

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3472 / January 6, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16386

In the Matter of

TRACI J. ANDERSON, CPA,
TIMOTHY W. CARNAHAN, AND
CYIOS CORPORATION

ORDER DENYING POST-HEARING MOTIONS

The Securities and Exchange Commission instituted this proceeding on February 13, 2015. On December 21, 2015, I issued the Initial Decision (ID). *See Traci J. Anderson, CPA*, Initial Decision Release No. 930, 2015 SEC LEXIS 5189.

On December 24, 2015, Respondents Timothy W. Carnahan and CYIOS Corporation submitted a “Motion under Rule 111 to Correct Manifest Errors of FACT” (Motion to Correct). On January 4, 2016, Respondents submitted a “Notice of Motion for Certification of Order for Appeal Pursuant to 28 U.S.C. § 1292(b)” (Motion for Certification). Carnahan appears on behalf of CYIOS, and pro se, and both motions have been construed liberally. Although the Division of Enforcement filed a response to the Motion to Correct on January 4, 2016, I have not considered it in resolving that motion.

Commission Rule of Practice 111(h) provides that a motion to correct a manifest error of fact is properly filed “only if the basis for the motion is a patent misstatement of fact in the initial decision.” 17 C.F.R. § 201.111(h). 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.” *Robert Cord Beatty*, Admin. Proc. Rulings Release No. 618, 2005 WL 354587, at *3 (Feb. 10, 2005) (quoting *Black’s Law Dictionary* 563 (7th ed. 1999) (alteration omitted)), *finality notice*, Securities Act of 1933 Release No. 8554, 2005 WL 608131 (Mar. 16, 2005).

Even construed liberally, the Motion to Correct fails to identify any manifest errors of fact. Only one point merits specific consideration: the claim that the first and last sentences of the first paragraph of page 6 of the ID contradict each other. Motion to Correct at 6. The first sentence quotes language from CYIOS’ 2011 Form 10-K/A (Division Exhibit 3), which, when describing CYIOS’ CYIPRO product, refers to Sarbanes-Oxley. ID at 6. The last sentence, on the other hand, notes that a separate description of CYIPRO in Respondents’ Exhibit 3 (a different document than Division Exhibit 3) does not cite to Sarbanes Oxley. *Id.* There is no

contradiction between these two sentences because they refer to different documents. To the extent the Motion to Correct argues that non-factual findings should be corrected – pertaining, for example, to the ID’s assessment of the expert evidence – such findings are not properly subject to a motion to correct manifest errors of fact. *See* 17 C.F.R. § 201.111(h); *e.g.*, Motion to Correct at 5 (“the expert opinion is a moot point”).

As for the Motion for Certification, construed strictly it seeks relief that is available only in connection with “an order” by a “district judge,” and it therefore cannot be granted. *See* 28 U.S.C. § 1292(b). Construed liberally, inasmuch as it seeks interlocutory review of the ID by the Commission, it is denied because the ID is not an interlocutory ruling. *See* 17 C.F.R. § 201.400(a). Inasmuch as the Motion for Certification seeks direct review of the ID by a Court of Appeals, without review by the Commission, it is denied because I lack the authority to issue the requested certification. *See* 17 C.F.R. § 201.400(c). Finally, inasmuch as the Motion for Certification is a petition for review of the ID, it is necessarily directed to the Commission. *See* 17 C.F.R. § 201.410(a), (b).

Order

Accordingly, it is ORDERED that Respondents’ “Motion under Rule 111 to Correct Manifest Errors of FACT” and “Notice of Motion for Certification of Order for Appeal Pursuant to 28 U.S.C. § 1292(b)” are DENIED.

Cameron Elliot
Administrative Law Judge