INITIAL DECISION RELEASE NO. 1044
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17035

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

In the Matter of SHREYANS DESAI	INITIAL DECISION August 5, 2016

APPEARANCES: Christina M. McGill and David Stoelting for the Division of Enforcement, Securities and Exchange Commission

Shreyans Desai, pro se

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

SUMMARY

In 2014, Respondent Shreyans Desai pled guilty in federal district court to two counts of wire fraud; in 2015, the court, in a separate civil action, enjoined Desai from violating the antifraud and broker registration provisions of the federal securities laws. Based on his injunction and criminal conviction, this initial decision finds it is in the public interest to impose permanent industry and penny stock bars against Desai pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.

I. PROCEDURAL BACKGROUND

On January 5, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Desai pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. The OIP alleges that in November 2015, a final judgment was entered against Desai in the civil action *SEC v. Desai*, No. 11-cv-5597 (D.N.J.), permanently enjoining him from future violations of the antifraud and broker registration provisions of the federal securities laws. OIP at 2. In addition, the OIP alleges that on May 5, 2014, Desai pled guilty to two counts of wire fraud in *United States v. Desai*, No. 12-cr-330 (D.N.J.).[1] *Id.* at 2-3.

[1] The civil and criminal complaints were filed concurrently in September 2011. The civil action was stayed pending completion of the parallel criminal action. Ex. D at 3. The same acts were the basis for the both the civil and criminal actions. *Id.* at 4-5.

Desai was served with the OIP on January 11, 2016, and his answer was due by February 3, 2016. *Shreyans Desai*, Admin. Proc. Rulings Release No. 3603, 2016 SEC LEXIS 529, at *2 (ALJ Feb. 11, 2016). On February 3, 2016, Desai filed a petition requesting to postpone the hearing for ninety to 180 days due to his lack of access to evidence, witnesses, and experts and his purportedly pending appeal in his criminal proceeding, among other reasons. The Division opposed Desai's request for a postponement. I denied Desai's petition and ordered a telephonic prehearing conference for February 18, 2016. *Id.* at *2-4.

At the prehearing conference, I ruled that I would consider Desai's February 3 petition as his answer. Tr. 25. Desai requested an in-person hearing and additional time to retain legal counsel. Tr. 14-16. I ordered Desai to make a filing by April 10, 2016, stating whether he had obtained legal counsel and describing the evidence Desai would present at a hearing. Tr. 24; *Shreyans Desai*, Admin. Proc. Rulings Release No. 3631, 2016 SEC LEXIS 648, at *3 (ALJ Feb. 22, 2016).

On March 30 and April 19, 2016, Desai made filings, but in neither one did he disclose if he had retained an attorney or describe any material fact in dispute or any evidence he would present at an in-person hearing. As a result, I granted the Division leave to file a motion for summary disposition. *Shreyans Desai*, Admin. Proc. Rulings Release No. 3790, 2016 SEC LEXIS 1424, at *5 (ALJ Apr. 19, 2016).

The Division filed its motion for summary disposition on May 6, 2016, attaching the declaration of Christina M. McGill and fourteen exhibits (Exs. A-N).[2] On May 27, 2016, Desai requested an extension of time to file his opposition, which I granted. *Shreyans Desai*, Admin. Proc. Rulings Release No. 3888, 2016 SEC LEXIS 1949 (ALJ June 1, 2016). He filed his opposition on June 22, 2016, attaching four exhibits (Desai Exs. A-D) and the Division filed its reply on June 27, 2016.[3]

[2] The exhibits include the following documents from the civil action: Ex. A is the complaint; Ex. B is the default judgment as to Desai's co-defendant Shreysiddh Capital, LLC; Ex. C is an amended complaint; Ex. D is the opinion granting the Commission's motion for summary judgment; Ex. E is the summary judgment opinion's accompanying order; Ex. F is the final judgment as to Desai; Ex. G is Desai's motion requesting reconsideration; Ex. H is the opinion and order denying Desai's motion for reconsideration. The exhibits also include the following documents from the criminal action: Ex. I is the criminal complaint; Ex. J is the indictment; Ex. K is the superseding indictment; Ex. L is the transcript of the plea hearing held on May 5, 2014, which is titled "sentencing hearing"; Ex. M is the transcript of the sentencing hearing held on December 3, 2014; and Ex. N is the amended judgment.

