Initial Decision Release No. 1160
Administrative Proceeding
File No. 3-17848

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

In the Matter of

James P. Griffin

Initial Decision
August 11, 2017

Appearances: Jack Kaufman and Christopher J. Dunnigan for the Division of Enforcement, Securities and Exchange Commission

James P. Griffin, *pro se*

Before: Brenda P. Murray, Chief Administrative Law Judge

Procedural Background

On February 16, 2017, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against James P. Griffin pursuant to Section 15(b) of the Exchange Act. The OIP alleges that on July 18, 2016, after a seven-day jury trial, Griffin was convicted of twenty-three counts of mail fraud, wire fraud, and money laundering in *United States v. Griffin*, No. 15-cr-207 (N.D.N.Y.) (criminal case), based on fraudulent conduct connected with the sale of securities. OIP at 2-3. The OIP further alleges that a parallel civil proceeding was filed on July 30, 2015, in *SEC v. Griffin*, No. 15-cv-927 (N.D.N.Y.) (civil case), and remained pending as of the date of the OIP. *Id.*

Griffin was served with the OIP between February 21 and March 2, 2017. *James P. Griffin*, Admin. Proc. Rulings Release No. 4714, 2017 SEC LEXIS 962, at *1 (ALJ Mar. 28, 2017). On March 21, 2017, Griffin filed a two-page letter responding to a March 7, 2017, letter from the Division of Enforcement, which I deemed to be Griffin's answer. *Id.* at *1-2; *see* 17 C.F.R. § 201.220. I denied Griffin's request to delay this proceeding until his

appeal in the criminal case is resolved. *James P. Griffin*, Admin. Proc. Rulings Release No. 4701, 2017 SEC LEXIS 882, at *2-3 (ALJ Mar. 22, 2017). At a telephonic prehearing conference on March 27, 2017, I determined that this proceeding was best resolved by a motion for summary disposition. Tr. 11-12; *James P. Griffin*, 2017 SEC LEXIS 962, at *2. Thereafter:

- On March 31, 2017, the Division submitted a letter describing its production of the non-privileged portions of its investigative file to Griffin pursuant to Rule 230, 17 C.F.R. § 201.230.

- On April 18, 2017, the Division submitted a memorandum of law in support of its motion for summary disposition, with a declaration of Division counsel Christopher J. Dunnigan, and ten exhibits (Motion).[1] The Division requests that I impose collateral and penny stock bars against Griffin.[2]

- In his opposition filed on May 16, 2017, Griffin stated that while he "strongly disagrees with many of the statements and characterizations leveled against him by the Division in its brief, he nonetheless, and without admitting any wrongdoing, has no objection" to the relief sought by the Division. Opp. at 1.

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[1] The exhibits are the July 22, 2015, indictment in the criminal case (Ex. 1); the November 25, 2015, superseding indictment in the criminal case (Ex. 2); a document titled "54 Freedom Group Stock and Funds Raised Summary" produced by entities controlled by Griffin (Ex. 3); excerpts of Griffin's testimony on July 18, 2016, in the criminal case (Ex. 4); the July 18, 2016, jury verdict form in the criminal case (Ex. 5); the July 18, 2016, jury trial minutes in the criminal case (Ex. 6); the December 16, 2016, judgment in the criminal case (Ex. 7); Griffin's December 12, 2016, sentencing statement in the criminal case (Ex. 8); the transcript of the December 13, 2016, sentencing hearing in the criminal case (Ex. 9); and the transcript of the March 27, 2017, prehearing conference in this proceeding (Ex. 10).

[2] A collateral bar is a prohibition from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization or from participating in an offering of penny stock. *See* 15 U.S.C. § 78*o*(b)(6)(A); *Bartko v. SEC*, 845 F.3d 1217, 1220 (D.C. Cir. Jan. 17, 2017) (recognizing that under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), the Commission may bar a market participant from associating with six listed classes based on misconduct in only one class).

I admit into evidence the exhibits attached to these filings and take official notice of the record in the criminal case. 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.

