



United States of America
Before the
Securities and Exchange Commission

Securities Exchange Act 1934
Release No. 67748 / August 29, 2012

Administrative Proceeding
File No. 3-14999

In the Matter of

ANGELICA AGUILERA,

Respondent.

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RESPONDENT ANGELICA AGUILERA'S
POST HEARING BRIEF

Respondent Angelica Aguilera, by and through her undersigned attorney, hereby files her Post Hearing Brief and in support thereof further states:

1. The U.S. Securities and Exchange Commission (hereinafter, the SEC) has failed to meet its burden of proof in showing that Respondent Ms. Aguilera (hereinafter, Ms. Aguilera) failed reasonably to supervise Fabrizio Neves and Jose Luna as they allegedly executed a fraudulent interpositioning scheme involving structured note transactions.

2. A cover-up was an integral part of the fraud and would have prevented Ms. Aguilera from discovering and preventing the alleged fraudulent scheme.

3. The SEC asserts in its Order Instituting Administrative Proceedings (OIP) "Neves and Luna....physically altered the original pricing information in the structured note term sheets transmitted to the customers' representatives to conceal their scheme." *OIP* at. 2, para. C. Overview, 6.

4. The SEC further alleged that

...during the time period, Neves concealed his markup scheme by directing Luna to alter the original term sheets from the issuer by either inflating the original price or removing the pricing information altogether in the order to conceal the actual markup charged to the end customer. Neves told Luna what prices to use and approved the alterations before Luna sent them to the customer. Luna used "white out" or electronic "cut and paste" to change or omit the original term sheets' pricing information. *OIP* at 4, Para. E. Fraudulent Markup Scheme, 21.

CONCEALMENT AND COVER UP

5. Altering the structured note term sheets was effective in concealing the fraudulent scheme. Mr. Luna testified that the price changes on the term sheets prevented discovery of the scheme by the end buyer and by Pershing Clearing. Hearing Transcript Record (hereinafter, "R.") at 239.

6. Mr. Luna further testified that on the instructions of Mr. Neves, no one at Latam should know about the altered term sheets to include Ms. Aguilera. Luna Testimony at 244-245.

7. Another cover-up related to the fraud involved Mr. Luna's opening the HAA International account. Mr. Neves wanted the account opened "(s)o he can compensate me (Luna) without the firm knowing." *R.* at 245. This prevented both LatAm and Ms. Aguilera knowing about improper payments made to Mr. Luna by Mr. Neves.

8. Mr. Landers as the compliance consultant stated that "(w)e did not note anything irregular with structured notes..." including after asking to see the prospectus and term sheet. *R.* at 331.

9. Neither trade tickets nor trade confirmations could have revealed anything untoward with the notes trading on the secondary market. In response to questions from the factfinder, Mr. Landers stated

There is no way for us (compliance consultants) or the regulators to know at that particular time (on the secondary market) by looking at the ticket if that particular ticket is a structured note or not.... We did look at trade confirmations. And for us, again, the same is with the regulator. It didn't ring any bells. The reason it didn't ring any bells is because when a trade is done, you would see the description of the security being put on the confirmation and on the statement of the claim.

The issue that had to be dealt with is the price that's done, what price, and is that a fair price because you are dealing with an issue here where there is a trace record. **THERE IS NO MARKET. THERE IS NOTHING BEING QUOTED. IT IS STRICTLY PARTY-TO-PARTY TRANSACTION** (emphasis added).... So if I am looking at the ticket and I look at the confirm, I am looking to see if the description is the same and the price is the same.

If those match, whether it is me, whether it is FINRA, or an examiner from the SEC, the issue that you have to deal with is the evaluation of the note in the secondary market. *R.* at 332-224.

10. FINRA's Mr. Hartofilis stated that he did not know whether the alterations to the term sheets would have prevented a reasonable supervisor from discovering any improprieties. *R.* at 273.

11. Mr. Konig's opinion as to how the scam could have been discovered is tenuous.

The alteration would not bring any supervisory—the operation (sic), per se, would not bring any questioning of a supervisor. But if a supervisor had seen how that note was originally purchased at – which was much below the altered price – and how it traded in these accounts that were—now I know—that were controlled by some people, then the supervisor should have realized that there was something wrong. *R.* at 589.

