

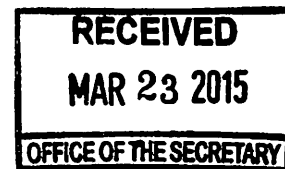
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

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

ADMINISTRATIVE PROCEEDING

File No. 3-015514



Respondents.

**RESPONDENT ANDREW GUZZETTI'S
MOTION TO EXTEND TIME TO FILE
MOTION TO CORRECT INITIAL DECISION, AND
MOTION TO CORRECT THE INITIAL DECISION**

Respondent Andrew Guzzetti respectfully requests permission to file a Motion to Correct the Initial Decision in this matter, or an extension of time to do so.

All Respondents have filed a Motion to Correct the Initial Decision, except for Rogers and Guzzetti. The time for the Division to file a response has not yet expired, and the time to file a petition for review does not start to run until those motions are resolved.

We realize that this motion is not filed within the time constraints provided in the Initial Decision, and we request that the motion be accepted as timely, since there is no prejudice to any party. However, the error has a significant impact on the statute of limitation issues in the matter and may prejudice Guzzetti in the future.

In the event the motion is granted, pursuant to Rule 410, Respondent Andrew Guzzetti ("Guzzetti") respectfully submits this Motion to Correct the Initial Decision because there was a manifest error of fact in the findings regarding Mr. Guzzetti.

Specifically, in the section titled Specific Legal Findings, the Initial Decision states at page 111:

Guzzetti agreed that as Clifton Park branch manager, beginning in October 2006, he supervised registered representatives working from that office, which would have included Anthony, Feldmann, Chiappone, and Gamello. Guzzetti Answer at 2; Tr. 3009, 3223.

Guzzetti was not the Clifton Park branch manager until October 2008, and was not the branch manager in 2006. Further, the reference to the Guzzetti Answer is incorrect, and the Transcript references are incorrect. The answer does not contain that statement, and the transcript pages do not contain any reference to Guzzetti being the Clifton Park branch manager in 2006. Relevant portions of the Answer are annexed hereto as Exhibit A, and the referenced transcript pages are annexed hereto as Exhibit B.

Further, the conclusion is contrary to all of the evidence at the hearing, including the admissions of the Division, the testimony elicited by the Division, the exhibits introduced by the Division, as well as the testimony of witnesses, including Mr. Guzzetti, and the factual findings contained in the Initial Decision.

Guzzetti Answer.

The answer filed in this matter does not admit that Guzzetti was the Clifton Park Branch Manager beginning in October 2006. It specifically alleges that he was not a supervisor in any capacity until, the earliest, October 2006. Guzzetti Answer Page 2, Exhibit A hereto

The Evidence

The firm's 2007 and 2008 compliance manuals did not identify Guzzetti as the branch manager of Clifton Park (since he took over in October 2008), identified Carl Nicolosi as the branch manager of Clifton Park and Guzzetti having responsibility for outside representatives (Respondent Lex in Pennsylvania, and others, not in the Clifton Park or New York City Offices). Guzzetti Ex. 2 at 37; Div. Ex. 329 at 40.

Guzzetti testified that he “[took] over the branch manager position at Clifton Park in October 2008.” Tr. 3004:24-3005:2. See Exhibit C hereto.

The Division's Position

The Division agreed that Guzzetti became the branch manager of Clifton Park in October 2008 and identified that fact at number 706 in its Proposed Findings of Facts and Conclusions of Law, at page 171. (“Guzzetti testified that he ‘[took] over the branch manager position at Clifton Park in October 2008.’ Tr. 3004:24-3005:2.”) See Exhibit D hereto.

The Initial Decision's Findings of Fact

The evidence at the hearing clearly established that Guzzetti became the branch office manager of the Clifton Park office in October 2008, not 2006, as reflected in the Initial Decision itself.

In the factual findings the Initial Decision itself, at page 23 finds that Guzzetti became the Clifton Park branch manager in October 2008:

Guzzetti held the title of branch manager for the Clifton Park office starting in October 2008. Tr. 1137-38, 2961, 2965; Div. Ex. 329 at 48.

Conclusion

Mr. Guzzetti was not the Clifton Park Branch Manager until October 2008 as reflected in the Findings of Fact, and the underlying evidence. The statement in the Specific Legal Conclusion section that he agreed he was the manager in 2006 is clearly erroneous.

Given the evidence at the hearing, as well as the statute of limitations bar in this proceeding, we believe that the error is significant, and respectfully request that the error be corrected.

Dated: March 20, 2015

Respectfully submitted



Mark J. Astarita, Esq.
Michael D. Handelsman, Esq.

