

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 780/August 7, 2013

ADMINISTRATIVE PROCEEDING  
File No. 3-15006

---

In the Matter of	:	
	:	ORDER ON MOTION TO
RAYMOND J. LUCIA COMPANIES, INC. and	:	CORRECT MANIFEST
RAYMOND J. LUCIA, SR.	:	ERRORS OF FACT
	:	

---

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Administrative and Cease-and-Desist Proceedings, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 on September 5, 2012.

On July 8, 2013, an Initial Decision (ID) was issued finding that Raymond J. Lucia Companies, Inc. (RJLC), violated Sections 206(1), 206(2), and 206(4) of the Advisers Act and Raymond J. Lucia, Sr. (Lucia) aided and abetted RJLC's Advisers Act violations. The ID ordered that RJLC's and Lucia's (collectively, Respondents) investment adviser registrations be revoked; barred Lucia from association with investment advisers, brokers, and dealers; ordered Respondents to cease and desist from further violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act; and ordered that RJLC and Lucia pay civil monetary penalties of \$250,000 and \$50,000, respectively.

On July 18, 2013, Respondents filed a Motion to Correct Manifest Errors of Fact (Motion), pursuant to Commission Rule of Practice 111(h). See 17 C.F.R. § 201.111(h). In the Motion, Respondents move to reword ten sentences, proposing specific corrections to them. Respondents argue that without the corrections, the sentences might be misconstrued to suggest that RJLC, an investment adviser, and its advisers sold securities and collected commissions. The Division of Enforcement (Division) filed an opposition on July 25, 2013.

The Commission has stated, "[M]otions to correct manifest error are properly filed under this Rule only if they contest a patent misstatement of fact in the initial decision. Motions purporting to contest the substantive merits of the initial decision will be treated as a petition for review [by the Commission, pursuant to 17 C.F.R. § 201.410]." 70 Fed. Reg. 72566, 72567

(Dec. 5, 2005). 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.” Black's Law Dictionary (9th ed. 2009).

Based upon the standards set forth for Rule of Practice 111(h) and a review of the record, Respondents’ Motion is DENIED in part and GRANTED in part. The instances that Respondents take issue with are discussed below and evaluated individually. The changes proposed by Respondents are in bold.

1. Lucia, at the time of the OIP, was a 61-year old ~~registered~~ **investment adviser** representative and the sole owner of RJLC. ID, p. 3, § II(A)(1), ¶ 1.

Respondents assert that Lucia was an investment adviser representative, not a registered investment adviser. The distinction is not perfectly clear in the record. Lucia was sometimes referred to as an investment adviser representative, but sometimes as a registered investment adviser. For example, during Lucia’s testimony, the question was asked, “In 1996, you became registered with the Securities and Exchange Commission as an investment advisor associated with Raymond J. Lucia Company’s name; is that correct?” Lucia answered, “Sounds correct, yes.” Tr. 1035. Because of the record’s ambiguity regarding Lucia’s registration, there is no manifest error. Respondents’ proposed changes to this sentence are DENIED.

2. Investment advisers for the joint venture, including Lucia, were registered representatives of ~~both RJLC and~~ Securities America **and investment adviser representatives of RJLC**. ID, p. 4, § II(A)(2), ¶ 2.

Respondents argue that the term “registered representative” is a legally defined term used by Respondents exclusively to refer to representatives of RJLC’s broker-dealer affiliates and RJLC advisers are not registered representatives; instead, they are “investment advisor representatives.” Respondents do not, however, always treat the terms mutually exclusively, as reflected by the record. For example, RJLC’s Chief Compliance Officer testified that she “reviewed marketing materials for our network programs not only for the Lucias, but also for other investment advisor registered reps . . .” Tr. 446. Similarly, when she was asked what she meant by the term “dually registered,” she replied, “[t]hat means that they were registered as an investment advisor representative with an investment advisor firm and also . . . registered representatives of [the broker-dealer].” Tr. 476. Respondents’ proposed changes to this sentence are DENIED.

3. During the period between January 1, 2009, and January 31, 2010, **Lucia**, RJLC and Lucia Financial generated a combined gross income of \$14.1 million, of which RJLC ~~registered representatives~~ **investment adviser representatives** (including Lucia and Lucia, Jr.) generated advisory fees of **only** approximately \$1.7 million. ID, p. 5, § II(A)(3), ¶ 1.

This sentence is simply a paraphrase of two sentences found in the Examination Report for Lucia Financial. See Div. Ex. 4, p. 8. In the context of the rest of the paragraph in which this

sentence appears, there is nothing manifestly erroneous about it. Respondents' proposed changes to this sentence are DENIED.

4. RJLC earned most of its investment adviser revenue by collecting fees for assets under management, but this ~~constituted~~ **generated** a paltry fraction of revenues in comparison with the commissions generated **by Lucia** through sales of securities through affiliated brokers, **Securities America and First Allied**. ID, p. 5, § II(A)(3), ¶ 1.

