UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15448

In the Matter of

GARY A. COLLYARD,

Respondent.

Respondent Gary A. Collyard's Response in Opposition to SEC Division of Enforcement's Motion For Summary Disposition

Preliminary Legal Statement

The SEC Division of Enforcement (the "Division") has asserted this matter falls under both subsection (i) and subsection (ii) of Exchange Act Section 15(b)(6)(A). This matter is only governed by subsection (i) thereof, since subsection (ii) requires Respondent to have been "associated with a broker or dealer." Respondent has never been associated with a broker or dealer in any manner or role, and accordingly there lacks jurisdiction in this proceeding to consider anything regarding Respondent relating to subsection (ii).

RESPONDENT'S OPPOSITION TO THE DIVISION'S MOTION

Respondent respectfully submits hereby that the sanction against Respondent requested by the SEC Division of Enforcement (the "Division") is inappropriate and not in the public interest for the following reasons:

A. There has never been a factual hearing or any other actual determination or finding that Respondent committed a violation for which the requested sanction should apply.

The Division repeatedly refers to Respondent's conduct as "egregious," "acting

knowingly," and similar allegations, and further that Respondent " has not acknowledged the wrongful nature of his conduct." Yet there has never been any factual judicial determination of Respondent's conduct in either the criminal or related civil proceeding The Division unfairly and without factual basis makes these broad assertions which have never been considered or determined in a judicial hearing.

In this administrative proceeding, it is important and even essential that in order for the requested sanction to be in the public interest, it should only be imposed based on as much of a factual determination as can be made in this proceeding in light of Respondent's total retraction and repudiation of his ill-advised and unwarranted plea agreement.

Respondent acted only as a legitimate "finder" in his role assisting Bixby to raise capital. (See accompanying affidavits of Respondent and his legal counsel.) Respondent never had any official, executive or employee, capacity with Bixby, nor did Respondent have any involvement whatsoever in any of the operations or business of Bixby. A factual determination of his role would show conclusively that his activities and capacity were only those of a legitimate "finder", and thus the SEC's case is without jurisdiction.

In the Minnesota civil action (No. 11-CV-3656), the SEC asserted the same charges against six other defendants, primarily accusing them, as with the Respondent, of making sales of Bixby securities without a brokerage license. All of these defendants asserted in their respective Answers to the SEC that they acted as legitimate "finders," and all were represented by attorneys experienced in securities law matters.

B. Respondent has repeatedly repudiated his ill-advised and unwarranted plea agreement initially taken in the District of Minnesota criminal action due to (i) inadequate legal representation, and (ii) ill health at the time the plea was mistakenly made.

(i) As shown by the accompanying affidavits of Respondent and his legal counsel, Respondent's plea agreement was entered into without adequate legal representation. His initial attorney was experienced in tax law matters, but was inadequate to advise and represent Respondent relating to the securities law allegations, particularly in regard to the time-honored and legitimate concept of participation as a "finder" not requiring a brokerage license. Moreover, Respondent's former attorney should not have allowed his client to enter into such a serious and damaging plea when he was ill and undergoing and recovering from sensitive and serious eye surgery.

(ii) Respondent entered into the plea agreement while very ill and just beginning to and still recovering from surgery to correct a serious and debilitating eye condition. He was in no condition to evaluate the seriousness and consequences of the plea agreement, and was not capable of understanding the gravity and permanent nature of the plea. Exhibit C of the Division's Memorandum herein clearly evidences his poor condition at the time they were pressing him to comply with the plea agreement:

> "Mr. Pierce sent Defendant home when he saw Defendant's bruised and swollen condition from surgery." (Page 13 of Exhibit C).
>
> While being driven to the courthouse for one of his plea hearings, "Defendant was quiet, **in pain**, and seemed to be sleeping." (Page 14 of Exhibit C. Emphasis added.)
>
> At the courthouse, "Defendant was sitting on a bench, **appearing very tired**." (Page 15 of Exhibit C. Emphasis added.)
>
> A forensic toxicologist submitted an opinion regarding Respondent that "an individual like Defendant, who took hydrocodone-acetaminophen tablets at Defendant's prescribed dose**, would experience impaired judgment.** (Page 17 of Exhibit C. Emphasis added.)

Respondent was sent home from an important business meeting because of his condition,

he was in pain and sleeping while going to one of the plea hearings, he appeared very tired at the courthouse, and an expert stated the drugs he took for his post-surgery condition would cause him to experience impaired judgment. These matters are clearly set forth by the Division in its Memorandum. Yet in spite of this condition of Respondent at the time, they forced him to participate in these plea hearings. The smallest amount of justice or fairness would have mandated that these plea hearings not be conducted until Respondent had recovered from his surgery and was no longer experiencing impaired judgment from his prescribed medical drugs.

