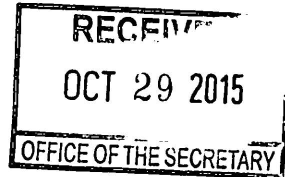
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15514

In the Matter of

FRANK H. CHIAPPONE,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER, and
PHILIP S. RABINOVICH,

Respondents.

RESPONDENT WILLIAM F. LEX'S INDIVIDUAL REPLY BRIEF

GILBERT B. ABRAMSON, ESQUIRE
GILBERT B. ABRAMSON & ASSOCIATES, LLC
One Presidential Boulevard, Suite 215
Bala Cynwyd, PA 19004
610-664-5700
gabramson@gbalaw.com

Attorneys for Respondent William F. Lex

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PRELIMINARY STATEMENT

Respondent Lex submits this Individual Reply Brief in Reply to the Division's Brief. We suggest there is no legal justification for any disciplinary action, including disgorgement and/or penalties, against Lex.

I. Statute of Limitations of Four Funds Sales by Mr. Lex Has Passed and Mr. Lex Had a Reasonable Basis for Offering the Trusts to his Customers

The Division's Brief at page 18 states: "Despite these red flags [all relating to the Four Funds] … Lex did no due diligence or investigation regarding the trust offerings."

The last sale of any of the Four Funds by any Respondents occurred more than five years prior to the institution of these proceedings (September 23, 2008). Accordingly, no claims by the Division relating to the Four Funds are cognizable and cannot form the basis for fines, penalties or forfeiture (including disgorgement). 28 U.S.C. § 2462. Nevertheless, the Division insists that in light of certain alleged red flags relating to the Four Funds, Mr. Lex should have refrained from selling the Trusts unless he performed a "searching" investigation. This attempt to conflate purported problems with the Four Funds as justification for not selling the Trusts, simply does not work.

The Division itself recognized that the Trusts were "far different" from the Four Funds offerings (see OIP ¶38b), a fact recognized and found by the ALJ (Initial Decision "I.D." p. 5): "The Four Funds were completely different from the pre-2003 offerings in structure."

As the Division alleged in the OIP, and Judge Murray found:

> "The debt financing that McGinn Smith & Co. had done before 2003 were small-scale note offerings tied to the income streams from the home alarm contracts, far different from the broad and

non-specific investment mandate of the Four Funds offerings." (OIP ¶38b, p. 9)[1]

Each Trust PPM[2] indicated that the offerings were, as the Division puts it, "tied to" specific "income streams" as opposed to "broad and non-specific [investments]" like the Four Funds. (OIP ¶38b, p. 9).

In light of the brokers' experience of clockwork payments with the Trusts (alarm notes) and the absence of any alleged "red flags" with respect to the alarm notes[3], there was no reason for the brokers to investigate anything before selling the 2006 and later trust offerings. Nevertheless, the ALJ, parroting the Division's statement in the OIP, found:

> "Lex willfully violated Securities Act Sections 17(a)(2) and (a)(3) because acting at least negligently, he obtained money by means of untrue material statements, i.e., his recommendation of these private placements indicated to his clients that he had some reasonable basis for believing they were good investments when he had done no investigation of their worth." (I.D. 103)[4]

Mr. Lex described the reason for his confidence in the trust offerings from 2006:

First, the Trusts (alarm notes and triple play notes) were similar, if not identical, to the pre-2003 notes and, as Judge Murray found:

> "By the mid-2000's MS & Co., had a national reputation in alarm financing, and had about fifty registered representatives ..." (I.D. p. 3).

---

[1] The Division points to problems with the pre-2003 alarm deals, more than 10 years before the filing of the OIP, but, of course, this information all came out following a three-year documents and records examination conducted by Kerri Palen, the SEC forensic accountant, following her exhaustive audit. That audit revealed that the brokers had no idea of the alleged scheme engaged in either with respect to the pre-2003 alarm note sales or the fraud conducted by McGinn and Smith as alleged in the OIP, and for which McGinn and Smith were convicted. (See finding of Judge Murray in I.D. at bottom of p. 4). What the brokers did know with respect to the alarm notes was that every interest payment was made on time and every redemption was made in full and on time.

[2] Lex did not sell Benchmark (See Exhibit DE-2; Palen Ex.4), and did not sell any of the Cruise Offerings.