[3] Desai Ex. A is Desai's brief filed June 6, 2016, in *SEC v. Desai*, No. 16-1629 (3rd Cir.); Desai Ex. B is a letter dated April 27, 2011, from the Commission's Broker-Dealer Inspection Program to Shreysiddh Capital, LLC; Desai Ex. C is one page from Document 121 filed April 3, 2015, in the civil action; Desai Ex. D is an April 5, 2016, letter from the Division of Enforcement to Desai.

I admit into evidence the exhibits attached to these filings and take official notice of the record in the underlying civil and criminal actions. 17 C.F.R. §§ 201.111(c), .323. I apply preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). The findings and conclusions herein are based on the entire record. I have considered and rejected all arguments and proposed findings and conclusions inconsistent with this initial decision.

II. SUMMARY DISPOSITION STANDARD

Summary disposition is appropriate here where there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250. Desai does not dispute that he has been enjoined from violating the federal securities laws or that he pled guilty to two counts of wire fraud in the parallel criminal case. Tr. 15; Exs. F, N. A motion for summary disposition is generally proper in "follow-on" proceedings like this one, where the administrative proceeding is based on a criminal conviction or a civil injunction. *See, e.g.*, *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40-41 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

III. FINDINGS OF FACT

Court Actions

On May 5, 2014, Desai pled guilty to two counts of wire fraud in violation of 18 U.S.C. § 1343; and, in December 2014, the district court sentenced him to fifteen months imprisonment followed by three years of supervised release and ordered him to pay restitution totaling $121,260. Exs. L, N. The court of appeals, upon the government's motion, summarily dismissed Desai's appeal of his criminal conviction, in view of the appellate waiver in his plea agreement. *United States v. Desai*, No. 15-1105 (3d Cir. May 6, 2015).

In the civil action, the district court granted summary judgment in favor of the Commission. Ex. D. On November 30, 2015, the court entered a final judgment against Desai in the civil action, permanently enjoining him from future violations of the antifraud and broker registration provisions of the federal securities laws: Exchange Act Sections 10(b) and 15(a) and Rule 10b-5, Securities Act of 1933 Section 17(a), and Advisers Act Sections 206(1) and 206(2).[4] Ex. F at 1-4. Desai was also ordered to pay disgorgement of $167,229.39, plus prejudgment interest of $40,520.99, and a civil penalty of $167,229.39. *Id.* at 4. Thereafter, the court denied Desai's motion for reconsideration, which he appealed. Ex. H; *SEC v. Desai*, No. 16-1629 (3d Cir.). As of the date of this initial decision, that appeal remains pending.

[4] In the civil action, Desai did not file a responsive statement of material facts to the Commission's statement of material facts; as a result, the court found "that there are no genuine issues of material fact" because "Desai does not put forth any dispute of a material fact that contradicts the evidence presented by the SEC." Ex. D at 1 n.2, 6.

Desai's Conduct

Desai was in his early twenties when he cofounded Shreysiddh Capital, LLC (SSC), a New Jersey limited liability corporation, in 2008. Ex. D at 2; Ex. L at 3, 12-13. SSC was not registered with the Commission or any other financial or regulatory agency, and Desai was not licensed as a securities professional.[5] Ex. D at 2, 7-8; Ex. L at 13. Between June 2009 and May 2010, Desai induced at least five investors to trade options, futures, and currencies though SSC. Ex. D at 1-2; Ex. L at 13-14. These investors agreed to pay Desai half of all profits earned on trades Desai executed on their behalf. Ex. D at 2; Ex. L at 13.

