

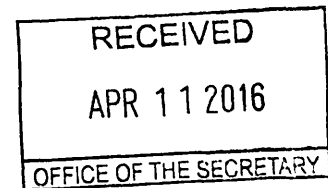
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15215

In the Matter of

JAMES S. TAGLIAFERRI,

Respondent.



DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S
RULE 111(h) MOTION TO CORRECT
MANIFEST ERRORS OF FACT

The Division of Enforcement ("Division") respectfully submits this Memorandum of Law in Opposition to the Rule of Practice 111(h) Motion of Respondent James Tagliaferri ("Tagliaferri") to Correct Manifest Errors of Fact in the Court's Initial Decision, dated March 23, 2016 (the "Initial Decision").

Preliminary Statement

Tagliaferri's Motion should be denied. He identifies no specific statement of fact within the Initial Decision that he claims is a "patent misstatement of fact." 17 C.F.R. § 201.111(h). Instead, he merely argues with the Court's legal conclusions drawn from the undisputed facts supported by the evidence adduced, reargues points made in his submissions, or offers new and unsubstantiated factual arguments to contest the Court's findings. Nothing he offers satisfies Rule of Practice 111(h)'s standards.

ARGUMENT

To prevail on a Motion to correct manifest errors of fact, a Respondent must “contest a patent misstatement of fact in the initial decision.” In the Matter of Joseph P. Doxey and William J. Daniels, Admin. Proc. File No. 3-15619, 2014 WL 11034300, at *1 (Order Denying Motion to Correct, dated June 12, 2014) (quoting 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)). Tagliaferri identifies no statement of fact in the Initial Decision, let alone any that constitutes a “patent misstatement.”

The following addresses each of the alleged misstatements identified by Tagliaferri in the order in which his motion raises them:

(1) *“The conversion of the proceeding into a ‘follow-on proceeding’ rendered my arguments as to the allegations made in the ‘OIP’ moot.”* (Motion at 1.)

This statement cannot support Tagliaferri’s Motion because it appears nowhere in the Initial Decision. In fact, the Court explicitly disagreed with Tagliaferri’s claim that the Commission’s decision to convert this proceeding into a follow-on would render any of his arguments moot: “[T]his [the Commission’s amended OIP] did not deprive him of the opportunity to present evidence and arguments to counter the OIP’s allegations and the sanctions sought by the Division.” (Initial Decision at 4.) Thus, Tagliaferri may claim on appeal that his arguments were given insufficient credence, but he identifies no statement by the Court that constituted a patent misstatement about the effect of the amendment to the OIP.

(2)(a) *“Rule of Practice 230(d) states the Division must make its investigative file available to the Respondent for inspection and copying NO LATER than 7 days after service of the ‘OIP.’ The Division failed to do so. It neither offered the file, nor did it respond to my demands for access to the file.”* (Motion at 2.)

Apart from Tagliaferri's recitation of the requirements of Rule 230, this statement does not appear anywhere in the Initial Decision. Tagliaferri seems simply to be rearguing his contention that the Division ignored its obligations under Rule 230 to make its investigative file available. In doing so, he ignores the factual record. First, by Order, dated June 10, 2015, the Court ruled that it would deem the OIP served on June 1, 2015 (Order Following Prehearing Conference, dated June 10, 2015), triggering the Division's obligations to make its investigative file available 7 days thereafter.¹ Thereafter, by letter dated June 4, 2015, the Division invited Tagliaferri to its offices to inspect its files, and renewed that invitation by letter dated June 5, 2015. (Initial Decision at 4.) At no time during the following month prior to Tagliaferri's surrender date did he indicate that he wished to review the documents at the Division's offices despite the .pdf conversion issues the Division advised him it was having with the production.²

(2)(b) *"The Court states Respondent did not disclose he was confined to a wheelchair and subject to home confinement."* (Motion at 4.)

The Initial Decision does not contain this statement of fact. However, it does note that Tagliaferri's June 4 "email to the Division rejecting its offer to review the investigative file at its New York office did not mention these issues [that he was confined to a wheelchair and subject to a bail condition of home confinement]." (Initial Decision at 6.) That statement is entirely correct, as the subject email itself confirms. (Declaration of Nancy A. Brown ("Brown Decl."), executed November 19, 2015, Ex. D.) And the Court's conclusion that Tagliaferri was not precluded from

¹ The Initial OIP was instituted on February 21, 2013. On February 28, 2013, the Division sent Tagliaferri its first Rule 230 letter. Prior to the Division's providing its file, however, the United States Attorney's Office moved to intervene and for a stay of all proceedings in this matter. That stay was granted by Order dated March 12, 2013.

