

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3047 /August 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16182

In the Matter of

PAUL EDWARD “ED” LLOYD, JR., CPA

ORDER ON MOTION TO
CORRECT MANIFEST
ERRORS OF FACT

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings on September 30, 2014. The initial decision (ID) was issued on July 27, 2015. On August 6, 2015, Respondent timely filed Proposed Corrections for Manifest Error of Fact in Initial Decision (Rule 111(h)) (Motion) with a supporting brief (Brief); the Division of Enforcement filed an opposition to the Motion on August 10, 2015.

Commission Rule of Practice 111(h), 17 C.F.R. § 201.111(h), 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.” 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.” *See Robert Cord Beatty*, Admin. Proc. Rulings Release No. 618, 2005 WL 354587, at *3 (Feb. 10, 2005) (quoting Black’s Law Dictionary (7th ed. 1999) (alteration omitted)), *finality notice*, Securities Act of 1933 Release No. 8554, 2005 WL 608131 (Mar. 16, 2005). An error of fact is “manifest” if it could reasonably affect the outcome of the decision. *See Raymond James Fin. Servs, Inc.*, Admin Proc. Ruling Release No. 622, 2005 WL 3778678, at *1 (Oct. 14, 2005), *finality notice*, Securities Act Release No. 8636, 2005 WL 3108488 (Nov. 21, 2005).

Respondent asserts fourteen errors of fact, which I consider more or less in numerical order. *See generally* Br.

The first asserted error pertains to two sentences describing the three entities in which Respondent’s clients participated. Br. at 4-5. Division Exhibits 151, 152, and 153 show that the entities set up their offerings pursuant to Reg D; on the other hand, Respondent is correct that the entities were limited liability companies, not limited partnerships. *E.g.*, Div. Ex. 151 at 1. The first full paragraph on page 6 of the ID will therefore be corrected as follows:

Each of the three conservation easements in suit involved a property owner who created a limited liability company which issued membership units pursuant to Reg D. Tr. 99-100, 445-46; Div. Exs. 151, 152, 153. The three limited liability companies/issuers and their associated Reg D offerings were named Maple Equestrian, LLC (Maple Equestrian), Piney Cumberland Holdings, LLC (Piney Cumberland), and Meadow Creek Holdings, LLC (Meadow Creek). Div. Exs. 151, 152, 153. The offering documents portrayed the offerings as exempt from registration pursuant to Reg D because the issuers believed the offerings constituted securities. Tr. 442-44, 454, 495, 517-21.

The second asserted error pertains to a sentence describing the basis for tax deductions taken by Respondent and his clients. Br. at 5-6. Respondent correctly notes that the tax deductions were based on charitable contributions, not on operating losses. Tr. 841-42. The first full paragraph on page 8 of the ID will therefore be corrected as follows:

Following the close of both the Maple Equestrian and Meadow Creek offerings, conservation easements on the underlying land were proposed; the landowners (including, respectively, FC11 and FC12-II) voted in favor of the proposed easements; and the easements were granted and recorded. Tr. 473-74, 501-02; Div. Ex. 108. The grant of these conservation easements caused the Maple Equestrian and Meadow Creek partnerships to issue to FC11 and FC12-II, respectively, Internal Revenue Service (IRS) schedule K-1s reflecting charitable contributions, and thereafter Lloyd created K-1s for each investor in the Forest Conservation entities, which were the basis of the deductions his clients took on their annual tax returns. Tr. 493-94, 502-04, 559; Div. Ex. 28; Div. Ex. 121 at 22-50 of 50; Div. Ex. 129.

The third asserted error, pertaining to a sentence summarizing Respondent's failure to follow compliance policies, is supported by the cited evidence and is not manifestly erroneous. Br. at 6-7.

The fourth asserted error pertains to a sentence describing Respondent's failure to provide a document in response to a request from Commission examiners. Br. at 7. In the context of Respondent's March 14, 2013, production, the sentence is supported by the cited evidence and is not manifestly erroneous. *See* ID at 20. Indeed, Respondent essentially concedes this point by noting that he eventually produced the document at issue on April 5, 2013, three weeks later. Br. at 7.

The fifth, sixth, and seventh asserted errors pertain to summaries of testimony by Respondent's clients. Br. at 7-9. Each allegedly erroneous sentence is supported by the cited evidence and is not manifestly erroneous. Moreover, the identified sentences could not reasonably affect the outcome of the decision, because the ID did not sustain the charge to which they relate, cite them as evidence of scienter, or otherwise rely on them to Respondent's detriment. *See* ID at 28-31.

The eighth, ninth, tenth, twelfth, thirteenth, and fourteenth asserted errors pertain to sentences that are not factual, and therefore cannot be manifestly erroneous.

The eleventh asserted error pertains to a Request for Judicial Notice of Statistics in Support of Respondent's Post-Hearing Brief (Request), filed on May 1, 2015. Br. at 11-13. To be sure, the ID did not explicitly rule on the Request. *See* Br. at 12-13. But the ID did state, rightly, that "[e]ven assuming that I have 'rarely, if ever, found in favor of the Respondent in the past two years,' that is not evidence of bias against Lloyd." ID at 32 (quoting Respondent's Post-Hearing Brief at 20). That is, the ID considered the Request's statistics, and correctly found them irrelevant. There was no manifest error of fact in connection with the Request.

Order

Accordingly, it is ORDERED that Respondent's Motion is GRANTED IN PART and DENIED IN PART, and the ID is AMENDED, as outlined above. As explained in the ID, the parties have twenty-one days from the date of this order to file a petition for review of the initial decision.

Cameron Elliot
Administrative Law Judge