To induce these five investors to invest with him, Desai made various misrepresentations including that: he was licensed to trade securities; SSC was a registered broker-dealer; funds held by SSC were insured; and he had previously worked as a day trader for two years. Ex. D at 2; Ex. L at 14. Additionally, Desai promised at least one of his investors that he would keep investor money in segregated accounts. Ex. D at 2. Desai received almost $250,000 from these five investors, but did not deposit this entire amount into any brokerage accounts held by SSC. *Id.* For example, one investor provided $100,000 to Desai, but only $90,000 was transferred to a brokerage account; the remaining $10,000 was used for expenses unrelated to the investor's investment. *Id.* In another instance, three investors gave Desai $70,000, and Desai misappropriated $5,000 to pay for various personal expenses. *Id.* From November 2008 to February 2011, Desai spent over $141,000 of investor funds on expenses unrelated to their investments, and he transferred a portion of these funds to foreign exchange market accounts. *Id.*

Desai covered up his activities by creating account statements showing extremely high profits and informing investors that their SSC account values were higher than they actually were. Ex. D at 2-3; Ex. L at 14-15. Additionally, he co-mingled investor funds, which on at least one occasion he used to demonstrate purported increases in the value of investments. Ex. D at 2. Desai deducted his fifty-percent commissions from the accounts based on the false profits he reported. *Id*. at 2-3. For a brokerage account of a sixth individual, Desai inflated account values and presented false account statements in order to receive $68,021 in commissions for purported trades he undertook in the client's brokerage account. *Id.* at 3.

Desai entered into a settlement agreement to pay $349,000 to one investor, of which $60,000 was paid, and he returned $148,350 to other investors and entered into settlements with most of them. *Id.* No investor received the large profits that Desai said he had made in their accounts. *Id.*

[5] On October 3, 2012, the district court entered a default judgment permanently enjoining SSC from violations of the antifraud and broker registration provisions of the federal securities laws, and finding SSC liable for disgorgement of $116,858.29 plus prejudgment interest. Ex. B at 1-4.

IV. ARGUMENTS

Division

The Division maintains that the collateral bars authorized by Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act are called for because the record establishes that: Desai was associated with a broker-dealer or investment adviser during the time of his misconduct; and he willfully violated provisions of the federal securities laws, was criminally convicted for conduct arising out of his involvement in the securities industry, and was enjoined from acting as a broker-dealer or investment adviser or from engaging in a practice or activity in connection with the purchase or sale of any security. Div. Br. at 7-8. The Division believes that the public interest favors barring Desai for a lifetime from participating in the securities industry and from participating in penny stock offerings. *Id.* at 8-10.

Desai

Desai raises numerous arguments set out in nineteen separate points. Opp. at 1-4. Primarily, he argues that this matter should be stayed until "all the matters are concluded" before the U.S. Supreme Court and Third Circuit. *Id.* at 4; *see id.* at 1, 4. He asserts the following:

> 19) The heart of my Opposition is that it is not I, it is SEC being gutless for violating my fundamental pre-requisite of Due Process. I reserve the right to start a litigation in a Constitutional Court if Summary Disposition is granted.
>
> **Conclusion:** Based on the above and based on the attached exhibits, it is that prayer that Summary Disposition not be granted and that this matter be stayed until all the matters are concluded at US Supreme Court and Third Circuit Court.

Id. at 4.

Desai also challenges the underlying district court proceedings and findings; however, the doctrine of collateral estoppel precludes Desai from attacking his injunction and conviction in this proceeding; the only means of challenging those district court actions is through an appeal to the Third Circuit, which Desai is currently pursuing in the civil action. Opp. at 1-3; Tr. 14, 19, 22-23, 26; *Daniel Imperato*, 2015 WL 1389046, at *4 & nn.23-24 (Mar. 27, 2015), *recons. denied*, Exchange Act Release No. 74886, 2015 WL 2088435 (May 6, 2015). Additionally, Desai reiterates his position that his partner, Siddharth Patel, is also responsible and should be a named respondent. Opp. at 1-4; *see* Tr. 12-13.

V. LEGAL CONCLUSIONS

I ruled at the prehearing conference on February 18, 2016, and in two written orders, that a pending appeal of a federal court ruling is not grounds to stay an administrative proceeding. Tr. 6-7; *Shreyans Desai*, 2016 SEC LEXIS 648, at *3; *Shreyans Desai*, 2016 SEC LEXIS 529, at *3-4 (citing *Hunt v. Liberty Lobby, Inc.*, 707 F.2d 1493, 1497 (D.C. Cir. 1983), *Paul Free, CPA*, Exchange Act Release No. 66260, 2012 SEC LEXIS 322, at *6 (Jan. 5, 2012), and *Jon Edelman*,

1996 SEC LEXIS 3560, at *2-3 (May 6, 1996)); *see also Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *2 n.4 (Jan. 16, 2007); *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 n.15 (Sept. 17, 1992), *aff'd*, 36 F.3d 86 (11th Cir. 1994).