² Nor do Tagliaferri's new factual claims satisfy Rule 111(h)'s standard. In any event, emails retained by the Division belie his contention that the "Division provided no information" (Motion at 3) regarding the delays it was encountering in providing him with its files in his preferred format.

traveling to the Division's offices by the Order of home confinement (Initial Decision at 6) is also supported by the record evidence.

(2)(c) *"Respondent was not given the opportunity to pay for the cost of copying the file, or any part of it."* (Motion at 4.)

The Initial Decision includes no statements that would be rendered incorrect by this contention. Rather, the Initial Decision simply notes that Tagliaferri "has not at any point indicated that he would pay the cost for the Division to produce the file in hard copy," a statement that Tagliaferri does not contest. (Initial Decision at 5.) As the record evidences, the Division advised Tagliaferri that it could not assume the cost of copying the remaining documents for him because the cost was "prohibitive" and he did not offer to pay that or any portion of that cost in response. (Brown Decl., Ex. I.) Indeed, given Tagliaferri's claims that he could not afford to make sufficient copies of his submissions for the Secretary's Office (see Tagliaferri's December 22, 2015 letter enclosing his Opposition to the Division of Enforcement's Supplemental Brief), it seems implausible that he would have volunteered to pay for copies had the Division explicitly offered him that option.

(3) *"In its March 23, 2016 opinion, this Court stated: 'Tagliaferri was given the opportunity to identify specific evidence creating genuine issues of material fact that could not be resolved without a hearing.'"* (Motion at 5.)

While this statement does appear in the Initial Decision (id. at 6), it is not a statement of fact, but of the matter's procedural history. And in attempting to show that it is a patent misstatement, Tagliaferri merely refers the Court back to his original submissions to identify the alleged specific evidence creating genuine issues of material fact that had to be resolved at a hearing. However, Tagliaferri is really only arguing with the Court's conclusion that Tagliaferri's arguments were immaterial (e.g., Initial Decision at 11) or foreclosed under collateral estoppel by the findings of the district court or jury in his criminal action (id. at 11 -12) or with the Court's

decision that Tagliaferri had to do more than simply name witnesses who he would call at a hearing. (Initial Decision at 6.)³

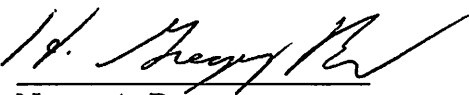
CONCLUSION

For all the foregoing reasons, Respondent's Motion to Correct Manifest Errors of Fact should be denied.

Dated: April 8, 2016
New York, New York

Respectfully submitted,

DIVISION OF ENFORCEMENT

By: 
Nancy A. Brown
H. Gregory Baker

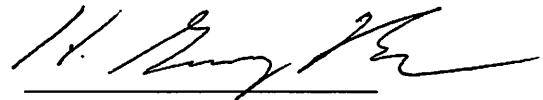
Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, NY 10281
(212) 336-1023 (Brown)
(212) 336-9147 (Baker)

³ The Court also properly noted that Tagliaferri had not attempted to satisfy the requisites for asserting a reliance on counsel defense. (Initial Decision at 12.)

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Division's Opposition to Respondent's Motion to Correct Manifest Errors of Fact to be served on Respondent James Tagliaferri this 8th day of April by sending him a copy of the same to him by United States Postal Service at the following address:

James S. Tagliaferri
Reg. No. [REDACTED]
FCI Beckley
Federal Correctional Institution, Satellite Camp
PO Box 350
Beaver, WV 25813



H. Gregory Baker



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE

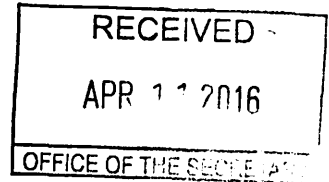
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NANCY A. BROWN
TELEPHONE: (212) 336-1023
EMAIL: brownn@sec.gov

April 8, 2016

Via Email and UPS Overnight

Hon. Cameron Elliot
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557



Re: In the Matter of James S. Tagliaferri;
Admin. Proc. File No. 3-15215

Dear Judge Elliot:

We represent the Division of Enforcement in this matter.

Enclosed are courtesy copies of the Division's Opposition to Respondent's Motion to Clarify Manifest Errors of Fact.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Gregory Baker".

H. Gregory Baker

cc: James S. Tagliaferri, Respondent (via USPS Express Mail)
Secretary's Office

Enclosure