[3] The Firstline bankruptcy disclosure, identified as a red flag in the OIP, was not made known to the brokers until September of 2009. Lex's last sale of any McGinn Smith offering was July17, 2009. (DE-2; Palen Ex.4).

[4] Apart from the problem with a statutory scheme that allows a person to be labeled a "fraud" for acting negligently, there is an inherent contradiction in a finding which says he willfully violated the Securities laws by: "acting at least negligently, . . ." [Emphasis added].

> "The pre-2003 offerings were considered successful because they generally paid interest on time." (I.D. p. 4).

We point out that they also redeemed on time. Not only was there a history of success in these types of products as of 2006, but Mr. Lex had even more reason for confidence in the trusts. In response to a question by the Division (N.T. 1632), Mr. Lex gives a detailed description of why he had much more than "some reasonable basis for believing they were good investments." As Mr. Lex testified:

> "A. . . .
>
> So this retired banker was involved in reviewing a lot of financial things to do with the alarm deals. And, in fact it was through his help that I actually was the salesman on $16 million of alarm notes to LaSalle Bank shortly before the IPO.
>
> So I know LaSalle Bank did their due diligence. . . .
>
> When Tim McGinn came back, I used another friend, a gentleman who was a retired director of Textron Financial, and he and I and Tim McGinn presented the notes to banks in our area.
>
> And the reason I say banks, actually there was a reference from a division of Key Bank, where an executive, I think it was McDonald Corporation prior to the IPO, had written a letter talking about Key Bank having purchased and successfully used $150 million of products from McGinn Smith.
>
> To me that's pretty powerful, $150 million from a major bank.
>
> So then, that was prior to the IPO. But with all that in context, now Tim McGinn is coming back, and I don't want to speak for the other brokers, but I think there was a little cheer went up; Tim's back, we got a product that was so reliable, and these new investments, I think we all felt were even more – were going to even be more reliable than the old ones because they were with commercial companies.
>
> So you weren't buying alarms that a homeowner put in. In other words, businesses were putting it in. And businesses typically don't default on paying for their alarm deal because they would lose their insurance.

. . .

A. . . .

> So ultimately I felt, I always knew, that certainly Tim McGinn was in control. My understanding was there was an extensive amount of people behind the scenes and I think another reason I had confidence in them, they just weren't transactional, your Honor, they actually had a little company which I believe the receiver is still working at, or within their old offices. It was called McGinn Smith alarm traders.
>
> So they had a very active, I'll say back room.
>
> . . .
>
> But in different meetings they would explain to the lengths that they would go, like when they were buying alarm contracts they would actually have people in this organization randomly call people who had the alarms to make sure they were satisfied.
>
> And that they were real.
>
> Because as I was told, you could buy alarm contracts and it would just be phony names, so that had – again, quality assurance. And then again they were diversified. They were over different states or whatever. (Testimony interspersed between N.T.1632:11 and 1639:14)

See also, N.T.4899:7 to 4900:7.

Although Judge Murray gives little acknowledgment to these successes, telling us that in hindsight the alarm note model was unsustainable, as far as Lex and the other brokers knew, there was sufficient success to justify a public offering, and that offering had to pass the scrutiny of counsel, the various underwriters, and the SEC itself. As Judge Murray points out in a footnote: "The IPO received favorable analyst commentary." (I.D. p. 4, footnote 8).

All of the above amply demonstrates that Lex had more than a reasonable basis for recommending the trusts and believing they were good investments. It is unconscionable for the ALJ to

have found that with all this history and information known to Lex that Lex's sale of the post-2006 alarm notes without conducting "further investigation" beyond what he knew about the trusts, "constituted a fraud or deceit on his clients," or that he had "no reasonable basis for the sales." (See also, testimony of Mary Ann Cody, Esquire, N.T. 4545-4552, describing the work done by more than a dozen people required to verify the reliability of the alarm deals).

II. Lex's Actions In Connection With The Sale Of McGinn-Smith Products Was In All Respects Appropriate, In Keeping With the Custom In The Industry, And In Keeping With The Rules Published By NASD And FINRA.

The Division complains that all Bill Lex did was "simply repeat[ing] the issuer's unchecked representations when he had done no investigation." (Division Brief p. 16). But by submitting a PPM, the representations were that of the issuer, and Lex had no authorization to modify or amend the representations. As Charles Bennett, Lex's expert[5], stated:

> "Diligent inquiry is done in the industry by the member firm or the investment bankers of the member firm or the accountants and lawyers who are engaged to help them conduct that due diligence. So diligent inquiry is done by the firm. [N.T.4111:2-11].