C. Respondent was legitimately acting as a "finder" regarding his Bixby activities, which is a very important function for capital formation of start-up and early stage enterprises.

As set forth in the accompanying affidavits, Respondent satisfied and adhered to the qualifications of being a legitimate "finder." The concept and role of a finder in capital formation is very important and sometimes essential especially for start-up or early stage companies. It is not in the public interest to hinder or impede the activities of legitimate finders like Respondent who are not involved in the actual offering or presentations related to selling securities.

CONCLUSION

What would really be "in the public interest" is to have a factual determination regarding Respondent's role in this matter, which has **never** occurred. Such an evidentiary hearing should have occurred and should have been demanded by Respondent's former attorney. Respondent's defense of acting as a legitimate finder needed to be heard and considered in a fair and objective court proceeding, and the unwarranted plea agreement should have never been negotiated and considered when Respondent was ill and recovering from his surgery.

The sentence Respondent is now serving is grossly unjust and beyond the pale when compared to other similar criminal matters. It is not in the public interest to add insult to injury in this lengthy matter which has not seen the light of day of evidentiary fairness.

Dated: January 9, 2014

Robert O. Knutson, Attorney for Respondent

[redacted]

Appendix A – Affidavit of Robert O. Knutson
Appendix B – Affidavit of Gary A. Collyard

Appendix A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15448

In the Matter of

GARY A. COLLYARD,

Respondent.

AFFIDAVIT OF ROBERT O. KNUTSON IN OPPOSITION TO MOTION OF SECURITIES AND EXCHANGE COMMISSION

After being first duly sworn, affiant swears to and states the following:

1. That affiant is the attorney for Respondent, and also has represented Respondent in the Federal Minnesota District Court civil action brought by the SEC against Respondent and other defendants. (No. 11-CV-3656).

2. That in affiant's representation of Respondent, affiant spent extensive hours in many meetings with Respondent relating to all of Respondent's activities and conduct regarding his role as a finder in assisting Bixby with raising capital.

3. Based thereon, affiant believes strongly that Respondent was never involved in any measure in the "sale" of securities for Bixby which would require a brokerage license, but rather Respondent limited all his activities to those of a legitimate "finder" not requiring a brokerage affiliation and thus outside the jurisdiction of the federal securities laws.

4. That the SEC asserted many positive statements in their civil complaint in Minnesota

District Court, without any factual basis for their assertions.

5. That affiant discussed and questioned Respondent regarding each and every person that Respondent introduced to Bixby executives for possible investment, and affiant is convinced thereby that Respondent only introduced accredited qualified investors to Bixby executives, that Respondent did not make statements or representations regarding Bixby or an investment therein to persons introduced by Respondent, and Respondent did not otherwise in any manner solicit investments from persons introduced by Respondent to Bixby. Respondent asserted to affiant that he did not provide offering materials to persons introduced by him to Bixby, but rather introduced the prospective investors to Bixby executives who in turn provided all offering documents and presentations to the prospective investors.

6. That none of the investors introduced by Respondent to Bixby ever complained to affiant that Respondent had acted in any role other than a "finder" regarding their Bixby investments.

7. Affiant strongly believes that Respondent had inadequate and limited legal representation relating to his plea agreement in the criminal proceeding, and that his former attorney, although knowledgeable in tax matters, had no experience in securities law matters, and in particular was not aware of the concept of being a legitimate non-broker "finder."

8. Affiant does not believe that any attorney having practical experience in securities law and related stock offerings and concepts thereof, such as introductions of investors in the role of a "finder," would have advised Respondent to plead guilty as occurred. Moreover, Respondent informed affiant that his former attorney even told Respondent that he would discontinue representing Respondent unless he signed the plea agreement.

9. That affiant first became involved in representing Respondent months after Respondent had signed the plea agreement in the criminal proceeding, and at that time Respondent was still suffering from his eye surgery operations and after-effects thereof, and he was not very

coherent regarding our initial discussions. Accordingly, affiant is convinced that Respondent was in ill health at the time he signed the plea agreement, and should not have been permitted to enter into such a serious and damaging plea at that time.

10. That affiant believes he is particularly capable and qualified to make the foregoing ; assertions due to affiant's academic and specialized extensive law practice qualifications including the following:

i. Graduation with honors and a Senior Law Review Editor at the University of Minnesota Law School;

ii. Legal practice for years with the largest Minneapolis lawfirm, Dorsey & Whitney, where affiant practiced in the securities law group of this lawfirm; and

iii. More than thirty years specialized practice as a securities and corporate attorney, including representation of, and preparation of offering circulars, prospectuses, memorandums and other offering documents for, for at least 150 different clients.

