UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 9465 / October 9, 2013

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 70639 / October 9, 2013

Admin. Proc. File No. 3-14266

In the Matter of

JOHNNY CLIFTON
11680 Stephenville Drive
Frisco, TX 75035

CORRECTED ORDER DENYING MOTIONS FOR RECONSIDERATION AND A STAY

I.

On July 12, 2013, we issued an opinion ("the July 12 Opinion") and order finding that Johnny Clifton, who was president, chief executive officer, and principal of MPG Financial, LLC, a former Commission-registered broker-dealer, violated Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act of 1933[1] by making and causing to be made material misrepresentations and omissions in the offer and sale of oil-and-gas limited partnership interests.[2] We also found that Clifton violated Section 15(b) of the Securities Exchange Act of 1934[3] by failing to supervise at least one sales representative with a view to detecting and preventing that sales representative's Securities Act Section 17(a) violations.[4] For this violative conduct, we found it to be in the public interest to bar Clifton from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, to order him to cease and desist from violating Securities Act Section 17(a), and to assess a $150,000 third-tier civil money penalty.[5]

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1 15 U.S.C. §§ 77q(a)(1), 77q(a)(2), 77q(a)(3).

2 *Johnny Clifton*, Securities Act Rel. No. 9417, 2013 WL 3487076, at *1 (July 12, 2013).

3 15 U.S.C. § 78o(b).

4 *Clifton*, 2013 WL 3487076, at *1.

5 *Id.*

Clifton, who is now proceeding pro se, has filed a motion asking that we reconsider the July 12 Opinion with a view to "lowering the penalties assessed." He also has filed three motions asking us to stay the sanctions imposed pending a possible appeal to the federal courts.[6] For the reasons set forth below, we have determined to deny Clifton's motions for reconsideration and a stay.

II.

We analyze Clifton's motion for reconsideration under Rule of Practice 470.[7] Rule 470 requires a motion for reconsideration to "briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought."[8] We have stated that reconsideration is an "extraordinary remedy"[9] "designed to correct manifest errors of law or fact, or to permit the presentation of newly discovered evidence."[10] Applicants may not use motions for reconsideration to reiterate arguments previously made or to cite authority previously available, and we will accept only such additional evidence that "the movant could not have known about or adduced before entry of the order subject to the motion for

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[6] By order dated August 22, 2013, we granted an interim stay of the collateral bar and civil money penalty imposed on Clifton in order to maintain the status quo pending our review of the parties' pleadings. *Johnny Clifton*, Order Granting Interim Sanctions, Admin. Proc. File No. 3-14266 (Aug. 22, 2013).

[7] 17 C.F.R. § 201.470.

[8] *Id*. § 201.470(b). Our Rules of Practice further provide that the text of any motion must be double-spaced and that the motion, together with any brief in support, cannot exceed 7,000 words in length, exclusive of any table of contents or authorities. *See id.* §§ 201.152(a)(5), 154(c); *see also id.* § 201.470(b). In general, a motion that does not exceed fifteen pages in length, exclusive of any table of contents or authorities, is presumptively considered to contain no more than 7,000 words. A motion that exceeds the length limitation must include a certificate by the attorney or, in this case, the unrepresented party stating that the motion complies with the length limitation and setting forth the number of words in the motion. *Id.* § 201.154(c). Clifton's motion is sixteen pages, single-spaced (excluding a table of contents), and thus appears to exceed the 7,000 word limit in Rule 154(c). It also does not include the required certification of compliance with that rule. Notwithstanding these apparent deficiencies in Clifton's motion, we have considered and decided the motion on its merits.

[9] *See, e.g.*, *Eric J. Brown*, Order Denying Collins's Motion for Reconsideration of Civil Penalties, Securities Act Rel. No. 3393, 2012 WL 1143573, at *1 (Apr. 5, 2012), *appeal filed, Collins v. SEC*, No. 12-1241 (D.C. Cir. June 1, 2012).

