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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4522/January 13, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17104

In the Matter of BIOELECTRONICS CORP., IBEX, LLC, ST. JOHN'S, LLC, ANDREW J. WHELAN, KELLY A. WHELAN, CPA, and ROBERT P. BEDWELL, CPA	ORDER DENYING MOTION TO CORRECT MANIFEST ERRORS OF FACT

On December 13, 2016, I issued an initial decision as to Respondents BioElectronics Corp., IBEX, LLC, St. John's, LLC, Andrew J. Whelan, and Kelly A. Whelan, CPA.[1] *BioElectronics Corp.*, Initial Decision Release No. 1089, 2016 SEC LEXIS 4597. On December 23, 2016, Respondents filed a motion to correct manifest errors of fact in the initial decision, pursuant to 17 C.F.R. § 201.111(h). The Division of Enforcement timely filed an 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." *Robert Cord Beatty*, Admin. Proc. Rulings Release No. 618, 2005 SEC LEXIS 359, at *8 (ALJ Feb. 10, 2005) (quoting *Black's Law Dictionary* 563 (7th ed. 1999)), *finality notice*, Securities Act of 1933 Release No. 8554, 2005 SEC LEXIS 622 (Mar. 16, 2005). For an error of fact to be manifest, it must be an error that could reasonably affect the outcome of the decision. *See Raymond James Fin. Servs., Inc.*, Admin. Proc. Rulings Release No. 622, 2005 WL 3778678, at *1 (ALJ Oct. 14, 2005), *finality notice*, Exchange Act Release No. 52810, 2005 WL 3108488 (Nov. 21, 2005). A motion contesting the substantive merits of the initial decision may not be brought under Rule 111(h). *See* Adoption of Amendments to the Rules of Practice and Related Provisions and Delegations of Authority of the Commission, 70 Fed. Reg. 72566, 72567 (Dec. 5, 2005).

The bulk of Respondents' motion is devoted to purely legal issues, which may not be contested under Rule 111(h). And those portions of the motion asserting manifest errors of fact are meritless. For example, Respondents dispute six factual assertions in the initial decision

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[1] The proceeding has ended as to Respondent Robert P. Bedwell, CPA. *BioElectronics Corp.*, Securities Exchange Act of 1934 Release No. 79176, 2016 SEC LEXIS 4034 (Oct. 27, 2016).

pertaining broadly to the testimony of Brian Flood, one of Respondents' expert witnesses. *See* Motion at 17-20. In support of their arguments, Respondents submitted a "Post-Hearing Declaration of Brian Flood," which may not be considered because it is not part of the hearing record, and which therefore cannot establish a manifest error of fact. I have in any event carefully reviewed the six factual assertions Respondents contend are erroneous, and find no error in them, manifest or otherwise.

Respondents dispute two other factual assertions in the initial decision. First, they dispute the alleged "finding that BioElectronics had 16,011 shareholders of record in 2009." Motion at 24. But the initial decision made no such finding; instead, it observed that "BIEL reported that as of December 31, 2009, it had 16,011 holders of record of its common stock," and "there is evidence that as of December 31, 2009, BIEL . . . common stock was held of record by 16,011 persons." *BioElectronics Corp.*, 2016 SEC LEXIS 4597, at *22, *93 (Dec. 13, 2016) (citing DX 51 at 16). These observations were accurate, a point Respondents concede. *See* Motion at 22, 24.

Second, Respondents contend that Flood's "detailed calculation of the aggregate proceeds [of IBEX's securities sales] is slightly different" from the calculation in the initial decision. Motion at 15. But Flood's post-initial decision calculation is inconsistent with the stipulated aggregate proceeds – $1,639,841 (stock sales) plus $2,656,425 (note sales) equals $4,296,266 – and may not be considered in any event because the calculation is not part of the hearing record. *See* Stipulation at Ex. B.

Respondents' motion to correct manifest errors of fact is therefore DENIED.

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Cameron Elliot
Administrative Law Judge

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