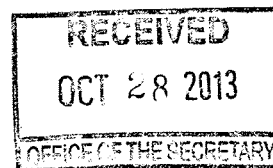


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE NO. 3-15124

DAVID F. BANDIMERE and :
JOHN O. YOUNG :
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PETITION FOR REVIEW OF RESPONDENT DAVID F. BANDIMERE

Respondent David F. Bandimere, through his attorneys, Davis Graham & Stubbs LLP, pursuant to Rules 410 and 411 of the Commission's Rules of Practice, petitions the Commission for review of the Initial Decision entered herein dated October 8, 2013, and in support thereof, states as follows:

1. The Initial Decision herein as was served upon Respondent by facsimile on October 9, 2013. By its terms, the Initial Decision provides that a Petition for Review may be filed within 21 days after service, or, October 30, 2013.

2. Respondent Bandimere has suffered legal harm from, and is a person adversely affected and aggrieved by, the Initial Decision, entitling him to seek judicial review pursuant to 5 U.S.C. § 702, and, therefore, has standing to file this Petition for Review with the Commission.

3. Respondent Bandimere objects to and excepts from the following Findings of Fact and Conclusions of Law, and raises the following additional matters in support of this Petition for Review:

a. Mr. Bandimere was not given adequate notice of the facts and law on which the violations found in the Initial Decision were based, thereby depriving him of his

rights to notice under the Commission's Rules of Practice (including specifically Rule 200(b)(3)), the Administrative Procedure Act, and due process of law, and a fair opportunity to defend himself, all of which constitute prejudicial error in the conduct of the proceeding.

- b. The findings that Mr. Bandimere violated, and willfully violated, Section 5 of the Securities Act by selling unregistered securities were not supported by a preponderance of evidence in the record taken as a whole, were clearly erroneous, and were based upon improper legal standards relating to Mr. Bandimere's state of mind and his purpose in conducting the activities found to be in violation of the law.
- c. The finding that Mr. Bandimere violated, and willfully violated, Section 15(a) of the Securities Exchange Act by acting as a broker without registration in selling or offering securities was not supported by a preponderance of evidence in the record taken as a whole, and were clearly erroneous. Mr. Bandimere was not engaged in the business of effecting transactions in securities for the account of others, and did not act with a state of mind that constituted willful conduct.
- d. The findings that Mr. Bandimere violated Section 17(a) of the Securities Act, and Section 10(b) of the Securities Exchange Act, and Rule 10b-5 thereunder, were not supported by a preponderance of evidence in the record taken as a whole, were clearly erroneous, and were based upon improper legal standards. There was no evidence of any statements made by Mr. Bandimere that were rendered misleading by omissions of material fact. The materiality of purported misrepresentations was based on a speculative assessment of what investors

would want to know, which is an improper standard for evaluating materiality. Findings of *scienter* were based on matters neither alleged nor identified in the Order Instituting Proceedings, and were unsupported by a preponderance of evidence and were clearly erroneous. Further, there was no evidence in the record that could support a finding that Mr. Bandimere acted negligently.

- e. Mr. Bandimere proved his affirmative defense that he was deprived of equal protection of the laws by a preponderance of evidence in the record taken as a whole, and the rejection of that defense was based upon improper legal standards, and was arbitrary and capricious. Mr. Bandimere showed that he was singled out by having the claims against him brought administratively to deprive him of procedural rights that would have assisted his defense, that otherwise would have been available to him.
- f. The imposition of a cease and desist order upon Mr. Bandimere is arbitrary, capricious, inconsistent with statutory and other legal standards, and not supported by a preponderance of evidence in the record taken as a whole. Mr. Bandimere is 68 years old and has never previously been involved in securities transactions (except as an investor) and who will never in the future be involved with securities except as an investor. Nor has Mr. Bandimere ever been accused of violating, or found to have violated, the law, other than in this matter.
- g. The imposition of a civil penalty upon Mr. Bandimere is arbitrary, capricious, inconsistent with statutory and other legal standards, and not supported by a preponderance of evidence in the record taken as a whole. Mr. Bandimere lost approximately \$1 million in the fraudulent schemes at issue. Further deterrence,

or punishment, is unnecessary. The findings that he acted with *scienter* were not supported by the evidence, and were based on facts about which Mr. Bandimere was not given notice, thereby depriving him of a reasonable opportunity to contest those facts.

- h. The imposition of a bar from associating with a broker/dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization upon Mr. Bandimere is arbitrary, capricious, inconsistent with statutory and other legal standards, and not supported by a preponderance of evidence in the record taken as a whole.
- i. The finding that Mr. Bandimere should disgorge \$638,056.33, plus interest, representing the proceeds of the purported fees he received (after reduction for certain amounts that he paid to investors) is arbitrary, capricious, inconsistent with established legal standards, and not supported by a preponderance of evidence in the record taken as a whole. The evidence does not support that this (or any other) amount constituted a gain to Mr. Bandimere, or that the payments flowed directly from any violation of the law.
- j. Mr. Bandimere was deprived of his rights under the Commission's Rules of Practice, the Administrative Procedure Act, and due process of law to have documents produced that were relevant to his defense, and to have irrelevant evidence excluded at the hearing. Mr. Bandimere's efforts to obtain documents relevant to his defense were refused in a manner that was arbitrary, capricious and not in accordance with law, including the sustaining of claims of privilege asserted by the Division of Enforcement without a reasonable basis, and

summarily over-ruling evidentiary objections with respect to evidence that had no relevance to any issue.

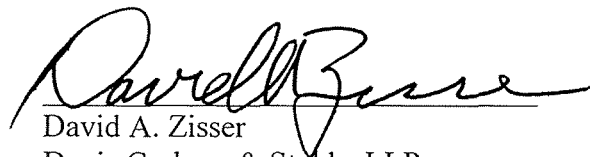
k. The Initial Decision found that Mr. Bandimere violated standards of conduct as to which Mr. Bandimere was not given proper notice, in violation of his rights under the Administrative Procedure Act and due process of law.

4. As a result of the unsupported Findings and Conclusions in the Initial Decision referred to above, the improper application of statutory standards, and the deprivation of Mr. Bandimere' rights under the federal securities laws, the Administrative Procedure Act, and the Constitution of the United States, Mr. Bandimere has made a reasonable showing that the Initial Decision embodies a finding or conclusion of material fact which is not supported by a preponderance of evidence in the record taken as a whole, and therefore, is clearly erroneous, and legal conclusions which are erroneous. Moreover, the determinations of law and policy embodied in the Initial Decision are important, and should be reviewed by the Commission.

Dated this 25th day of October, 2013.

Respectfully submitted:

DAVIS GRAHAM & STUBBS LLP



David A. Zisser
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202
(303) 892-9400 - Main
(303) 892-7256 - Direct
(303) 893-1379 - Fax
Email: david.zisser@dgsllaw.com

ATTORNEYS FOR DAVID F. BANDIMERE