under *SEC v. Capital Gains Research Bureau, Inc.,* 375 U.S. 180 (1963), *any* financial benefit to the advisor apart from advisory fees presents a conflict – irrespective of why the benefit was purportedly conferred – because such a financial incentive tends to taint the advisor's objectivity and judgment. But *Capital Gains* does not so hold: "why the benefit" was conferred is the critical question. The Supreme Court in *Capital*

*Gains* expressed concern "whenever advice to a client might result in financial benefit to the adviser – other than the fee for his advice." Thus, the concern is the relationship between the advice to the client and the financial benefit. Certainly, if an investment advisor has a financial incentive to offer certain advice, under *Capital Gains* there is an actionable conflict of interest and potential violation of Section 206. But the key question is if "advice to a client might result in financial benefit to the advisor – other than for the fee for his advice." If the advice to the client does *not* result in financial benefit to the advisor, other than for the fee for his advice, then there is no conflict of interest, no violation of law, and no material information to disclose.

In this case, the evidence established that Montford's advice to his clients to invest in SJK (or, in some instances, to not invest in SJK), did not result in financial benefit or detriment to Montford whatsoever –Montford was paid the same number regardless of where the money was invested. There was no evidence to the contrary, no testimony, no documentary evidence, no calculations, or any tabulations or any other kind of evidence that would support any inference that Montford was paid by SJK to steer clients to SJK, or that Montford was paid more if he advised his clients to investin SJK.

Oddly, Division did not even try to prove to the contrary. Division not only could have called SJK to testify, but also could have called any number of SJK's employees, who would have known of any such a deal (and, facing indictment, would have been eager to testify to please the S.EC.). But Division did not call any witnesses to prove this critical piece of its case. Indeed, Division's factual presentation on this issue was so weak it is clear that Division believed that it only needed to show payment (which was

conceded), and that did not need to show that the payment was to compensate Montford for steering clients to SJK.

In sum, the ALJ erred in not recognizing that Division had not carried its burden. As Justice Goldberg stated in *Capital Gains*, the key issue is whether "advice to a client might result in financial benefit to the advisor – other than the fee for his advice." 375 U.S. at 187. Division, not believing that it needed to prove the connection between the advice and the payment, presented no evidence in support of this critical element. Since Division failed to carry its burden under Section 206 and *Capital Gains*, and the ALJ erred in the finding Montford liable.

### F. There was no Section 207 Violation because the Economic Benefits Received from SJK were not "in connection with giving advice to clients"

Error and supporting reasoning: The ALJ erred in holding that Montford violated Section 207 by failing to disclose on its Form ADV the fact of the payments from SJK. The Form ADV required disclosure of economic benefit "from a non-client *in connection with giving advice to clients.*" There was no evidence that the payments from SJK were made in connection with Montford giving advice to any clients. Similarly, Montford's statement that it did not accept "fees" from managers in the Form ADV was meant in the same way as the Form ADV question – an economic benefit in connection with giving advice to clients – such as a finder's fee or a commission.

### G. Cease and Desist Order Unnecessary and Unlawful

Error and supporting reasoning: The ALJ erred by issuing a cease and desist order because Division made no credible showing of "some cognizable danger of recurrent violation." *Slocum,* 334 F.Supp.2d 144 at 185.

Related Error and supporting reasoning: The cease and desist order is unenforceable because it does not specify the conduct prohibited, and instead simply requires Montford to "obey the law." As such, it is unenforceable as a matter of law. *SEC v. Smyth,* 420 F.3d 1225 (11th Cir. 2005). "This circuit has held repeatedly that 'obey the law' injunctions are unenforceable." *Id.* n.14. It is black-letter law that an injunction that commands a party to simply "obey the law" is not enforceable. *Hughey v. JMS Development Corp.,* 78 F.3d 1523 (11th Cir. 1996). *See also United States v. Philip Morris USA Inc.,* 566 F.3d 1095 (D.C. Cir. 2009) ("we have held injunctions to be too vague when they enjoin all violations of a statute in the abstract without any further specification, or when they include, as a necessary descriptor of the forbidden conduct, an undefined term that the circumstances of the case do not clarify").

For the foregoing reasons, the Petition for Review should be granted and the Initial Decision reversed.

This 11th day of May, 2012.

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