Respondents argue that RJLC collected investment adviser fees, but did not collect commissions on sales of securities. This sentence, in original form, does not conflate the two. Respondents' proposed changes to this sentence are DENIED.

5. Sales of securities through ~~RJLC's~~ affiliated brokers were ~~RJLC's~~ **Lucia's** main income generator. ID, p. 5, § II(A)(3), ¶ 2.

Respondents aver that RJLC as an investment adviser did not collect or account for commissions from sales of securities and that the income from sales was accounted for separately from RJLC. Although that statement is found elsewhere in the ID and is supported by the record, this sentence, read narrowly, suggests something different. Accordingly, Respondents' proposed changes are DENIED in part and GRANTED in part.

The sentence is amended accordingly: Sales of securities through RJLC's affiliated brokers were ~~RJLC's~~ **Respondents'** main income generator.

6. Between January 1, 2009, and January 31, 2010, ~~RJLC~~ **First Allied Securities** collected \$12.4 million in gross commissions from sales of securities ~~through First Allied~~, \$8.7 million of which was paid to Lucia as commissions on the sale of non-traded REITS – undoubtedly the biggest seller for ~~RJLC~~ **Lucia** during that period. ID, p. 5, § II(A)(3), ¶ 2.

Respondents again aver that RJLC never collected any income from sales of securities through First Allied or any other affiliated broker-dealers. Although that statement is found elsewhere in the ID and is supported by the record, this sentence, read narrowly, suggests something different. Accordingly, the Respondents' proposed changes are DENIED in part and GRANTED in part.

The sentence is amended accordingly: Between January 1, 2009, and January 31, 2010, ~~RJLC~~ **Respondents** collected \$12.4 million in gross commissions from sales of securities through First Allied, \$8.7 million of which was paid to Lucia as commissions on the sale of non-traded REITS—undoubtedly the biggest **seller revenue generator** for ~~RJLC~~ **Respondents** during that period.

7. **Through First Allied, Lucia's network of registered representatives, RJLC** invested more than \$143 million in non-traded REITs for ~~its~~ **his** clients during the same period. ID, p. 5, § II(A)(3), ¶ 2.

Respondents argue that RJLC cannot invest in securities, nor can it execute sales of securities. RJLC advisers can only recommend securities, such as non-traded REITs. RJLC's Chief Compliance Officer was asked, "So in the report it says that in excess of \$143 million was invested in REITs in approximately a one-year period by clients of Raymond J. Lucia Companies, Inc. Does that seem to you to be an [sic] approximately correct?" She replied, "I would – I would say that's pretty close, yeah." Tr. 506-07. The record is clear that RJLC clients, rather than RJLC, invested in non-traded REITs through dually registered RJLC-affiliated representatives. Accordingly, the Respondents' proposed changes to this sentence are DENIED in part and GRANTED in part.

The sentence is amended accordingly: **Through RJLC-affiliated representatives, RJLC clients** invested more than \$143 million in non-traded REITs ~~for its clients~~ during the same period.

8. Of the \$12.4 million in gross commissions from sales of securities, ~~RJLC Lucia~~ paid \$2.7 million, or approximately 22%, to ~~its~~ **affiliated** registered representatives. ID, p. 5, § II(A)(3), ¶ 2.

The record is clear that RJLC-affiliated representatives generated commission income, which was paid to Lucia, not RJLC, and Lucia then paid the representatives from that income. Accordingly, the proposed corrections to this sentence are GRANTED.

9. RJLC used to pay its advisers based upon a percentage of ~~sales commissions and~~ fees, ~~but in 2011, it moved to an all-salary employment model. In 2010, it sold its advisory contracts to RJLWM which uses an all-salary employment model.~~ ID, p. 5, § II(A)(3), ¶ 2, n.7.

Respondents argue that RJLC never paid its advisers percentages of sales commissions, only a percentage of fees. This is not supported by the record. Lucia was asked, "Now, during the last decade . . . the commissions generated from the sale of people who came in from the seminars were signed over to you; is that correct?" He replied, "That's right. As the company evolved into paying a salary rather than commission compensation to advisors – in the securities industry, as I'm sure you well know, you cannot pay [commissions] to an entity." Tr. 1073-74. Respondents further argue that they moved to the all-salary model in 2010, not 2011. Although there is some support for the shift occurring in 2010, there is also support for the shift occurring in 2011, and in any event the date is not material, as the ID notes. Tr. 1569; ID, p. 5 n.7. Accordingly, the Respondents' proposed changes are DENIED.

10. Thus, total expenses for 2010 were at most approximately \$10.7 million, compared to \$12.4 million in gross commissions alone, leaving Lucia ~~and RJLC~~ with a substantial profit. ID, p. 6, § II(A)(3), ¶ 5.

Respondents argue that the \$12.4 million in commissions was earned by the affiliated broker-dealer, not by RJLC, and Lucia was, individually, paid a portion of those commissions. This is not supported by the record. Div. Ex. 4, p. 8. The proposed changes to this sentence are DENIED.

SO ORDERED.

---

Cameron Elliot  
Administrative Law Judge