TRADING SUPERVISION

12. Despite the SEC charging Ms. Aguilera with failing reasonably to supervise because of her limited time with the title of “president,” the SEC fails to provide either clear and convincing evidence or a preponderance of the evidence showing that Ms. Aguilera had a supervisory role in trading. To the contrary, the evidence shows that Ms. Aguilera had no experience in trading supervision and no experience in trading.

13. The Written Supervisory Procedures (WSP's) did not accurately reflect job responsibilities. Ms. Aguilera's position as President and FINOP was primarily administrative and marketing. The WSP's showing her with a secondary responsibility in trading supervision were incorrect.

14. The experienced Mr. Konig, brought into the firm in a supervisory capacity near the end, testified that "(t)he Written Supervisory Procedures of LatAm were very insufficient." *R.* at 568. Mr. Konig also stated that "(w)hen I joined the firm, one of the biggest problems we had was, like I said before, the Written Supervisory Procedures....this was a complete mess." *R.* at 594.

15. When asked by the SEC to describe Ms. Aguilera's role at LatAm, Mr. Konig testified that "...she was the president. And she was handling most of the administration. And she was also acting also as a recruiter, supervisor in recruiting people, and also recruiting other producers." *R.* at 571.

16. Also showing the discrepancies between the WSP job descriptions and the reality or the actual job functions at LatAm, when asked if Ms. Aguilera's experience and her actions indicate that she was active at LatAm as a trading supervisor, Mr. Lashkari answered in the negative. *R.* at 486.

17. Mr. Lashkari had earlier testified that "...I didn't see her communicating anything trade related. I only heard trading-related things from Esdras....And Marcos Konig was the closest thing to a trading kind of guy and Mr. Acosta. That's it." *R.* at 479.

18. Mr. Lashkari's Hearing Testimony reinforced his investigative testimony. In response to questions as to who was responsible for reviewing and approving markups and commissions, Mr. Lashkari had stated that

He (Mr. Vera) said everything went through Angelica. And that did not make absolutely any sense because after I got to know--in the short period of time that I was there, I got to kind of understand who really -- I'm not trying to be mean, but who kind of knows stuff, you know, like really knows stuff, and she doesn't know that stuff. I mean, on paper it looks way better, in my opinion, than her real skills set. I mean, she's a smart person, but I don't think he was telling the truth at all.

She wouldn't know that because conversations that I've had, pure back office conversations, like DTC stuff, NSEC stuff, you know, stuff I can hold a conversation, you kind of tell if you're picking up on it or if you're kind of blank in the mind about it. She wouldn't -- know. That's why I don't -- when he made that comment to me, I don't believe it was truthful, you know.

Investigative Testimony of Darius Lashkari at 88-89.

19. Ms. Aguilera never placed or executed a securities trade in her life. Mr. Konig denied ever seeing Ms. Aguilera placing a securities trade at LatAm. *R.* at 591, Mr. Lashkari denied ever seeing Ms. Aguilera placing a securiteis trade at LatAm. *R.* at 480. Mr. Landers stated that "I don't believe she ever placed trades." *R.* at 309.

20. Regarding trade blotter review, Ms. Aguilera verified that the firm's Chief Compliance Officer, Mr. Esdras Vera would sign off (electronically or in long hand) on the trade blotters, showing that he had performed his duties. In reality, Ms. Aguilera was conscientious about verifying Mr. Vera's trade blotter signatures, because, not having a FINRA review for at least two years (November 2005), the compliance consultant Mr. Landers advised that LatAm was due for the SRO review.

21. Ms. Aguilera's trade blotter review consisted of verifying that Mr. Vera had signed off on the blotters and that the blotters were in proper bound form.

22. Evidence provided by Mr. Vera as to final trade blotter review is confusing at best. Mr. Vera stated that no one else would review the blotters on a daily basis and he didn't think that anyone else would review it later on, or that anyone else had that responsibility. *Investigative Testimony of Esdras Vera* at 21. Later, Mr. Vera testified that Ms. Aguilera would review trade blotters "(o)nly when I would discuss it with her." *Id.* at 29.

