

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 1520/June 13, 2014

ADMINISTRATIVE PROCEEDING  
File No. 3-15755

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In the Matter of

MARK FEATHERS

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ORDER

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Under consideration is Mark Feathers’s (Feathers) Motion to Correct Manifest Error of Fact (Motion to Correct), filed on June 9, 2014, pursuant to 17 C.F.R. § 201.111(h) (Rule 111(h)). The filing relates to the May 30, 2014, Initial Decision (ID) in this proceeding and is thus timely.<sup>1</sup> However, it does not identify a patent misstatement of fact in the ID. Thus, it must be denied.

**BACKGROUND**

The Securities and Exchange Commission’s (Commission) February 18, 2014, Order Instituting Proceedings alleged that Feathers was enjoined from violating the antifraud and registration provisions of the federal securities laws, in SEC v. Small Business Capital Corp., No. 5:12-cv-3237 (N.D. Cal. Nov. 6, 2013), appeal docketed, No. 13-17304 (9th Cir. Nov. 12, 2013). The ID concluded that Feathers had been permanently enjoined “from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security” within the meaning of Sections 15(b)(4) and 15(b)(6) of the Exchange Act and barred him from the securities industry. Mark Feathers, Initial Decision Release No. 605, 2014 SEC LEXIS 1849 (A.L.J. May 30, 2014).

**MOTION TO CORRECT**

The Motion to Correct has been considered in light of the limited purpose of Rule 111(h) – to correct “a patent misstatement of fact.” 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).

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<sup>1</sup> The Division of Enforcement timely filed an opposition to the Motion to Correct on June 12, 2014.

Feathers argues that the ID contains a “patent omission of facts” in that it fails to recognize or give proper consideration to what he describes as admitted misconduct by the Division of Enforcement in SEC v. Small Business Capital Corp. This is, however, an argument that the ID misapplied the law, not a misstatement of fact. It takes issue with the ruling that:

the issues in the OIP in this proceeding concern Feathers, not the Commission, and thus his allegation of misconduct by Commission staff in Small Business Capital Corp. is not relevant to the issues in this proceeding. Any challenge to the propriety of the staff’s conduct should be brought before the court in which that case was heard, which Feathers is doing. See Harold F. Crews, 87 SEC Docket 350, 359 (Jan. 13, 2006) (footnote omitted).<sup>2</sup>

The argument that this is a misapplication of law is properly made in a petition for review, which Feathers intends to file.

In light of the above, the Motion to Correct must be denied.

IT IS SO ORDERED.

/S/ Carol Fox Foelak  
Carol Fox Foelak  
Administrative Law Judge

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<sup>2</sup> ID at 2, 2014 SEC LEXIS 1849 at \*4. According to the docket report, the court has scheduled a hearing on this matter for June 24, 2014. SEC v. Small Business Capital Corp., No. 5:12-cv-3237 (N.D. Cal. May 14, 2014), ECF Nos. 910, 913, 914, 915.