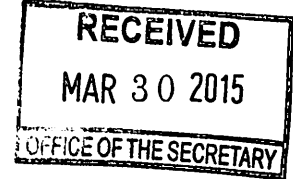


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UNITED STATES OF AMERICA

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, :
WILLIAM P. GAMELLO, :
ANDREW G. GUZZETTI, :
WILLIAM F. LEX, :
THOMAS E. LIVINGSTON, :
BRIAN T. MAYER, :
PHILIP S. RABINOVICH, and :
RYAN C. ROGERS. :

**RESPONDENT, WILLIAM F. LEX'S REPLY BRIEF IN SUPPORT OF
MOTION TO CORRECT MANIFEST ERRORS OF FACT**

Because the Division confirms the facts underlying Lex's Motion to Correct Manifest Errors of Fact and provides no basis for denying the Motion, the Motion should be granted.

In the Initial Decision in this case, the Chief Administrative Law Judge found that Respondent William Lex (and the other Selling Respondents, except William Gamello) "had requisite scienter to violate the antifraud provisions by at least February 1, 2008." (Initial Decision at 115.) On that basis, two sentences after that finding, the Judge ordered Respondent Lex (and other Respondents) "to disgorge all commissions earned on sales after that date...." (Id., emphasis added.)

The Judge determined that that amount was \$335,066, and ordered Mr. Lex to disgorge such commissions. (Id. at 115, 117.)

Lex's Motion to Correct Manifest Errors of Fact ("Motion to Correct") established that the \$335,066 figure was incorrect, based on the Division's own evidence admitted at the hearing, and therefore a manifest error of fact. The \$335,066 figure improperly includes \$165,691 in commissions that Lex earned on sales made **before** February 1, 2008, contrary to the Judge's decision. The correct figure for commissions he earned on sales made **after** February 1, 2008 is \$169,375. (Lex's Motion to Correct ¶¶ 12 & 13.)

The Division's Brief in Opposition does not dispute the facts alleged in Lex's Motion. To the contrary, the Division confirms that Lex's figures are accurate. (See chart at page 4 of the Division's Brief.) Rather, the Division contends that the Judge should have invoked a different rationale for her disgorgement order and should not have restricted disgorgement to commissions on sales made after February 1, 2008. What the Division is really requesting is for the Judge to **amend** the Initial Decision to order disgorgement of "all commission payments *received* on or after February 1, 2008," regardless of when the sales underlying the commissions were made. (Division's Brief at 4, emphasis in original.)

There is no authority for the Division's request. The SEC Rules of Practice provide for two means of challenging an Initial Decision: (1) a Motion to Correct Manifest Errors of Fact and (2) a Petition for Review. The Division has not filed a Motion to Correct, and such a Motion would be impermissible both procedurally and substantively. Procedurally, "[a]ny motion to correct must be filed within ten days of the initial decision." 17 C.F.R. § 201.111(h). Here, the Initial Decision was filed February 25, 2015, and the deadline for a Motion to Correct expired on Monday, March 9, 2015 (because the tenth day fell on a Saturday).

Substantively, a “motion to correct is properly filed under this Rule only if the basis for the motion is a patent misstatement of fact in the initial decision.” (Id.) Here, the Division does not point to any “patent misstatement of fact in the initial decision.” Rather, the Division wants the Judge to alter her legal rationale. Such a request by the Division is not permitted by the Rules and is not an authorized basis for a Motion to Correct. 17 C.F.R. § 201.111(h).

Lex has pointed out a manifest error of fact in the Initial Decision that drastically and adversely affects the result. Because the Division is unable to dispute the facts underlying Lex’s Motion, the Motion should be granted.

For the foregoing reasons, as well as those set forth in Lex’s Motion to Correct Manifest Errors of Fact, Respondent, William F. Lex respectfully requests that his Motion to Correct Manifest Errors of Fact be granted.

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