Bennett went on to testify what Lex's obligation was – to understand the product. With respect to the Four Funds, he opined that from what he knew in speaking with Lex and examining the PPMs, Lex fulfilled that duty by reading the PPM, understanding the difference between the tranches, deciding he would only sell the senior tranches, asking for information from time to time from his supervisor, receiving information from time to time, and determining from answers from his supervisor and CFO that the assets were performing. (N.T. 4111:8 to 4112:12).

---

[5]See R-Lex-147 for Charles Bennett's complete Curriculum Vitae. Mr. Bennett was in the securities industry for more than 35 years as of the time he testified. He worked for the NASD and ultimately became the head of the Corporate Finance Department as a director from 1991 to 1998. He then worked as the Head of Syndicate Operations, In-House Counsel Capital Markets, Securities Counsel and counsel to Broker-Dealers. In addition, at NASD, he was involved in investigations and examinations of member firms and their underwriting distribution activities. He was a member of the examinations and qualification writing committees, writing questions for the securities industry for their qualification examinations, specifically the Series 62, 82, 22 and 39. (N.T. 4029:15 to 4031:8)

During the hearing, a dispute arose among the various experts as to whether or not there was a duty on the part of the broker to conduct due diligence. The dispute pertained to the word "member" in FINRA's Rules and Regulatory Notices. Mr. Lowry, on behalf of the Division, claimed that "member" meant the registered representative as well as the member firm (broker-dealer). Regulatory Notice 12-25 cited by Mr. Bennett clarifying Notice to Members 03-71, indicated clearly that the duty to investigate a security belonged to the broker-dealer, not the registered representative. (N.T. 4188-4190; R-Lex-150).

Mr. Bennett explained:

> Q. Is the registered representative permitted to offer information to the customer outside the parameters of the PPM itself?
>
> A. Absolutely not.
>
> Q. Does the PPM, in fact, say that; that the customer can't rely on anything other than what appears in the PPM?
>
> A. The representations in the private placement memorandum are the issuer's disclosures. This is the potential for a contract for investment between the issuer and a client, and the agent, the broker, sits in the middle acting as an agent.
>
> So they present the disclosures, and ask if there are any questions. 'Can I explain this? Do I need to get any further information for you? Can I introduce you' – I mean, certainly not unusual in private placements. I have certainly been involved where I hosted private placements with the issuer in order to let brokers get answers.
>
> But it is not a circumstance where the broker on a one-off [sic] goes and gets a financial statement and says 'Aha. I have material information that is not in the private placement memorandum, and I am going to tell my clients about it.'
>
> If he did that, he would be talking outside the private placement memorandum, and that is prohibited by Section 12, because he is making a material statement outside the disclosures of the issuer. The issuer owns the disclosures." (N.T.4197:20-4199:3)

It is stated in the opinion by Mr. Lowry that the registered representative should ask to see the due diligence file of the issuer. Mr. Bennett, in replying, stated that registered representatives are not given access to the due diligence file. (N.T.4200:5 to 4202:15).

Mr. Bennett in his experience has also assisted in the preparation of examinations in the industry regarding underwriting, due diligence and similar issues, including Series 7 examinations, as well as Series 82, Series 62, Series 22, and Series 39. (N.T.4202:16-4203:18). When asked whether in any of these examinations he was familiar with a duty resting with the registered representative to conduct a "searching inquiry,"[6] he answered "No," and pointed out that there are lots of questions on due diligence in the Series 79: ". . . They are investment bankers. They have to know how to do it." (N.T.4204:11-12)

III. The Division Is Estopped From Claiming The 2007 Portfolio Analysis Constituted A Red Flag And, In Any Event, Upon Receiving The Analysis Lex Made Inquiries Of Smith And The CFO And Was Satisfied With Their Responses.

The Division's suggestion that the portfolio analysis provided to Lex in August 2007 was a red flag, constitutes a belated attempt on the part of the Division to shore up its lack of confidence in the "red flags" which it identified in the OIP.