23. At Hearing, Mr. Vera stated that "...the blotter was then placed in a binder. I reviewed it. And the binder was there for the president of the firm to approve the blotter....Typically, we would have a conversation in regards to the activity within the blotter. If there was anything out of the normal, I would put it on memo form for the president of the firm." *R.* at 493-494.

24. Mr. Vera's testimony regarding putting abnormalities "...in memo form for the president of the firm," is particularly troubling. On being presented with the Vera compliance memoranda (*Exhibit DX-1*), Mr. Lashkari denied ever seeing the memos at LatAm.

25. He further testified that the eleven (11) memos, supposedly written over the ten month period of December 2008 through September 2009, seemed suspicious as

(t)hey seem repetitive. And they seem on a hunch that I cannot explain that they were all fairly promptly within the same time frame....they look to me like it was done with the same pen, and it was done fairly around the same time." *R.* at 473-477.

26. Mr. Luna did not remember Ms. Aguilera initialing trade tickets and had no knowledge of Ms. Aguilera reviewing trade tickets or trade blotters. *R.* at 246, 250.

MR. ACOSTA AND MR. NEVES CONTROLLED LATAM

27. Evidence presented by witnesses called by the SEC shows that Mr. Maximino Acosta retained and exercised effective control over LatAm and that Mr. Neves held and exercised *de facto* control over the firm.

28. According to Mr. Luna, Mr. Vera was the principal responsible for trade ticket and trade blotter review. *R.* at 250. Mr. Luna further believed Mr. Neves to be biggest shareholder of LatAm. *Id.* at 251.

29. Mr. Luna believed Ms. Aguilera to be the boss of "...vacations. Employee vacations, salary increase, if anything goes wrong in the company. It depends on the situation." *Id.* at 252. Mr. Luna denied that Ms. Aguilera was the boss of trading and believed that the boss of trading was Mr. Neves. *Id.*

30. According to Mr. Landers, the NASD/FINRA was concerned about Ms. Aguilera's lack of experience as a FinOp and in compliance. *R.* at 306-308.

31. Mr. Konig stated that "...one of the things that happened at the firm is that titles were changed and exchanged frequently." *R.* at 571.

32. Mr. Acosta clearly maintained control of the firm and of Ms. Aguilera. The voting trust was a sham and Ms. Aguilera felt highly pressured by Mr. Acosta. According to Mr. Konig, "...there would be decisions that he (Acosta) would make that sometimes made Ms. Aguilera cry." *R.* at 595.

33. Mr. Konig further testified that "...I couldn't understand why Ms. Aguilera acted in such a way at the request of Mr. Neves. And that's when, more or less, I understood that he (Neves) had more control *de facto* than they did." *R.* at 597.

34. Regarding Ms. Konig's opinion of Ms. Aguilera role as a "rainmaker" while president, he testified that she, together with Mr. Acosta and Mr. Konig, was effective in resolving a serious issue with Pershing Clearing. *R.* at 603. Mr. Konig also admitted that Ms. Aguilera was influential and that she performed well as a president in soliciting Biscaine Capital Group, an organization currently with \$800 million under management. *R.* at 601-602.

CONCLUSION

35. The SEC has not overcome its burden in showing whether the alleged fraud could have been discovered or prevented by Ms. Aguilera in light of the evidence showing intentional concealment and cover-up of the fraud.

36. Here, in alleging failure reasonably to supervise, the SEC has neither clearly and convincingly, nor by a preponderance of the evidence, shown that Ms. Aguilera was *in reality* a supervisor responsible for the trading actions of Mr. Neves and Mr. Luna. In addition, the SEC has failed to show *who* ultimately *was* in charge of Neves and Luna.

WHEREFORE, Respondent Angelica Aguilera respectfully requests that the Court find in her favor and that this proceeding be dismissed with respect to Ms. Aguilera.

Respondent requests that allegations of failure to reasonably supervise be dismissed as possible fraud and wrongdoing by Neves and Luna contained as part of the fraud the concealment and cover up of facts by Neves, Luna and others that would prevent discovery. Respondent further requests that she be awarded her costs and fees associated with the defense of this matter and for whatever other relief that the Court finds just and equitable.

[REDACTED]

[REDACTED]

[REDACTED]