

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 1911/October 16, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-15625

In the Matter of

AMBASSADOR CAPITAL MANAGEMENT, LLC
AND DEREK H. OGLESBY

ORDER ON MOTION TO
CORRECT MANIFEST ERROR OF
FACT

On November 26, 2013, the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Ambassador Capital Management, LLC, and Derek H. Oglesby (Oglesby) (collectively, Respondents), pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (Investment Company Act). The hearing took place in Washington, D.C., over eight days between May 5 and May 14, 2014, and the Initial Decision (ID) issued on September 19, 2014.

On September 26, 2014, Respondents filed a Motion to Correct Manifest Errors of Fact (Motion). On October 6, 2014, the Division of Enforcement (Division) filed a Response to the Motion (Opposition). 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.” *Raymond J. Lucia Cos.*, Admin. Proc. Rulings Release No. 780, 2013 SEC LEXIS 2292, at *2 (Aug. 7, 2013) (citation and internal quotation marks omitted).

First, Respondents assign manifest error to the determination that Ambassador Funds, Respondents’ client and the registered investment company of which Ambassador Money Market Fund (AMMF) was a prime money market fund series, “failed to implement [stress testing] in accordance with Rule 38a-1 between February 18, 2011, and February 7, 2012.” Motion at 2 (citing ID at 57). Respondents contend that they conducted a stress test for AMMF on July 31, 2011, and that that date should be the end point of the period during which AMMF was out of compliance with Rule 38a-1 under the Investment Company Act. *Id.* at 2 & n.6.

The ID found that a proper stress test must “tell the Board” certain things, and that “[s]tress test results were next presented to the Board in February 2012.” ID at 23, 57. As the Division correctly observes, “stress testing that was never presented to the Fund’s board,” such as Oglesby’s July 2011 work, did not qualify as proper stress testing. Opposition at 5; *see* ID at 57 (holding that a proper stress test requires a “report” to the board). Thus, the finding that

Respondents caused AMMF to be out of compliance until February 7, 2012, rather than July 31, 2011, was not manifestly erroneous.

Even assuming that there was manifest error, the error worked to Respondents' advantage, because the February 2012 stress test also failed to comply with Rule 38a-1. The ID found that a proper stress required certain numerical "outputs," and "[n]either the February 2011 stress test nor the February 2012 stress test provided any of these numbers." ID at 57. But the ID also noted the OIP's allegation that AMMF "'did not fully implement written stress testing procedures until May 21, 2012.'" ID at 55 (quoting OIP at 9). Because even the February 2012 stress test failed to comply with Rule 38a-1, the record could have supported a finding of May 21, 2012, as the end point for non-compliance. To be sure, the Division "[did] not contend that there were defects in any of the other stress tests that [Respondents] conducted for the fund after that initial one." Tr. at 1810 (emphasis added); *see also* Div. Br. at 38. But the "other stress tests" the Division meant were those in "early 2012," not in July 2011. Tr. 1810.

Second, Respondents argue that the ID contains a manifestly erroneous characterization of the expert evidence. Motion at 3. The relevant passage in the ID analyzes one of the public interest factors applicable to civil penalties:

The egregiousness of the violations is of greatest weight, because most of them were only technical violations. Zitzewitz's un rebutted opinion was that on the days when *the Fund allegedly broke the buck*, the market-based NAV was very close to the amortized-cost NAV. Ex. 466 at 13. Any violation of Rule 22c-1 was therefore technical and not egregious.

ID at 78 (emphasis added). Respondents argue that "the Fund allegedly broke the buck" is "in error," because no such allegation was at issue in this proceeding. Motion at 3. The Division agrees that it "did not allege that the Fund broke the buck in 2009." Opposition at 6.

In context, the term "allegedly" in this passage clearly refers to an allegation analyzed by Zitzewitz but not appearing in the OIP. Zitzewitz summarized his work as an "analysis of portfolio risk on the four days on which certain of the Fund's holdings *may have* exceeded the diversification limits imposed by Rule 2a-7," which included calculation of AMMF's "Net Asset Value (NAV) per share on a market-value basis for the four days at issue and the two days which were initially but incorrectly self-reported." Ex. 466 at 3, 7 (emphasis added). "[O]n the days when the Fund allegedly broke the buck" was merely a paraphrase of Zitzewitz's finding that AMMF did not break the buck "on all six days." Ex. 466 at 3; ID at 78. There is nothing manifestly erroneous about the complained-of language.

Finally, Respondents argue that Oglesby was erroneously assessed a \$1,000 civil penalty for violating Company Act Rule 38a-1, even though the OIP did not charge him with such a violation. Motion at 4 (citing ID at 78). In other words, Oglesby was assessed a civil penalty of \$126,000, based on 86 first-tier violations and one second-tier violation, when he should have been assessed a civil penalty of \$125,000, based on 85 first-tier violations and one second-tier violation. The Division agrees that Oglesby was not charged with a Rule 38a-1 violation, and it "does not oppose a reduction of the total civil penalty against Oglesby by \$1,000." Opposition at

7. The ID's assessment of \$126,000 in civil penalties was manifestly erroneous, and the ID will be amended accordingly.

It is ORDERED that Respondents' Motion to Correct Manifest Errors of Fact is GRANTED IN PART, the Initial Decision is AMENDED, and Respondent Derek H. Oglesby is ORDERED to pay a civil penalty of \$125,000.

Cameron Elliot
Administrative Law Judge