Summary Disposition Standard

Rule 250(b) governs summary disposition in cases designated by the Commission as 75-day proceedings. *See* 17 C.F.R. § 201.250(b); OIP at 4. Rule 250(b) specifies that a motion for summary disposition may be granted if "there is no genuine issue with regard to any material fact" and "the movant is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250. 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 civil injunction because relitigation of "the factual findings or the legal conclusions" of the underlying proceeding is precluded. *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *8, 10 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

Findings of Fact

In February 2017, Griffin was seventy-one years of age and a resident of Cazenovia, New York. OIP at 2. Griffin was founder and, from at least 2007 through 2014, CEO of 54Freedom Inc.; 54Freedom Securities Inc.; 54Freedom Tele Inc.; 54; MoneyIns Inc.; 54Freedom Foundation Inc.; 5 Ledyard Avenue LLC; 5 Ledyard Corporation; and IICNet LLC (collectively, the 54Freedom companies).[3] *Id.* at 1.

From July 27, 2010 through May 5, 2014, Griffin orchestrated two fraudulent schemes that defrauded at least twenty-seven investors of over $2 million. Ex. 5 at 1-2; Ex. 7 at 7-8; *see* Ex. 2 at 3-4, 7.

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[3] According to the Superseding Indictment, Griffin was CEO of the 54 Freedom Group, Inc.; 54 Freedom, Inc.; 54 Freedom Association; 54 Freedom Tele; 54 Freedom Foundation, Inc.; 54 Freedom Securities, Inc.; and 54 Freedom Services, Inc.; and an officer and agent of 5 Ledyard Corporation; 5 Ledyard Avenue, LLC; 5 Ledyard, LLC; and Money Ins., Inc. Ex. 2 at 1. There is no dispute in the record that these are the same companies despite the slight variations in the format of their names.

The first scheme—involving alleged charitable gift annuities which allow an individual to donate to charity in exchange for a lifetime fixed income stream—included thirteen instances of mail or wire fraud between July 2010 and June 2013.[4] Ex. 5 at 1; *see* Ex. 2 at 1-5. In convicting Griffin on all thirteen counts, the jury necessarily found that Griffin engaged in a scheme or artifice to defraud by making one or more of the following misstatements about the charitable gift annuities offered by the 54Freedom companies to induce persons to purchase them:

> The annuities provide "lifetime fixed income for one or two individuals." Ex. 2 at 2.
>
> The 54Freedom companies "reinsure[] transactions through a carrier rated 'A' or higher by A.M. Best" and as a result, gives donors confidence that they will receive annuity payments that are guaranteed. *Id.* at 2-3.
>
> The annuities provide "payments backed by highly rated, state regulated insurance carriers." *Id.* at 2.
>
> The annuities provide security, flexibility, and certainty to an audience aged fifty to ninety. *Id.* at 3.
>
> The annuities were a product with no risk of loss of principal, which will provide a tax advantaged future stream of income guaranteed for life. *Id.*
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> "The annuity promise (guarantee) is kept by a national insurance carrier (e.g. Lincoln Life, Penn, etc.)," and "[y]our money is PROTECTED WITH THE GUARANTEE OF A HIGHLY RATED INSURANCE COMPANY." *Id.*

The second scheme included ten instances of mail fraud or money laundering between July 2010 and May 2014 and involved investors' tax-sheltered retirement accounts.[5] Ex 5 at 2; *see* Ex. 2 at 5-9. As part of this

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[4] Mail fraud has two elements: a scheme to defraud and the mailing of a letter for the purpose of executing the scheme. *Schmuck v. United States*, 489 U.S. 705, 721 (1989). The elements of wire fraud parallel those of mail fraud but require the use of an interstate telephone call or electronic communication instead of mail. *Neder v. United States*, 527 U.S. 1, 21 (1999).

[5] Money laundering is knowingly engaging in, or attempting to engage in, a monetary transaction exceeding $10,000 derived from an unlawful activity.