11. That during the past decades of extensive securities law practice, affiant has advised many companies and persons regarding the role of a legitimate "finder" and the elements of satisfying this role to assist with introducing prospective accredited investors. That in recent years, it has become almost impossible for early stage entrepreneurs to raise money as in the past, especially since the curtailment of Regulation A and other exemptive or specialized offerings. This was officially recognized by Congress in the recent Jobs Act. In any event, it is important that start-up and early-stage companies are able to obtain prospective investor introductions through the time-honored concept of "finders." The Respondent and other accused finders in the civil proceeding should not be held liable for actions of the Bixby executives which they had no involvement with. It simply is not

in the public interest to restrain the Respondent or anyone else from engaging in legitimate "finder" activities.

12. That affiant further believes strongly that the criminal sentence imposed on Respondent is extremely unwarranted and totally out of proportion to any activities of Respondent even viewed against him in the worst light; and that the Division and the sentencing judge have unfairly "piled on" and conducted "overkill" regarding the Respondent, especially due to the fact that Respondent has never been an officer or employee of Bixby and in no way has participated in any actual operations of Bixby.

13. That over the years, affiant has observed many sentences for convictions of illegal activities and crimes far more serious (such as brutal manslaughter and other serious assault injuries) than the allegations against Respondent and resulting in sentences much shorter than that of Respondent. Just recently in Pennsylvania, for example, persons were convicted of serious terroristic crimes, and were given no more a sentence than Respondent. There simply is no reason or cause in the public interest to sanction Respondent any further than the unwarranted and crushing sentence he has already received.

Further affiant sayeth not.

Robert O. Knutson

Subscribed and sworn to before me
this 10th day of January, 2014.

Notary Public

TERESA R. YERHART
Notary Public
Minnesota
My Commission Expires January 31, 2014

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States Securities
And Exchange Commission,

Plaintiff,

v.

Gary A. Collyard, *et al*,

Defendants.

Civil No. 11-cv-3656 JNE/JJK

AFFIDAVIT OF GARY A. COLLYARD IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND THE COMPLAINT

After being first duly sworn, affiant swears to and states the following:

1. That affiant is a defendant in this proceeding.

2. That affiant has read plaintiff's proposed Amended Complaint in this proceeding and affiant, for himself and on behalf of Collyard Group LLC ("Collyard defendants") strongly and absolutely refutes and denies the amended portions of the Complaint as follows:

i) Paragraph 5 of the Amended Complaint states that affiant "sold Bixby securities" and solicited investors for such securities. That assertion is completely false, since Collyard defendants only acted as a "finder" to introduce prospective investors to Bixby officers who made the actual solicitations and sales of securities.

ii) Paragraph 34 of the Amended Complaint states that Collyard defendants continued to raise funds and communicated with prospective investors to induce them to provide funds to Bixby. This is totally false, since in all cases affiant acted only in the capacity of a "finder" to introduce prospective investors to Bixby.

iii) Paragraph 34 of the Amended Complaint also states that Collyard defendants " received investor funds." That is absolutely untrue, since no investor funds were handled or deposited in any account by Collyard defendants. On one occasion an investor check was sent to Collyard, but this was not requested by or even known to affiant until the check to Bixby arrived in the mail. Immediately upon receiving this check, affiant contacted an officer of Bixby who came to affiant's office and took this check to Bixby.

iv) Paragraph 34 of the Amended Complaint further states that Collyard defendants "knowingly solicited unqualified investors." That is absolutely false. Affiant never solicited any investors in its role as a finder, and further affiant introduced only qualified or accredited investors to Bixby.

Affiant does not understand how plaintiff can make such positive statements without asserting any factual basis whatsoever for this statement.

v) Paragraph 40 of the Amended Complaint states that Collyard defendants knowingly made misrepresentations and omissions to investors to induce them to invest funds in Bixby regarding its coal gasification business and other matters. This assertion of plaintiff is false in all respects, since affiant only acted as a finder in all transactions whereby affiant introduced prospective investors to Bixby. Affiant did not make any such misrepresentations or omissions as alleged by plaintiff. Again, affiant does not understand how plaintiff can make such positive assertions without citing any factual basis to support these unfounded allegations.

vi) Paragraph 41 of the Amended Complaint asserts that affiant made misrepresentations and omissions to a particular prospective investor relating to a $240,000 investment. That is absolutely false. The only $240,000 investment that affiant is aware of came from Ward Johnson, and Collyard defendants role in this Bixby investment was solely to introduce Mr.