As has been set forth in prior briefing, the Division was precluded from offering any events as red flags which were outside of the OIP. But more importantly, the inference that Lex knew that McGinn or Smith were using Four Funds proceeds to redeem pre-2003 investments based upon the Portfolio Analysis is unjustified. The lack of a citation supporting this statement at the top of page 19 of the Division's Brief is ample evidence that there was no justification for this conclusion. Lex, diligent enough to seek information on the investments, and diligent enough to follow up with calls to the CFO to find out if the investments were performing (R-Lex-41), and having received that confirmation, is now criticized for not interpreting the 2007 document as the Division suggests he should. Therefore, if Lex made no inquiry, he would be liable for securities fraud, and likewise if he makes an inquiry, the

[6] This phrase is used in the OIP by the Division to describe the representative's duty with respect to a product.

Division suggests he is liable for securities fraud for not interpreting the information in accordance with the Division's interpretation.

IV. The Division Mischaracterizes Lex's Reference To the Warnings In The PPMs.

The Division insisted that it was not enough for the PPMs, replete with warnings and statements of the risks inherent in the investments, to inform the customers of the risks, but that Lex was required to repeat the statements contained in the writings. The witnesses referred to by the ALJ in the I.D. on page 21, all conceded they received the PPMs and the Subscription Agreements and had ample time to read and review them. (Weinar N.T. 747; Forsythe N.T. 1514:2-10). Yet the Division complains that: "Lex did not inform any of these investors of the risky nature of the Private Placements." In other words the Division's complaint is that Lex failed to orally inform them of that which was written in bold in the written material provided by Lex as to the nature of the investments, and the failure to do so the Division equates with securities fraud. (Division Brief, p. 21).

The repeated statement that the investors were using retirement funds is an attempt by the Division to turn this case into some kind of "customer suitability" matter, which was never pleaded in the OIP, and about which Mr. Lex had no notice, and for which Lex did not prepare to defend.

The finding by the ALJ that these investors were "unsophisticated" is not the question. The question is whether they were intelligent enough to be able to read, and did they understand the product they were investing in. They may have been unsophisticated (and we do not believe this is so of Dr. Forsythe or Dr. Weinar) (see, *e.g.,* Forsythe N.T. 1499:17 to 1502:11; and 1497:21 to 1497:16), but they certainly were not stupid. Dr. Weiner had a Bachelor's Degree in English, a Masters in Broadcasting, and an MD Degree. Dr. Forsythe was a physician who had for years kept control of her own investments. Mrs. Monahan was a Registered Nurse.[7]

---

[7] See Lex N.T. 1543:2-24.

Dr. Weinar, testifying about conversations which occurred almost 10 years before his testimony did recall the following: that Lex told him that the money was going to be placed in a pool and invested in or loaned to various companies, and that from those profits the interest would be paid on the notes (N.T.758); that Mr. Lex only offered senior and senior-subordinated (N.T. 759:19-760:4); that Lex explained the advantages of the senior notes to the junior notes and that Weinar's understanding was: "That I would be paid back <u>with greater likelihood should there be trouble with the company</u> [emphasis added]."[8] (N.T. 768:25-769:3); that he acknowledged signing the Subscription Agreement which stated: "The undersigned is aware that the purchase of notes is a speculative investment involving a high degree of risk . . .," but denied having read that statement before signing the acknowledgement that he did read it. When asked to explain the contradiction in his testimony, he stated: "I started to read it and found it very dense language and skimmed it." (N.T. 770). Weinar acknowledged he understood there were no guarantees. (N.T. 770).

V. Responses To Various Incorrect Assertions By The Division In Its Brief.

1. The Division suggests that believing David Smith, and having confidence that he could act as the Manager of the Four Funds was "an untenable belief." (Division Brief, at 16). But Bill Lex had no reason to believe that Smith operated other than in a truthful manner. For the 20 years that Bill Lex knew David Smith, he had proven to be an honest, knowledgeable person living up to the promises he made. The products which were offered by McGinn-Smith had paid like clockwork during all of those years. Smith's reputation in the Albany community was stellar. Smith's judgment had proven extremely sound on all financial matters. On all of Lex's customers, every note was paid on time for more than 15 years. (N.T. 4885:20-4887:6; 4892:12-20). It was only after the fact that the Division

[8] Hard for Dr. Weiner to suggest he believed there were no risks when he understood there could be "trouble with the company."

comes forward and suggests that the brokers' failure to recognize so-called "red flags" makes any belief or confidence in the truthfulness and honesty of Smith, "untenable."