(continued…)

scheme, Griffin sold securities in the 54Freedom companies. Ex. 3 at 1-3; Ex. 4 at 120; Ex. 5 at 2; *see* Ex. 2 at 6. The jury necessarily found that Griffin engaged in a scheme or artifice to defraud by falsely misrepresenting to potential investors that money they withdrew from their tax-sheltered retirement accounts and invested with him would be rolled over into another tax-sheltered retirement account with a third-party custodian and avoid the early withdrawal tax penalty, that he would pay any early withdrawal tax penalty, or that invested funds would garner unrealistically high returns. Ex. 5 at 2; *see* Ex. 2 at 6-7; *see also* Ex. 9 at 19 (district court finding of fraud during sentencing).

The district court judge found at sentencing that the "evidence [was] clear throughout the trial" that Griffin "intentionally misled people." Ex. 9 at 19.

Legal Conclusions

Exchange Act Section 15(b)(6)(A) empowers the Commission to bar a person if: (1) at the time of the alleged misconduct, the person was associated with a broker or dealer or was participating in a penny stock offering; (2) the person was convicted, within ten years of the commencement of this proceeding, of a crime involving the purchase or sale of any security or other similar crimes; and (3) a bar is in the public interest. 15 U.S.C. § 78*o*(b)(6)(A)(ii).

The evidence shows that at the time of his misconduct Griffin participated in a penny stock offering, and that a bar is in the public interest.[6]

United States v. Wynn, 61 F.3d 921, 926-27 (D.C. Cir. 1995). Griffin was convicted of the money laundering counts under 18 U.S.C. § 2(b), suggesting that he willfully caused the crime by working through witting or unwitting intermediaries. *See United States v. Cho*, 713 F.3d 716, 720 (2d Cir. 2013).

[6] It is not clear why the Division did not contend that Griffin's misconduct occurred while he acted as a broker or person associated with a broker. *See* 15 U.S.C. § 78c(a)(4)(A). A person does not have to be registered with the Commission to be considered a broker; the key is whether they acted as such. *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *1 n.2 (Apr. 23, 2015); *see also Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 WL 3299148, at *5 (Dec. 2, 2005).

Participation in a Penny Stock Offering

A penny stock is an equity security with a price of less than $5 per share, except as exempted under Exchange Act Rule 3a51-1. *See* 15 U.S.C. § 78c(a)(51); 17 C.F.R. § 240.3a51-1. A "person participating in an offering of a penny stock" includes "any person acting as any 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." 15 U.S.C. § 78*o*(b)(6)(C).

The record shows that Griffin was participating in an offering of a penny stock at the time of his misconduct. *See* 15 U.S.C. § 78*o*(b)(6)(A); *accord SEC v. Pallais*, No. 08-cv-8384, 2010 WL 5422531, at *3 (S.D.N.Y. Dec. 23, 2010) ("the SEC must submit admissible evidence proving that the securities qualify as penny stock before the Court may order a bar"). Records produced by entities controlled by Griffin, titled "54 Freedom Group Stock and Funds Raised Summary," indicate that, over their lifetime, five of Griffin's companies raised over $2.6 million from stock sales at prices ranging from $1 to $20 per share and that over $1,260,000 of those stock sales were for less than $5 per share. *See* Ex. 3 at 1. A portion of these sales were sales of penny stocks during the time of Griffin's misconduct. Specifically, between July 27, 2010, and May 5, 2014, 77,950 shares of MoneyIns were sold for $1.25 per share in five transactions and 360,000 shares of 54Freedom Securities were sold for an average of $1 per share in 15 transactions. Ex. 3 at 15-23, 30-32; *see* Ex. 5 at 1-2.

Griffin does not dispute that the shares sold were penny stock or that he participated in the offering of those shares during the period of his proven misconduct. *See* Opp. at 1. There is no indication in the record that the securities sold for these entities fall within any of the exemptions listed in Exchange Act Rule 3a51-1.