If Desai is successful on his appeal, his remedy is to petition the Commission for reconsideration of any sanction imposed in this proceeding. *See Jesse C. Litvak*, Exchange Act Release No. 77993, 2016 SEC LEXIS 1998 (June 3, 2016); *Charles Phillip Elliott*, 1992 SEC LEXIS 2334, at *11 n.17; Tr. 14-15.

Statutory Criteria

Exchange Act Section 15(b)(6)(A) and Advisers Act Section 203(f) empower the Commission to bar a person from participating in the securities industry if: (1) the person was associated with a broker or dealer or investment adviser at the time of his misconduct; (2) the person was convicted, within ten years of the commencement of this proceeding, of a crime that involved the purchase or sale of any security or arose out of the conduct of the business of a broker, dealer, or investment adviser, or was enjoined from similar activities, or was convicted of wire fraud, 18 U.S.C. § 1343; and (3) the sanction is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(B)(i), (ii), (iv), (C), (6)(A)(ii), (iii), 80b-3(e)(2)(A), (B), (D), (4), (f). On the same basis, the Exchange Act authorizes a penny stock bar. 15 U.S.C. §§ 78*o*(b)(6)(A).

Associational status: Here, the district court found that "[t]here is no question that Desai acted as a broker by actively soliciting potential investors, possessing investor funds, and receiving compensation for the transactions." Ex. D at 8. The district court found further that Desai's guilty plea confirmed that he was acting as an investment adviser and that he agreed to receive as a fee a percentage of all profits generated in his investors' accounts. *Id.* at 7. It is irrelevant that Desai was unregistered in any capacity. *See Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (affirming Commission's authority to bar persons from association with investment advisers, whether registered or unregistered); *Daniel Imperato*, 2015 WL 1389046, at *4 (noting Commission's authority to sanction persons who act as unregistered brokers).

Conviction and injunction: The second statutory requirements are also met as to Desai – the district court entered an amended criminal judgment on two counts of wire fraud based on Desai's guilty plea, and enjoined Desai from violating the antifraud and broker registration provisions of the federal securities laws. Exs. F, N.

Public interest: The factors used to guide public interest determinations are: (1) the egregiousness of the respondent's actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of the respondent's assurances against future violations, (5) the respondent's recognition of the wrongful nature of his conduct, and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the harm caused to investors and the deterrent effect of sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at

*35 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). Each case should be reviewed "on its own facts" to determine the respondent's fitness to participate in the relevant industry capacities before imposing a bar. *See Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (citation omitted).

Desai's misconduct was egregious and recurrent. Between June 2009 and May 2010, he made numerous material misrepresentations to SSC investors, including representing that: he had a securities brokerage license, he had worked as a day trader for two years, SSC was a registered broker-dealer, he had accumulated significant profits on behalf of other investors, the funds held by SSC were insured, and he represented to a least one investor that he would keep investor funds in segregated accounts. Ex. D at 1-2, 7-8. Desai's representations were false, and as the district court noted, he deceived multiple investors over a period of approximately two years. *Id.* at 7, 9. Desai's misconduct was definitely recurrent. The district court in the criminal proceeding found it "bothersome . . . that [the misconduct] went on for so long," noting that Desai knowingly misled people "because it went on for such a long time. It wasn't one or two incidents . . . . He repeatedly misled people that appeared to be unsophisticated and vulnerable investors who trusted him" and concluded that his conduct was "repetitive and excessive." Ex. M at 27-28.

Moreover, to cover up his misappropriation of funds and market losses, Desai compounded his initial fraud by co-mingling investor funds and creating and mailing to investors false account statements that showed inflated values on which he charged commissions. Ex. D at 2-3.

Desai's conduct was particularly egregious because he acted as an investment adviser and thus violated the fiduciary duty he owed to his clients. *E.g.*, *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, 194 (1963). The Commission considers fraudulent conduct to be "especially serious and subject to the severest of sanctions." *E.g.*, *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). The egregious nature of Desai's conduct is underscored by the $121,260 in criminal restitution, $167,229.39 in civil disgorgement plus prejudgment interest, and $167,229.39 in civil penalties that he was ordered to pay. Ex. F at 4; Ex. N at 6.

