

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1081/December 4, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15514

In the Matter of

DONALD J. ANTHONY, JR.,
FRANK H. CHIAPPONE,
RICHARD D. FELDMANN,
WILLIAM P. GAMELLO,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER,
PHILIP S. RABINOVICH, AND
RYAN C. ROGERS

ORDER FINDING DONALD J. ANTHONY, JR.,
IN DEFAULT, PROVIDING HEARING
LOCATION, AND SETTING PREHEARING
CONFERENCE FOR PARTIES REQUESTING A
SETTLEMENT CONFERENCE

On September 23, 2013, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) alleging that: (1) Donald J. Anthony, Jr. (Anthony), Frank H. Chiappone, Richard D. Feldmann, William P. Gamello, William F. Lex, Thomas E. Livingston, Brian T. Mayer, Philip S. Rabinovich, and Ryan C. Rogers willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), and Exchange Act Rule 10b-5; and (2) Andrew G. Guzzetti failed reasonably to supervise the other Respondents pursuant to Section 15(b)(6) of the Exchange Act, incorporating by reference Section 15(b)(4)(E), with a view towards preventing their alleged violations.

The Office of the Secretary sent the OIP by certified mail to all Respondents on September 24, 2013. The Commission's files indicate that Anthony refused to accept the mailing. On November 1, 2013, the Division of Enforcement (Division) filed a sworn statement executed by Michael D. Birnbaum describing Division efforts to serve Anthony with the OIP. Exhibit A to the Division's sworn statement is a true and correct copy of the Proof of Delivery furnished by United Parcel Service reflecting delivery of the OIP to Anthony's home on November 1, 2013, and Anthony's signature reflecting receipt of delivery. In addition, the Division represents that it transmitted the OIP electronically on October 31, 2013, to an address the Division believes is used

by Anthony. These measures followed six weeks during which the Division left three voice messages on a phone number that it had successfully used for Anthony in the past, spoke with Anthony's father about Anthony's address and confirmed that address with a neighbor, and employed a process server who was unable to achieve service. Rule 141(a)(2)(i) of the Commission's Rules of Practice provides that service occurs by delivery of the OIP to a person. I find that all Respondents were served with the OIP by November 1, 2013.

All Respondents, except Anthony, have filed required Answers. See OIP at 15; 17 C.F.R. § 201.220(b). Anthony is in default because he has not filed an answer and has not otherwise defended the proceeding.¹ See OIP at 15; 17 C.F.R. §§ 201.155(a), .220(f), .221(f). I find the allegations in the OIP true as to Anthony. See OIP at 15; 17 C.F.R. § 201.155(a). At the beginning of the hearing, the Division shall either submit a written statement or state orally what sanctions it recommends be applied to Anthony in view of his default and cite support for those sanctions. See Rapoport v. SEC, 682 F.3d 98 (D.C. Cir. 2012).

Several motions for a more definite statement are pending. The hearing will begin at 9:30 a.m. on January 27, 2014, in Room 208, United States Tax Court, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278. This facility does not have wireless Internet or teleconferencing capacity.

A few Respondents have requested implementation of Rule 240(c)(2) of the Commission's Rules of Practice, which provides that a hearing officer may be requested to express her/his "views on an offer of settlement or otherwise to participate in a settlement conference" provided that those making the request waive their right to claim bias or prejudice by the hearing officer on the views expressed. In response to these requests, I ORDER a telephonic prehearing conference on December 16, 2013, at 10:00 a.m. for the parties who want to participate in a settlement conference.

Brenda P. Murray
Chief Administrative Law Judge

¹ A respondent has the right to file a motion to set aside a default within a reasonable time, stating the reasons for the failure to appear or defend, and specifying the nature of the proposed defense. 17 C.F.R. § 201.155(b). The Commission can set aside a default at any time for good cause. 17 C.F.R. § 201.155(b).