[10] *See id.* & n.7 (quoting *Perpetual Sec., Inc.*, Order Denying Motion for Reconsideration, Exchange Act Rel. No. 56962, 2007 WL 4372765, at *1 (Dec. 13, 2007)).

reconsideration."[11] Motions for reconsideration, therefore, are granted only in exceptional cases.[12]

Clifton's motion for reconsideration fails to meet these rigorous standards. The July 12 Opinion found, based on a de novo review of the record, that the preponderance of the evidence established the antifraud and failure to supervise violations and supported the sanctions imposed. While Clifton disputes certain factual findings and witnesses' credibility, he does not demonstrate any manifest error of fact. He also disputes his liability under Securities Act Section 17(a) and Exchange Act Section 15(b), but does not establish any manifest error of law. Instead, Clifton's motion largely repeats and reformulates arguments that we have previously considered and rejected, including that: (1) he did not engage in a scheme to defraud and did not act with scienter; (2) he did not conceal material, adverse information about the oil and gas well project from sales representatives or prospective investors; (3) he did not know that the third oil well was a dry hole until the afternoon of December 28, 2009; (4) he did not have primary responsibility for reviewing sales representatives' outgoing e-mail correspondence until October 2009; (5) after October 2009, he delegated to the firm's chief compliance officer the responsibility for reviewing e-mails; (6) he is remorseful about his conduct; and (7) he cannot afford to pay the $150,000 civil money penalty.

Moreover, as the July 12 Opinion stated, Clifton admitted on appeal that he made material misrepresentations and omissions during a December 23, 2009 investor conference call, that two sales representatives' e-mails to prospective investors contained material misrepresentations and omissions, and that he failed to follow appropriate procedures and review those e-mails.[13] Based on his admissions and other evidence in the record, the July 12 Opinion found that Clifton willfully violated Securities Act Section 17(a) and violated Exchange Act Section 15(b). Accordingly, the July 12 Opinion determined that barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating, and imposing a single $150,000 third-tier civil money penalty were in the public interest and remedial. Given the egregious, recurrent, and fraudulent nature of Clifton's misconduct, we see no basis for reconsideration of the July 12 Opinion.

Clifton raises several new points in his reconsideration motion, but offers no explanation for failing to make these arguments or providing support for them in his prior briefs to us. For instance, Clifton argues that the administrative law judge improperly found that he did not admit to wrongful conduct, showed no remorse for his actions, and was not willing to take corrective action

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11 *Id.* & n.8 (quoting *Perpetual Sec.*, 2007 WL 4372765, at *1).

12 *Id*. & n.9.

13 *See Clifton*, 2013 WL 3487076, at *2 n.13, *9 & n.59, & *12 & n.83. In his motion for reconsideration, he continues to admit that he made misrepresentations during the December 23, 2009 conference call and failed to review e-mails containing false and misleading statements.

to ensure future compliance with the securities laws, rules, and regulations. In making this argument, Clifton overlooks the fact that once he filed his petition for review, the law judge's initial decision ceased to have any force or effect.[14] As a result, the Commission was free to decide, in the first instance, what remedial sanctions would be appropriate and should be ordered. Moreover, our briefing order issued in this case expressly stated that we had determined, on our own initiative, to review what sanctions were appropriate.[15]

Clifton also argues that "[t]here were several witnesses that [he] would have liked to have called in his defense," but, due to his "limited resources," his attorney "chose to just cross-examine the Division [of Enforcement]'s witnesses instead of calling new" witnesses. As the Supreme Court has recognized, a party is bound by the actions of the attorney he retained.[16] "[K]eeping [a] suit alive merely because [a party] should not be penalized for the [acts or] omissions of his own attorney would be visiting the sins of [the party's] lawyer upon the [opposing party]," which "would be wholly inconsistent with our system of representative litigation."[17]

Clifton requests oral argument so that he can present his case "face-to-face" before the Commission. We deny the request as untimely. Rule of Practice 451(b)[18] requires that any request for oral argument be made by a separate motion accompanying the initial brief on the merits. Clifton failed to do this and therefore did not comply with Rule 451(b). We also deny his unsupported requests for a new hearing and the introduction of unspecified additional evidence.

Clifton further argues for "a suspension instead of a collateral bar and a reduced fine with consideration given to [his] ability to pay." The July 12 Opinion found that Clifton committed fraud through his material misrepresentations and omissions about the Osage project and his actions to perpetuate the fraudulent scheme by concealing material, adverse information from sales representatives and ensuring that they, in turn, withheld such information from investors.[19]

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[14] *See Steven Altman, Esq.*, Order Denying Motion for Reconsideration and a Stay, Exchange Act Rel. No. 63665, 2011 WL 52087, at *2 & nn.7-9 (Jan. 6, 2011).