There is a great deal of evidence that shows Desai acted with a high degree of scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (citation omitted). He knowingly lied to investors to induce them to invest with him, as well as continue their investments. Ex. D at 9. The injunction was issued because the court found that Desai violated provisions of the securities statutes that require a showing of scienter: Securities Act Section 17(a)(1), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(1). *See id.* at 6-7. The district court found that Desai's attempts to conceal the actual value of the investors' accounts "to mask his violations of federal securities law demonstrates a high degree of scienter." *Id.* at 9. It also found that "based on the evidence, Desai acted with a high degree of scienter, as he repeatedly engaged in fraudulent conduct with multiple investors." *Id.* at 11.

None of the many filings Desai has made in this administrative proceeding acknowledge wrongful conduct or offer assurance that he will not commit similar acts in the future.[6] At the sentencing hearing on his plea agreement in the criminal case, Desai admitted that his actions were done knowingly and willfully. Ex. L at 14-15. The judge in the criminal action, before whom Desai appeared on two occasions, was not sure "that Mr. Desai is fully deterred from future conduct without a custodial sentence," found that Desai "appears to be somewhat manipulative," and did not "get a genuine sense of his full remorsefulness," even though Desai begged the court and investors for forgiveness and "promise[d] to be a better person and a humble, responsible person." Ex. M at 19-21, 28-29. The district court in the civil matter similarly noted that "Desai's appeal of his previously agreed upon guilty plea evidences a failure to recognize the wrongfulness of his conduct, and leads the [c]ourt to conclude that there is a substantial likelihood that Desai will engage in future violations of the federal securities laws if not enjoined." Ex. D at 9. There are no credible assurances in this record that Desai will not commit future violations and no indication that he recognizes the wrongful nature of his conduct. Although Desai's current occupational status is unknown, absent a bar, he would not be prevented from rejoining the securities industry and committing fraud again.

Each public interest factor supports imposing a permanent industry bar to "prevent [Desai] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015); *see also, e.g.*, *Guy P. Riordan*, Securities Act Release No. 9085, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010); *Gary M. Kornman*, 2009 SEC LEXIS 367, at *23 (the securities industry "presents a great many opportunities for abuse" and depends heavily "on the integrity of its participants" such that the Commission has "barred individuals even [for] . . . dishonest conduct unrelated to securities transactions"). Where a respondent has been enjoined from violating antifraud provisions of the securities laws, the Commission "typically" imposes a permanent bar because "such injunctions have especially serious implications for the public interest." *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *37 (Oct. 29, 2014) (internal quotation marks omitted).

In addition, "absent 'extraordinary mitigating circumstances,' an individual who has been convicted cannot be permitted to remain in the securities industry." *Frederick W. Wall*, Exchange Act Release No. 52467, 2005 SEC LEXIS 2380, at *14 (Sept. 19, 2005) (citation omitted).

[6] *See* Respondent's opposition (June 22, 2016); Respondent's emergency application requesting an extension to file his opposition (May 27, 2016); Respondent's letter regarding submission of additional details and areas of concern and requesting oral argument (Apr. 19, 2016); Respondent's letter regarding his concerns and opposition to my February 22, 2016, order (Mar. 30, 2016); Respondent's February letter to the Division requesting that the proceeding be delayed ninety days until he is released from prison (Mar. 2, 2016); Respondent's letter requesting ninety days to respond and prepare to participate in hearing (Feb. 17, 2016); and Respondent's petition to stay the proceeding (Feb. 3, 2016).

There are no mitigating circumstances present here. For all the reasons stated, the statutory requirements have been met and it is in the public interest to bar Desai from participation in the securities industry to the broadest extent possible.

VI. ORDER

Under Commission Rule of Practice 250(b), I GRANT the Division of Enforcement's motion for summary disposition and ORDER, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Shreyans Desai is BARRED from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

I FURTHER ORDER that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Shreyans Desai is BARRED from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This initial decision shall become effective in accordance with and subject to the provisions of Commission Rule of Practice 360, 17 C.F.R. § 201.360. Pursuant to that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule 111, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occurs, the initial decision shall not become final as to that party.

_____

Brenda P. Murray
Chief Administrative Law Judge