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EXHIBIT A

SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

DONALD J. ANTHONY, JR., FRANK H. CHIAPPONE, RICHARD D. FELDMAN, 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

ANSWER OF ANDREW G. GUZZETTI

ANSWER OF ANDREW G. GUZZETTI

Respondent Andrew G. Guzzetti, by and through his attorneys, Sallah Astarita & Cox, LLC, in response to the allegations of the Order Instituting Administrative and Cease-and-Desist Proceedings in the above referenced matter, alleges as follows:

OVERVIEW

Mr. Guzzetti is a 30 year veteran of the securities industry. He has been married for 44 years, has two children and four grandchildren. He spent first 13 years of his post-college life as a football and baseball coach in upstate New York and entered the securities industry in 1983 at Shearson & Company. Mr. Guzzetti remained with that entity, through its mergers, until 2002. During that time he built a reputation for hiring and training financial consultants, and for a period of time was with Shearson's National Training Department in Chicago. He was also a branch office manager, and was responsible for training new managers. In 2002 he left the securities industry and returned to academia.

In September 2004, Mr. Guzzetti was hired by McGinn-Smith as the head of retail. His task was to transition the firm from a transactional, commission based business to a fee-based, management of accounts business model – in other words, transitioning the financial consultants

to be exactly that – consultants rather than salesmen. Mr. Guzzetti was also asked to oversee the recruiting of new brokers, retaining a new clearing firm, creating a new wealth management platform for the fee-based business. In 2007 and 2008 he spent the majority of his time developing an investment program for baby-boomers and post-retirement career and investment plans.

Prior to the institution of the proceedings, Mr. Guzzetti had no disciplinary or regulatory history.

Mr. Guzzetti's involvement with the Four Funds and Trusts at issue herein was non-existent. He was not involved in the creation or management of the funds. While he was a supervisor of the MS & Co. Clifton Park office, his supervisory responsibility did not include the Four Funds or Trusts at issue, which were supervised by Mr. McGinn and Mr. Smith. Mr. Guzzetti's involvement was to act as a messenger between management who controlled the funds and the brokers, simply passing along information, or setting up conference calls. He did not make any presentations regarding the funds, did not approve or review subscription agreements nor did he supervise the activities of the funds or the sales of the funds in any way. In fact, he did not become a supervisor of anyone, for any purpose, until October 2006.

Mr. Guzzetti did not have any substantive information regarding the Funds or the Trusts, he had no decision making authority regarding the investments and questions regarding the funds and trusts were directed to David Smith or Tim McGinn.

Although the Division now claims that Mr. Guzzetti was aware of "red flags" which should have caused him to conduct an investigation of the products, such investigations were beyond the scope of his duties, but Mr. Guzzetti was not aware of any such red flags, was not

EXHIBIT B

1 A. Guzzetti - Direct

2 never knew any of the underlying investments in
3 the Four Funds, did you?

4 A. You know, when I testified in front of
5 you folks, I said I didn't know what was in
6 there. After this hearing, I started
7 remembering that, you know, Phil Rabinovich and
8 Brian Mayer, and I would have lunch and Ryan
9 Rogers would have lunch, down in New York City
10 office, your Honor, and Phil would talk about a
11 lot of the things he had in the fund that he had
12 investigated. They were around longer than I
13 was, as far as the funds were. They would talk
14 about things. I knew somewhat what was in them
15 but not a lot, no, sir.

16 Q. You referred to your deposition
17 testimony. Why don't we just read that. If we
18 can look at page 88 of Mr. Guzzetti's
19 deposition, line 16?

20 Actually, why don't we start at 87,
21 line 19?

22 "Did you at any point, when you worked
23 at McGinn Smith & Company, see the Four Funds
24 LLC balance sheets?

25 "Answer: No.

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Cross/Guzzetti

A. No.

Q. Was any one person responsible for all aspects of McGinn Smith's supervisory system?

A. No.

Q. In your experience in the securities industry and at McGinn Smith, that work is divided up among different people with different qualifications and different abilities, right?

MR. STOELTING: Objection.

Leading.

MR. ASTARITA: It is cross.

JUDGE MURRAY: I will overrule the objection.

Q. In the broad stroke use of the term supervisor and in a supervisory system, you were one of those supervisors, right?

A. Yes.

Q. In the securities industry when we talk about the supervisor of a broker, are we talking about all those people who supervise the various aspects of a firm's business, or are we talking about somebody else?

A. Talking about the POs (sic).

EXHIBIT C

1 A. Guzzetti - Direct

2 A. Again, if this is April, this is
3 incorrect. Carl Nicolosi was still the manager
4 in Clifton Park to October '08. So that is
5 incorrect.

6 Are you saying this is April,
7 Mr. Stoelting?

8 Q. The copy we have has a page in the
9 back that says April 1st, '08. It is not
10 completely clear, but that is my understanding.