[15] *See Johnny Clifton*, Order Granting Petition for Review and Scheduling Briefs, Admin. Proc. File No. 3-14266 (Jan. 3, 2012) ("Pursuant to Rule of Practice 411(d), the Commission, on its own initiative, has determined to review what sanctions, if any, are appropriate in this matter.") (footnote omitted).

[16] *See Link v. Wabash R. R. Co.*, 370 U.S. 626, 633-34 (1962) (stating that "[p]etitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent").

[17] *Id.* at 634 & n.10.

[18] 17 C.F.R. § 201.451(b).

[19] *Clifton*, 2013 WL 3487076, at *8-10.

Fraud is "especially serious and subject to the severest of sanctions."[20] In addition, Clifton failed to review materially false and misleading e-mails sent by a sales representative and failed to follow the procedures instituted for the supervision of sales representatives.[21] The July 12 Opinion concluded that "the pattern, self-serving nature, and egregiousness of Clifton's fraud demonstrates his unfitness to participate in the securities industry in any capacity."[22] As for the civil money penalty, the July 12 Opinion found that Clifton's violations created a "significant risk" of substantial losses to prospective investors. Based on this finding and the fact that inability to pay is but one factor to consider and is not dispositive of the penalties determination, the July 12 Opinion decided that the scope and severity of Clifton's misconduct warranted the imposition of a civil money penalty of $150,000 to deter Clifton and others like him.[23] We find no basis for altering our conclusions regarding the appropriate remedial sanctions here.

III.

Turning to Clifton's motions for a stay of sanctions pending a possible appeal to the federal courts, we generally consider a stay motion in light of four factors: whether the party seeking the stay is likely to prevail on appeal; whether the party seeking the stay is likely to suffer irreparable injury if the stay is not granted; whether any other party is likely to suffer substantial harm if the stay is granted; and whether the stay will serve the public interest.[24] The party seeking the stay has the burden of demonstrating that a stay is justified.[25]

We have evaluated Clifton's stay motions in light of the four factors and find that he has not established grounds for a stay. For instance, he has provided no basis to conclude, given his admissions and the egregiousness of his conduct, that he is likely to prevail on appeal.[26] Nor has

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[20] *Id.* at *14 & n.95 (quoting *Marshall E. Melton*, Advisers Act Rel. No. 2151, 56 SEC 695, 2003 WL 21729839, at *9 (July 25, 2003)).

[21] *Id.* at *14.

[22] *Id.* at *16.

[23] *Id*. Although we found that Clifton had waived the argument of inability to pay, we nonetheless considered it and ultimately determined to disregard it based on the egregiousness of his misconduct. *See id.* at *16 n.116.

[24] *See Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985).

[25] *Id*. at 978.

[26] Clifton argues that the collateral bar was impermissibly retroactive, but failed to demonstrate how he has been harmed by this ruling such that a stay is warranted. Even if he were successful on that issue, he still would be subject to a broker-dealer bar and have to close his business.

he shown that the financial losses he claims he will suffer outweigh protecting the public.[27] Rather, granting the stay would risk exposing investors and the markets to securities industry participation by a person who has demonstrated "an unfitness to participate in the securities industry that goes beyond the professional capacity in which he was acting when he engaged in the misconduct underlying these proceedings."[28] Under the circumstances, it would be inappropriate to stay Clifton's remedial sanctions pending an appeal to the federal courts.

Accordingly, IT IS ORDERED that the motion for reconsideration filed by Johnny Clifton be, and it hereby is, DENIED, and it is further

ORDERED that Clifton's motions for a stay of the Commission's July 12, 2013 order imposing remedial sanctions be, and they hereby are, DENIED.

By the Commission.

Elizabeth M. Murphy
Secretary

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[27] *See, e.g., Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (denying stay for failure to establish irreparable harm and indicating that the alleged injury must be "both certain and great," that "economic loss does not, in and of itself, constitute irreparable harm," and that "the movant [must] substantiate the claim that irreparable injury is 'likely' to occur").

[28] *Clifton*, 2013 WL 3487076, at *15.