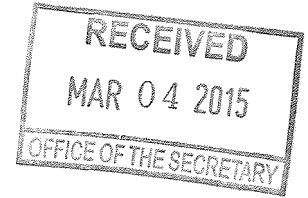


HARD COPY

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**



In the Matter of

DONALD J. ANTHONY, JR.,
FRANK H. CHIAPPONE,
RICHARD D. FELDMANN,
WILLIAM P. GAMELLO,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER,
PHILIP S. RABINOVICH, and
RYAN C. ROGERS,

Respondents.

**ADMINISTRATIVE PROCEEDING
File No. 3-15514**

**CHIAPPONE AFFIDAVIT SUPPORTING MOTION TO CORRECT MANIFEST ERROR OF
FACT AND TO SUBMIT ADDITIONAL EVIDENCE.**

Frank Chiappone, being duly sworn deposes and states as follows:

1. I am a Respondent in the above captioned proceeding. This is a motion to correct a mathematical error in the Initial Decision of the hearing officer made pursuant to SEC Rule 410, coupled with a Motion to Submit Additional Evidence in connection with the motion to correct, made pursuant to SEC Rule 452. The additional evidence offered relates to the mathematical error referenced herein.

2. This Motion deals solely with that portion of the Hearing Officer's decision concerning the amount of disgorgement of commissions to be made by Respondent, as set forth in the initial decision of Honorable Brenda P. Murray, Chief Administrative Law Judge at pages 115 and 117 of such decision.

3. In her Initial Decision, Judge Murray determined that all Respondents, except Gamello, would be ordered to disgorge all commissions earned on sales made after February 1, 2008. She computed the amount to be disgorged by me as the sum of \$103,800 (see Initial Decision, page 115). Judge Murray wrote:

“I find that all Selling Respondents, except Gamello, had the requisite scienter to violate the antifraud provisions by at least February 1, 2008. This date is almost a month after Selling Respondents learned about the Four Funds’ junion note default and that Smith had misled them regarding Four Funds’ diversification, investments in alseT, and conflicts. Selling Respondents, except Gamello, are ordered to *disgorge all commissions earned on sales after that date*” (Initial Decision, page 115) (emphasis supplied).

4. Judge Murray’s computation was based upon Division Exhibit 2, Exhibit 4d (as attached to Division Exhibit 2). This exhibit, introduced by the Commission, shows the amounts of commissions paid to me on account of sales of private placements made by me, and the dates those commissions were paid to me.

5. The error committed by Judge Murray was that she computed the amount to be disgorged by me based on all commissions paid to me on or after February 1, 2008 which is inconsistent with her decision that all selling respondents should disgorge commissions earned on sales made after February 1, 2008. That is, the use of Exhibit 4d to Div. Exhibit 2 to compute the disgorgement amount is not correct, because Exhibit 4d to Exhibit 2 shows commissions that were paid to me after February 1, 2008; not commissions earned with respect to sales made after February 1, 2008.

6. The reason that reliance on Exhibit 4d to Div. Exhibit 2 results in an incorrect computation is that several of the commissions paid after February 1, 2008 are what is known in the trade as “trailing commissions.” Trailing commissions are commissions paid on sales or product, other than the initial commission paid at the time of sale.

7. This inconsistency has a substantial effect, as it overstates the disgorgement amount by \$40,947.00.

8. Attached hereto as Exhibit "A" is a copy of the relevant page from Exhibit 4b to Exhibit 2 setting forth commissions paid to me between February 1, 2008 and the date I ceased working for McGinn Smith & Co. Attached hereto as Exhibit "B" is the same page, in which I have circled the specific commissions that should not have been included in the calculation of the disgorgement amount, because they related to sales made prior to February 1, 2008, and are therefore not subject to disgorgement under Judge Murray's initial decision.

9. Judge Murray's miscalculation is understandable, because Exhibit 4d to Exhibit 2, prepared by the Division's summary witness, Kerri L. Palen, did not set forth the dates on which commissions were earned, only the dates on which commissions were paid.

10. I am stating under oath that all the commissions circled by me on Exhibit "B" to this Affidavit were in fact made with respect to sales made prior to February 1, 2008.

11. Of the total amount computed by Judge Murray \$103,800, the amount of \$40,947 represented commissions paid after February 1, 2008, but they related to sales made before that date. Many of the McGinn Smith private placement offerings provided for initial commission at the time of sale, and trailing commissions over a period of years.

