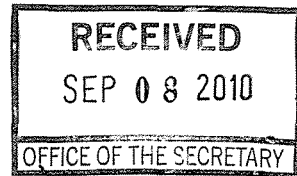


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-13871

In the Matter of

Ronald S Bloomfield  
Robert Gorgia  
Victor Labi  
John Earl Martin, Sr.  
And  
Eugene Miller

Respondents,

PRE-HEARING BRIEF

OF

ROBERT GORGIA, RESPONDENT

Pursuant to Rule 222 of the Rules of Practice, Gorgia, acting *pro se*, hereby submits this Pre-Hearing Brief in the above matter before the Honorable Brenda Murray. The "Case Outline" and "Legal Theories" sections hereof are set forth extensively in this respondent's Motion for Summary Disposition previously served and filed. Therefore, for judicial economy, only a very brief outline will be set forth herein.

## CASE OUTLINE

The Order Instituting Proceedings (“OIP”) dated April 27, 2010 states the violations in (1) Paragraph G, 54 as “failure to supervise Bloomfield, Labi, and Martin, within the meanings of Sections 15 (b) (4) and 15 (6) of the Exchange Act, with view of preventing and detecting their violations of Section 5 of the Securities Act”. (2) Paragraph G, 55 as “willfully aided and abetted and cause violations of Sections 17 (a) of the Exchange Act and Rule 17a-8 thereunder”.

The evidence will further demonstrate that Gorgia did not commit a violation of failing to supervise Bloomfield, Martin, Labi or any other employee at Leeb Brokerage Services. The evidence will also demonstrate that Gorgia did not aid and abet violations of Section 17(a) and 17a-8.

## LEGAL THEORIES

### 1. Supervisory Allegations:

Applying the Commission’s SEC “line” approach to determining supervisor status, we look at whether Gorgia was in the direct supervisory chain and had the ability to control the conducts of the individuals (see *In re Louis R Trujillo* , Exchange Act Release No 26,635, 1989 SEC Lexis 480, March 16,1989). Miller and Bloomfield were

the supervisors, and Miller supervised Bloomfield. As reflected by the 2005 and 2006 Written Supervisory Procedures ("WSP"), Gene Miller was the supervisor for Penny and Microcap Securities. Gorgia was not a supervisor. Gorgia believes the 2006 WSP listing him as a supervisor was fabricated after the fact or submitted without Gorgia's knowledge. Anyone could have changed the internal section of the document. Second, Gorgia did not have the ability to control the individuals. Gorgia reported to Miller. The facts reflect that even when Gorgia tried to assert control by pointing out problems, he was "dressed down" or forced to "tone" down his statements. Like so many in a job-and a part time at that- Gorgia made an effort over time but left the firm as it became apparent that he would not be listened to nor respected. The falsified WSP clearly indicate he was not in control.

## 2. Aiding and Abetting Allegations:

The elements of aiding and abetting require that (i) the accused had specific intent to facilitate the commission of a crime by another; (ii) the accused has the requisite intent, and (iii) the accused assisted or participated in the commission of the underlying offense. Gorgia could not be found to aid and abet when (1) Gorgia was not even present at the time of the commission; and (2) Gorgia did not and could not know

of it, since other senior and experienced members of the firm withheld, did not inform or failed to perform their required duties.

The following authorities will be relied upon:

Statutes

- Federal Register Vo No 247/Wednesday December 24,2003/ Rules and Regulations SEC Final Rule: Compliance Programs of Investment Companies and Investment Advisers 17 CFR Parts 270,275 and 279 [Release Nos IA-2204; IC-26299; File No S7-03-03] effective date February 5,2004, page 74720

Law Review

- Gadziala, Mary Ann, "Comprehensive Examinations for Securities Firms, May 16, 2006
- Glassman, Cynthia, "Sarbanes-Oxley and the Idea of Good Governance, September 27,2002
- Gohlke, Gene, Managed Funds Association Educational Seminar Series 2005, "Practical Guidance for Hedge Fund CCO Under the SEC New Regulatory Framework", a Job Description for CCOs of Advisors to Private Investment Funds, May 5,2005.
- Pirraglia, Anthony, "A Tangled Web: Compliance Director Liability Under Securities Laws, Fordham Journal of Corporate & Financial Law, Vol VIII,2003
- Securities Industry Association, "White Paper on the Role of Compliance", October 2005.

Case Law

- *In re Dean Reynolds, Inc.*, Initial Decisions Release No 179,74S.E.C. Docket 522
- *In re James Huff*, Exchange Act Release No 29,017, 48 S.E.C. Docket 767

- *In re* Louis R Trujillo , Exchange Act Release No 26,635, 1989 SEC Lexis 480, March 16,1989
- In the Matter of John H Gutfreund, Tomas Strauss and John Meriweather, Administrative Proceeding File No 3-7930 (December 3,1992), Exchange Act Release No 34-31554
- *In re* George J. Kolar, Initial Decisions Release No 152,70 S.E.C. Docket 2382
- United States v Roan Eagle, 867 F. 2d 346,455 (8th Cir), *cert denied* 490 U.S. 1028 (1989)
- United States v. Labat 905 F. 2d, 18,23 (2d Cir. 1990)

### DOCUMENTS INTENDED TO BE INTRODUCED

Respondent intends to introduce the following documents at hearing. The majority of these documents have been previously served and filed in connection with this Respondents' Motion for Summary Disposition. The entire submission has been sent to the respective parties to this Matter. The exhibit numbers correspond to the exhibit books submitted with that motion.