Johnson to Bixby. And as already referred to in affiant's response to paragraph 34 of the Amended Complaint, the check for this investment was sent to Collyard defendants without affiant's knowledge until it arrived in the mail; however, the check was issued to Bixby and as soon as received in the mail by affiant, affiant notified a Bixby officer to come and pick it up.

vii) Paragraph 42 of the Amended Complaint relates to plaintiff's assertion that Collyard defendants were involved in transactions involving approximately $4 million. That assertion is totally false, since in their role as a finder, Collyard defendants only introduced to Bixby investors who invested in the aggregate approximately $1.6 million. Again, no factual basis or data is contained in the Amended Complaint regarding Plaintiff's sweeping and unfounded assertions that Collyard defendants were involved in transactions of approximately $4 million, an amount more than twice the investments for which affiant acted as a fiinder.

viii) Paragraph 43 of the Amended Complaint alleges that Collyard defendants "induced investors to invest in Bixby" and received income in the form of "commissions." That is absolutely false, since Collyard defendants only received legitimate finder's fees and not broker's commissions, and further did not induce any investments in Bixby but rather only introduced prospective investors to Bixby.

2. That regarding paragraph 44 of the Amended Complaint, affiant realizes that his guilty plea of February 27, 2012 of a count of conspiracy in the Bixby criminal proceeding contains contradictions to affiant's assertions in this Affidavit and other documents in this civil proceeding. Nonetheless, affiant strongly refutes, denies and withdraws all admissions of affiant contained in the plea agreement regarding the conspiracy admission, supported as follows:

i) Affiant was incompetent to enter into such a plea agreement at the time in February 2012 for the following reasons:

a) For a period of weeks before this plea agreement, affiant was severely sick and incoherent from a debilitating and painful vision impairment condition which required operative surgery in both eyes in order to preclude worsening of vision and even future blindness, which was explained in affiant's earlier affidavit in this proceeding relating to the motion to set aside the entry of default against Collyard defendants. The surgery was performed during the plea agreement time period, and affiant simply was not competent or coherent to understand the nature, seriousness or ramifications of signing the plea agreement. Affiant also understood and thought the plea agreement meant there would be no further claims or actions against affiant in any federal proceedings including this civil case.

b) At the time of this plea agreement, affiant was extremely apprehensive and scared both from his post-operative surgery condition and from the pressure and high anxiety and stresses of the Bixby proceedings. Affiant was not coherent or competent to evaluate or understand the admissions he was making in the plea agreement, and these admissions are now denied totally by affiant.

An example of affiant's condition at the time is that a week or so after the plea agreement, affiant met with certain federal agents to assist in their obtaining information on Bixby matters. Affiant couldn't even drive to the interview due to his physical condition. During the interview, affiant was sent home due to his incoherent post-surgery condition. Agent Robert Strande even stated that affiant was still "loopey" from the surgery.

ii) Affiant only understood that even his involvement as a "finder" somehow involved him

in a "conspiracy" with Bixby relating to investors introduced by affiant. It was never explained to affiant by his attorney or anyone else that being a finder did not subject him to conspiring with Bixby officers in the sale of Bixby securities. If affiant had been aware of this, he never would have entered into the plea agreement.

iii) Affiant was pressured strongly by his former attorney to enter into the plea agreement even though affiant did not understand the serious future effects of doing so. Affiant's former attorney even told affiant he would discontinue representing affiant if he did not sign the plea agreement. Affiant now strongly believes that his former attorney, although knowledgeable in tax matters, has no or negligible experience in securities law matters, and was especially not aware of the concept of a person acting as a non-broker finder incident to introducing investors. Accordingly, affiant does not believe that he had adequate or competent legal representation relating to his entering into the plea agreement.

iv) As for the tax fraud admissions in the plea agreement, nothing in the financial statement provided by affiant were intentionally misrepresented, and affiant believes that the financial statements were accurate at the time they were made, but the terrible collapse of the national economy at the time and especially the real estate development business in which affiant was involved, seriously affected the accuracy of affiant's financial statements. These financial statements were made based on present values of development performance contracts which became valueless in the economic collapse, but affiant again states they were materially accurate at the time they were submitted before the economic collapse.

v) Affiant is in the process of engaging an experienced criminal attorney for the purpose of reversing his February 2012 plea agreement, and has contacted and met with William

Mauzy to represent him for that purpose. Affiant sincerely and firmly intends to attempt to have his plea agreement in the criminal Bixby proceeding reversed or set aside, since affiant was not competent or properly represented to enter into such a plea agreement at the time, and further affiant had a mistaken understanding of the concept of conspiracy.

Further affiant sayeth not.

/S/ Gary A. Collyard
Gary A. Collyard

Subscribed and sworn to before me
this 6 day of August, 2012.

/S/ Notary Public