12. Therefore, I respectfully request that Judge Murray and/or the Commission correct the manifest error in computation by subtracting the sum of \$40,947 from the initially computed amount of \$103,800, resulting in a corrected amount of \$62,853.

13. The marked up version of Exhibit "B" was not available at the trial, because the Judge had not yet made a determination of the time period for which disgorgement would be ordered. Thus, neither I nor my counsel could have provided the correct information to the

Judge needed to calculate the disgorgement amount at the time of trial.

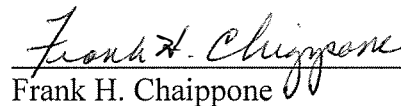
14. I therefore respectfully request that the Judge or the Commission, as applicable, accept Exhibits "A" and "B" to this affidavit into evidence and make it a part of the official record of this proceeding, as permitted by Commission Rule 452.

15. This motion to correct a computational error is separate from a more general petition for Commission review of the initial decision, which will be filed within twenty-one days of the determination of this Motion.

16. In witness whereof, the undersigned has signed this Affidavit.

Dated: February 27th, 2015

Respectfully submitted,



Frank H. Chaippone

Sworn to before me this
27 day of February, 2015.



Notary Public - State of New York

JENNIFER BOUTIN

Notary Public, State of New York
Qualified in Saratoga County
My Commission Expires 03/09/20 15

Clifton Park and Albany Brokers
Commissions Paid

Palen Exhibit 4d

Date	Description per Payroll Records	645 CHIAPPONE
10/15/2007	Firstline (TDML and FIRSLN)	\$ 5,900
11/15/2007	Firstline, TDML, CMSF 80%	\$ 2,400
11/15/2007	Firstline 90%	\$ 1,350
12/15/2007	Firstline 90%	\$ 8,168
12/15/2007	2007 Annual FAIN	\$ 7,860
1/15/2008	TDM Verifier 75%	\$ 675
1/15/2008	2008 Annual TAIN & FIIN	\$ 56,910
2/15/2008	TDM Verifier 75%	\$ 844
2/15/2008	Firstline, TDML, CMSF 80%	\$ 500
2/15/2008	Firstline 90%	\$ 2,025
2/15/2008	2008 Annual FEIN, tain & fiin	\$ 28,173
3/15/2008	TDM Verifier 75%	\$ 1,875
3/15/2008	Firstline, TDML, CMSF 80%	\$ 300
4/15/2008	TDM 75%	\$ 1,875
5/15/2008	Firstline, TDM, CMSF 80% (REALLY VERIFIER)	\$ 2,000
6/15/2008	TDM 75%	\$ 188
6/15/2008	Firstline 90%	\$ 4,320
8/15/2008	Net Private (Inex and MSTF)	\$ 1,215
10/15/2008	Fort13%	\$ 21,000
11/15/2008	Fort13%	\$ 3,000
12/15/2008	Fort13%, TDM Cable Roll	\$ 1,200
1/15/2009	Firstline, TDM, CMSF 80%	\$ 1,920
1/15/2009	2008 FAIN	\$ 245
1/15/2009	2008 TAIN	\$ 1,446
2/15/2009	Firstline, TDM, CMSF 80%	\$ 480
2/15/2009	2008 FAI	\$ 245
2/15/2009	2008 TAI	\$ 1,446
3/15/2009	2008 FAIN	\$ 245
3/15/2009	2008 TAIN	\$ 1,446
3/15/2009	Net Private (TDMV07R9% and TDMM Cable 09)	\$ 4,218
4/15/2009	2008 FAIN	\$ 245
4/15/2009	2008 TAIN	\$ 1,446
5/15/2009	2008 FAI	\$ 245
5/15/2009	2008 TAI	\$ 1,446
6/15/2009	Net Private (TDMM Cable 09 for April and May)	\$ 5,933
6/15/2009	2008 FAI	\$ 245
6/15/2009	2008 TAIN	\$ 1,446
7/15/2009	2008 FAIN	\$ 435
7/15/2009	2008 TAIN	\$ 2,570
7/15/2009	Net Private (TDMV07R and TDMM CAB)	\$ 750
9/15/2009	Net Private (TDMM Benchmark)	\$ 5,023
9/15/2009	2008 FAI	\$ 435
9/15/2009	2008 TAIN	\$ 2,570
10/15/2009	Net Private (TDMV and TDMM Benchmark)	\$ 805
TOTAL		\$ 531,844

N

N

N

N

N

N

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TOTAL		\$ 531,844

These were trail
commissions owed
to me for sales
before Feb 1st 2008

\$40,947.00

P. 115
COMMISSIONS