Griffin was a "person participating in the offering of a penny stock" because he participated in the sales as an officer of the issuers. 15 U.S.C. § 78*o*(b)(6)(C); *see Harold F. Harris*, Exchange Act Release No. 53122, 2006 WL 89510, at *4 (Jan. 13, 2006) (finding that respondents were participating in an offering of penny stock because, as officers of the issuer, they were agents of issuer of penny stock and they drafted or reviewed various documents used to attempt to induce investors to purchase penny stock). During the criminal case, Griffin testified that he was the CEO of the 54Freedom companies and that he sold stock in "[a]ll companies." Ex. 4 at 97-98, 120. Further, Griffin induced investors to invest in his companies by

making false statements regarding tax-sheltered retirement accounts and the returns investors would receive. *See* Ex. 2 at 6-7; Ex. 5 at 2.

Criminal Conviction

After a seven-day trial, on July 18, 2016, the jury returned a general verdict convicting Griffin of ten counts of mail fraud in violation of 18 U.S.C. § 1341, eight counts of wire fraud in violation of 18 U.S.C. § 1343, and five counts of money laundering in violation of 18 U.S.C. §§ 1957 and 2(b). Exs. 5-6. On December 16, 2016, Griffin was sentenced to sixty months of imprisonment, followed by three years of supervised release, and ordered to pay $2,153,530.93 in restitution. Ex. 7 at 3-4, 7-8. Griffin's convictions for mail fraud and wire fraud satisfy the statutory prerequisite for imposing a bar. 15 U.S.C. § 78*o*(b)(4)(B)(iv); *id.* § 78*o*(b)(6); *see* Ex. 5. Further, Griffin's conviction involved the sale of securities and theft, fraudulent concealment, fraudulent conversion, and misappropriation of funds. 15 U.S.C. § 78*o*(b)(4)(B)(i), (iii); *id.* § 78*o*(b)(6); *see* Exs. 2, 5.

Public Interest Analysis

The factors used to guide public interest determination of whether a bar is appropriate 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 WL 231642, at *8 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Investment Advisers Act of 1940 Release No. 2151, 2003 WL 21729839, at *2 (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. *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

Griffin's conduct was egregious and recurrent. He orchestrated two fraudulent schemes that lasted at least from July 27, 2010 through May 5, 2014. Ex. 5 at 1-2; *see* Ex. 2 at 2, 4, 6-7. In one of the schemes, he preyed on investors' altruism by representing that they could donate to charity while still receiving regular guaranteed income for life. *See* Ex. 2 at 3; Ex. 5 at 1.

In the second scheme, Griffin's false representations convinced investors to remove funds from tax-sheltered retirement accounts and invest in risky penny stocks. *See* Ex. 2 at 6-7; Ex. 5 at 2; *see generally* Ex. 3 (documenting sales, some of which were of penny stocks as explained above).

Four individuals testified at Griffin's sentencing hearing regarding the impact of Griffin's frauds on themselves and their families. Ex. 9 at 5-14. One investor, age sixty-four, and her husband lost "everything" and had to "start over." *Id.* at 6. Another investor lost his retirement and another investor lost his son's college fund. *Id.* at 12, 14. A woman, testifying on behalf of her deceased father and ill mother, stated that her parents went "virtually bankrupt" as a result of Griffin's fraud and had to move in with her, her father died "virtually penniless," and her parents were unable to provide for their children, grandchildren, and great grandchildren as they had hoped. *Id.* at 9, 11.

Griffin has claimed that there are over two hundred investors in his companies from over twenty-five states—all of whom were placed at risk by his conduct. *See* Ex. 9 at 18. These investors are lawyers, doctors, people in the disability community, teachers, relatives, neighbors, high school friends, ministers, and nurses. *Id.* Griffin even defrauded personal acquaintances. *See id.* at 6 (describing how victim "knew [Griffin and his wife] for a long time," "did triathlons" with Griffin's wife, and "made Christmas ornaments together"). Griffin's egregious conduct is underscored by the $2,153,530.93 in restitution he was ordered to pay to twenty-seven investors. Ex. 7 at 7-8.