Exhibit Number	Description
Vol 1-1	Historical Time Line
Vol 1-2	Letter to Adam Grace and Attestation by Gorgia
Vol 1-3	Gorgia's Employment Contract
Vol 1-4	Eugene Miller's Deposition (Extract)
Vol 1-5	FINRA Exit Conference and subsequent emails
Vol 1-6	Speech by Mary Ann Gadziala, SEC
Vol 1-7	Global Trading Documents
Vol 1-8	Broker Check for David Mack
Vol 1-9	Promissory Notes for LCM
Vol 1-10	Cost Sharing Agreement

Vol 1-11	Corporate Resolution of LBS
Vol 1-12	Letter to Robin Bifone, FINRA from Gorgia
Vol 1-13	Memo for resolution of AR and AP between LBS and Affiliates
Vol 1-14	Gorgia's report to Board of Directors of LBS
Vol 1-15	Letter to Thompson Financial
Vol 1-16	Emails from Gorgia to Robin Bifone, FINRA
Vol 1-17	Emails from Gorgia to LBS Outside Accountants
Vol 1-18	Memo to file for erroneous deposits to LBS checking account
Vol 1-19	Employment Agreement for intended Red Bank Office
Vol 1-20	Emails and memos concerning Compliance problems at LBS
Vol 1-21	Emails with intended clearers
Vol 1-22	Emails concerning employee behavior
Vol 1-23	AML Audit Report 2005
Vol 1-24	Extracted calendar of Gorgia
Vol 1-25	Summary of sign on to Quick Books
Vol 1-26	Letter from Leeb to FINRA, Dec 24,2007
Vol 1-27	LBS WSP dated Mar 1,2005
Vol 1-28	Comparisons between 2005 and 2006 WSP for LBS
Vol 1-29	Designation of Supervisors 2005 WSP and redacted pages of WSP with summarized spreadsheet
Vol 1-30	Designation of Supervisors 2006 WSP and redacted pages of WSP with summarized spreadsheet
Vol 1-31	Email to Karen Hagan, Regulatory Compliance
Vol 1-32	Bloomfield's Deposition (Extract)
Vol 1-33	American Express Statement
Vol 1-34	Letter from David Mack to FINRA, dated Mar 4,2005
Vol 1-35	Letter from Gorgia to FINRA dated Apr 2,2005
Vol 1-36	Extract of OSJ WSP
Vol 1-37	OSJ MOU
Vol 1-38	LBS WSP dated Mar 1,2005 Section 19.0
Vol 1-39	FINCEN Guidance of SAR Narrative
Vol 1-40	Wires to Lichtenstein
Vol 1-41	Pershing Wires for the OSJ (extracted)

## WITNESS LIST

Respondent intends to call, or request that the Court subpoena, the following persons to testify at the hearing:

### Former Leeb Brokerage Services Employees

1. Eugene Miller  
c/o Brunelle & Hadjickow, P.C.  
One Whitehall Street, Suite 1825  
New York, NY 10004-21

Subject Matter of testimony: Leeb customer activity, supervisory procedures and company structure.

2. Ronald S. Bloomfield  
c/o Robert B. Martin Jr., Esq.  
Law Offices of Robert B. Martin Jr.  
2609 Canyon Crest Drive  
Escondido, CA 92027-4908

Subject Matter of testimony: Leeb customer activity, supervisory procedures and company structure.

3. Victor Labi  
c/o Michael Kalmus, Esq.  
Kalmus & Martuscello PC  
108 Greenwich St.  
New York, NY 10006

Subject Matter of testimony: Leeb customer activity, supervisory procedures and company structure.

4. David Laubach  
Scarsdale Equities  
10 Rockefeller Plaza  
Suite 720  
New York, NY 10020

Subject Matter of testimony: Leeb customer activity, supervisory procedures and company structure.

5. Thomas Poss  
Aegis Capital Corp.  
810 7<sup>th</sup> Ave  
11<sup>th</sup> Floor  
New York, NY 10019

Subject Matter of testimony: Leeb customer activity, supervisory procedures and company structure.

6. John Martin,  
c/o Robert B. Martin Jr., Esq.  
Law Offices of Robert B. Martin Jr.  
2609 Canyon Crest Drive  
Escondido, CA 92027-4908

Subject Matter of testimony: Leeb customer activity, supervisory procedures

## CONCLUSION

The allegations against Gorgia are unwarranted because of the following:

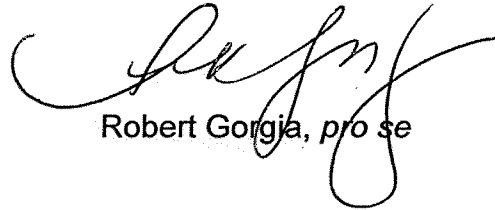
- Gorgia was part-time
- Gorgia was not empowered
- Gorgia did not have the final authority or decision making finality



- Gorgia was not the supervisor of Bloomfield, Martin, Labi or any other person at LBS reported to Senior Management and the Board of Directors
- The policy and procedures were in place to detect possible violations
- The absence of *mens rea* with Gorgia
- The complete and total absence of any motive, financial or otherwise.

The prayer before the Commission and the Honorable Brenda P. Murray is the dismissal of this matter and the allegations against Gorgia before the Securities and Exchange Commission.

Respectfully submitted,



Robert Gorgia, *pro se*

Dated: September 3, 2010