

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 804/August 19, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-14999

In the Matter of	:	
	:	ORDER ON MOTION TO
ANGELICA AGUILERA	:	CORRECT MANIFEST
	:	ERRORS OF FACT

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Administrative Proceedings on August 29, 2012, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act).

On July 31, 2013, I issued an Initial Decision (ID) finding that Respondent Angelica Aguilera (Aguilera) failed reasonably to supervise Fabrizio Neves and Jose Luna within the meaning of Sections 15(b)(4)(E) and 15(b)(6) of the Exchange Act with a view to preventing and detecting their violations of the antifraud provisions of the federal securities laws. The ID barred Aguilera from association with a broker or dealer in a supervisory capacity and barred her from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

On August 12, 2013, Aguilera filed a Motion to Correct Manifest Errors of Fact (Motion), proposing three additions and one deletion to the ID. The Division of Enforcement (Division) filed a Response Opposing Respondent's Request to Correct Manifest Errors of Fact (Response) on August 14, 2013, arguing that, with one exception, Aguilera's Motion should be denied because it is not based on patent misstatements of fact and the requested changes are unsupported by the record. Response, p. 1.

Rule 111(h) of the Commission's Rules of Practice (Commission Rule) 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." *Black's Law Dictionary* (9th ed. 2009).

Following a review of the record, and based upon the standard set forth in Commission Rule 111(h), Aguilera's Motion is DENIED in part and GRANTED in part. The instances that

Aguilera takes issue with are discussed below and evaluated individually. The changes proposed by Aguilera are in bold.

1. In June or July 2008, Aguilera spoke to outside legal counsel about firing Vera and outside counsel recommended that he be fired, but, according to Aguilera, Acosta told her that they could not fire Vera because Vera was assisting Acosta with several side projects, and instead they hired Konig (**delete “part time.”**). **In addition LatAm hired a part time person, Eric Isaac, to come and help Jose Luna with the filing. Transcript at 681; see also Marcos Konig Investigative Testimony, August 24, 2010 at 28-29.**

Aguilera’s proposed changes to this sentence are GRANTED in part and DENIED in part. The Division does not object to the deletion of “part time” from the end of this sentence, and the more reasonable reading of the testimony is that Marcos Konig (Konig) was not hired part time. Tr. 680-81; Response, p. 2 n.1. Aguilera’s proposed addition of a new sentence is, however, denied. Aguilera has not identified a patent misstatement of fact in the ID, and Commission Rule 111(h) is not a means by which the parties can add additional facts to the ID they view as relevant. To the extent that Aguilera offers the August 24, 2010, investigative testimony of Konig to support the addition, Konig’s investigative testimony was not admitted into evidence and is therefore not part of the record in this proceeding. Tr. 13-16.

The amended sentence should read as follows: In June or July 2008, Aguilera spoke to outside legal counsel about firing Vera and outside counsel recommended that he be fired, but, according to Aguilera, Acosta told her that they could not fire Vera because Vera was assisting Acosta with several side projects, and instead they hired Konig. Tr. 391-92, 679-81.

2. According to Landers, he advised LatAm to hire someone to work with Aguilera as FINOP because FINRA had expressed concern about Aguilera’s lack of experience **as a FINOP and in regards to compliance** when LatAm was attempting to get clearance to add third party clearing as a business line, and LatAm subsequently hired Singer **and had a FINOP consultant at all times. Transcript at 307-08; see also Howard B. Landers Investigative Testimony, June 30, 2011 at 60-62.**

Aguilera’s proposed additions to this sentence are DENIED. Aguilera has not identified a patent misstatement of fact in the ID, and for the reasons explained above, Commission Rule 111(h) does not authorize her additions. Tr. 307-08. To the extent Aguilera offers the June 30, 2011, investigative testimony of Howard B. Landers to support her additions, that investigative testimony was not admitted into evidence and is not part of the record. Tr. 13-16.

3. Aguilera requests that the following sentence be added as the final sentence to the first paragraph of Section II(A)(3) on page 4 of the ID: **Acosta additionally served as the chief compliance officer from late 2005 through December 2005, and from about January or February 2006 through November 2007. Maximino J. Acosta Investigative Testimony, August 2, 2011 at 17-19.**

Aguilera's proposed additions to this sentence are DENIED. Aguilera has not identified a patent misstatement of fact in the ID, and for the reasons explained above, Commission Rule 111(h) does not authorize her additions. To the extent that Aguilera offers the August 2, 2011, investigative testimony of Maximino J. Acosta to support her additions, that investigative testimony was not admitted into evidence and is not part of the record. Tr. 13-16.

SO ORDERED.

Cameron Elliot
Administrative Law Judge