The Commission considers fraudulent conduct to be "especially serious and subject to the severest of sanctions." *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (quoting *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *5 (Apr. 20, 2012)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). The Commission has repeatedly held that, "absent 'extraordinary mitigating circumstances,' an individual who has been criminally convicted in connection with activities related to the purchase or sale of securities cannot be permitted to remain in the securities industry." *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *6 & n.34 (Jan. 16, 2007) (quoting *Frederick W. Wall*, Exchange Act Release No. 52467, 2005 WL 2291407, at *4 (Sept. 19, 2005)).

Griffin acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976)). Griffin was convicted of violating three statutes—18 U.S.C. §§ 1341, 1343, 1957—that require knowing or willful conduct. Ex. 5 at 1-2. The jury necessarily found that he lied to prospective investors to induce them to invest in his two

fraudulent schemes. *See* Ex. 2 at 2-4, 6-7. The district court found that Griffin "intentionally misled people, told them [he'd] do something [he] didn't do," and "[t]old them something was done when it wasn't done." Ex. 9 at 19. One person whose deceased father thought he had set up a family trust with Griffin testified during the sentencing hearing that Griffin has attempted to hide the proceeds of his fraud by placing assets in his wife's name. *Id.* at 9-10.

Griffin does not acknowledge his wrongful conduct or offer assurances that he will not commit similar acts in the future. To the contrary, he denied the existence of a scheme and claimed to have been interrupted in his work by the economic breakdown beginning in 2009, the Commission's investigation, and calls investors made to the Federal Bureau of Investigation. Ex. 8 ¶¶ 10-11. At his sentencing hearing, Griffin did not apologize for his misconduct, stating instead that he "apologize[s] to all of our investors for the lack of production to date," "continue[s] to work since 2007 to produce money for investors," and "ask[s] the Court to allow these efforts to continue." Ex. 9 at 18. He further claimed that "with a reengineered team and direction, [he would] work to produce the results that [his] investors expected and [he] want[s] them to have." *Id.* In sentencing him, the district court credited investor descriptions of Griffin as a "delusional, sociopathic, and amoral" individual who has "no idea what right and wrong is about." *Id.*; *see, e.g.*, *id.* at 6 (investor testimony that she was totally devastated when she found out the truth and she did not think Griffin had "any remorse or bad feelings"). The court could "not understand how" Griffin was "still professing [his] innocence" despite the "overwhelming" evidence of his guilt. *Id.* at 18-19.

The evidence is persuasive that if Griffin is allowed to continue in the securities industry, there is a high likelihood that he will commit future violations. In his sentencing statement, Griffin did not acknowledge misconduct, but bragged about his good deeds. He claimed that he could "complete the distribution of these products and turn this operation like all [his] others into a very successful mission" and his goal was "to make all approximately 200 investors whole with initial principal plus gain." Ex. 8 at ¶¶ 3, 14.

I do not find anything in the record to support the district court's consideration of a "low risk of recidivism" when determining that a ten-month departure below the minimum guideline sentence was appropriate. Ex. 9 at 5, 19. Indeed, two investors professed their certainty that Griffin would continue to run "scams" while in prison. *Id.* at 13-14. One investor, a former college professor and businessman, testified that Griffin "must never be given the opportunity to harm others" and that he was "sure" Griffin

would "attempt to run illegal scams from his jail cell." *Id.* at 13. A second investor urged consideration of the fact that incarceration would mean that Griffin would not have an opportunity "to scam someone. He will be running scams in jail. There's no doubt about it. But he shouldn't be out in the streets." *Id.* at 14.

Each public interest factor supports imposing permanent industry and penny stock bars to "prevent [Griffin] 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 WL 1744130, at *20 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015); *see, e.g.*, *Guy P. Riordan*, Securities Act Release No. 9085, 2009 WL 4731397, at *19 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010); *Gary M. Kornman*, 2009 WL 367635, at *7 (stating that 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" (quoting *Bruce Paul*, Exchange Act Release No. 21789, 1985 WL 548579, at *2 (Feb. 26, 1985))).

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

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, that James P. Griffin is BARRED from association with a broker, dealer, investment adviser, 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, James P. Griffin 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.

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Brenda P. Murray
Chief Administrative Law Judge