11 A. I did not become the manager at
12 Clifton Park until 10/08.

13 Q. The next page, the organizational
14 chart for McGinn Smith & Co., it lists you as
15 Smith, McGinn, Shea, Livingston and then
16 Guzzetti, managing director, private client
17 group.

18 The last two lines says, "All brokers
19 in the Clifton Park office are under Andy
20 Guzzetti's direct supervision." Under that, it
21 says, "Brian Mayer and Andy Guzzetti are under
22 David L. Smith's supervision."

23 A. Again, if this is April '08, this is
24 incorrect. I didn't take over the branch bank
25 management position at Clifton Park until

1 A. Guzzetti - Direct

2 October '08.

3 Q. From October '08 until you left you
4 were office manager?

5 A. Yes, sir.

6 Q. Is office manager the same as branch
7 manager?

8 A. Yes. I think it is used the same. I
9 think so.

10 Q. In Clifton Park, in that time from
11 October '08 until the end of '09, among the
12 brokers in Clifton Park were Mr. Anthony,
13 Mr. Feldmann, Mr. Chiappone?

14 A. Yes.

15 MR. STOELTING: Can we look at
16 Division Exhibit 328, please?

17 Q. This is called, "McGinn Smith Branch
18 Office Procedures." Do you recall ever seeing
19 this before?

20 A. I may have. I don't remember it.

21 Q. Can we look at page 13, please.

22 This is a listing of responsibilities
23 of a branch office manager. It says,
24 "Transaction review."

25 "Review and approval of daily trades.

EXHIBIT D

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15514

In the Matter of

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

Respondents.

CHIEF JUDGE BRENDA P. MURRAY

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF THE DIVISION OF ENFORCEMENT

David Stoelting
Haimavathi V. Marlier
Michael D. Birnbaum
DIVISION OF ENFORCEMENT
Securities and Exchange Commission
Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281-1022

April 9, 2014

758. The 2007 and 2008 MS & Co. Compliance Manuals identify Guzzetti as one of five (2007) or four (2008) persons considered “Supervisory Personnel” who “are responsible for the supervisory activities of the firm.” AG Ex. 2 at 45; Div. Ex. 329 at 47.

759. The 2008 Compliance Manual identified Guzzetti as the “Office Manager – Clifton Park Office” in addition to the “Managing Director – Private Client Group,” and states that “All brokers in the Clifton Park office are under Andy Guzzetti’s direct supervision.” Div. Ex. 329 at 47-48.

760. Guzzetti testified that he “[took] over the branch management position at Clifton Park” in October 2008. Tr. 3004:24 – 3005:2. The Clifton Park office included Respondents Anthony, Feldmann and Chiappone. Tr. 3005:10-14.

761. McGinn Smith’s written Branch Office Procedures stated that among the responsibilities of a branch manager was: “Ensure that all transactions are suitable for customers and that no unusual sales practice activities are occurring in connection with the review of daily trading. The branch manager should concentrate on the following areas. Review of general suitability of transactions. Such review considers the client investment profiles and objectives. . . . The branch manager or designated principals will review and approve all assigned transactions on a daily basis.” Div. Ex. 328 at 13; Tr. 3005:15 – 3006:14.

762. Guzzetti held weekly sales conference call with the brokers and he also sent near-daily emails to all MS & Co. brokers. Guzzetti testified that Smith “liked the idea of my sales meetings. I know he liked the idea of my morning notes every day. He thought they were great.” Tr. 2990:10 – 2991:2.

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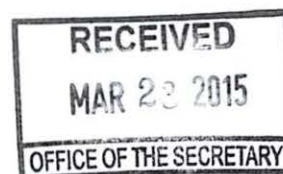
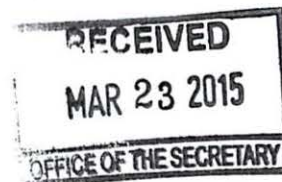
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BOCA RATON, FL 33431

March 20, 2015

VIA FEDEX

Elizabeth M. Murphy
Secretary, U.S. Securities and Exchange Commission
100 F Street N.E.
Washington D.C. 20549



Re: *In the Matter of Donald J. Anthony, Jr., et. al.*
Administrative Proceeding Fiel No. 3-15514

Dear Ms. Murphy:

We enclose an original and three copies of Respondent Andrew G. Guzzetti's Motion to Extend Time to File Motion to Correct Initial Decision, and Motion to Correct Initial Decision. We have also enclosed a certificate of service.

Very truly yours,

Michael D. Handelsman

cc: Brenda P. Murray, ALJ (By email: alj@sec.gov)
All Counsel of Record (By email)