2. The Division provides a citation for two affirmative statements where the testimony cited only relates to one of the statements. the Division's Brief p. 16, states: "But Lex fully understood the red flags apparent in the Four Funds PPM, which he read from cover to cover," citing "Tr.1567:4-10". While 1567:4-10 does support the fact that Lex read the PPMs "cover to cover," it does not support the statement that: "Lex fully understood the red flags apparent in the Four Funds PPMs." The red flags were neither apparent nor did Mr. Lex understand these to be red flags in the PPMs. We point out that apparently neither the SEC nor NASD found any red flags in the Four Funds PPMs. See Livingston Exhibit 103 and RMR Exhibits 40, 120, 135, 161 and 184. Only the Division, in its desperation to cobble together a case against the individual brokers, identified the PPMs themselves as "red flags."

3. The Division criticizes Lex for not seeking balance sheets or income statements on the Four Funds. We are not sure whether the Division is referring to balance sheets and income statements from the companies in which the Four Funds made investments, or the Four Funds themselves. But either way, as Mr. Bennett stated, this was not Mr. Lex's obligations or duty. (N.T. 4197:20 to 4199:3).

What Lex saw was performance by the Four Funds – 2003 to 2007 – interest paid and redemptions made within the time permitted in the PPMs. These judgments as to the financial status of the investments were left exclusively with Smith as described in the PPMs. The acquisitions were at his discretion. That these were Smith's decisions was fully disclosed in the PPMs of the Four Funds.

When things began to unravel in early 2008, it was up to Smith and McGinn-Smith, its CFO and its investments experts to determine the viability of the investments. The failure of companies to make their payments on loans to such an extent so as to require the reduction of interest from 10% to 5% on the junior tranche was neither indicative of mismanagement or fraud. The fact is that these are

not the only reasonable inferences that could be drawn from the reduction in interest on the junior tranche. It was just as plausible that liquidity problems could have occurred due to the down-turn in the economy at the end of 2007, early 2008, and credit drying up. The reasons Smith gave were reasonable and not sufficient to require Bill Lex to refrain from selling the Trusts.

4. As to the claim that Smith's explanation for initially not supplying the names of companies in which the Four Funds made investments, this has been dealt with in depth in Lex's Individual Brief at pp. 18-20, and no further comment is required here.

5. The Division again mischaracterized testimony in this case. The Division on page 18 of its Brief states that: ". . . Lex also knew that investors holding maturing notes were being redeemed with new investments which Lex's own expert admitted 'would be a red flag which would require further inquiry[.]'" and then cites R-Lex-147a, which is Bennett's Supplemental Report dated 2/10/14. Bennett did testify that "a Policy requiring brokers to provide a replacement customer as a condition of redeeming would be a red flag requiring further inquiry with respect to the particular offering." (Division Brief, p. 18). But Bennett also testified at length, and the ALJ so found, that there was not a "Redemption Policy." (N.T.4204:13 to 4209:4)

Bennett testified that exhibits such as DE 279, 281, 160, 125 and 500 which contain information about redemptions and replacements are exactly the type which a person would want to provide underwriters who would want to know "are you going to be a net buyer or a net seller in connection with this redemption that we are running." (N.T. 4165:5-18). For a more complete discussion, see N.T. 4164:9-4166:23.

6. Again the Division seeks to characterize what are now Bill Lex's losses in connection with his and his family's purchases of McGinn-Smith products as part of the "scheme." This attempt is not only wrong, but shameful, and makes absolutely no sense. FIIN was put out in September of 2003.

The fourth purchaser of the notes was Bill Lex for $400,000.00. (See DE 2; Palen Ex. 4 – Lex's Sales). The Division tries to suggest that this was part of Bill Lex's scheme to sell notes. The argument is that he purchased the notes so that he could tell customers he purchased them so that he could sell more. But if a schemer, why purchase notes at all, or in such a large amount? Why put $400,000.00 at risk? Bill Lex and the other brokers bought these investments and sold them to their spouses, their parents, children and siblings. (R-Lex-55, 153). Lex bought the notes because he believed in McGinn-Smith, in Smith, and their ability to run a successful investment.

7. The Division's statement that "Lex tried to obtain priority for redemptions of his own notes, we assume, is an attempt at impugning his character. In fact, at a time when he and his wife held almost $600,000.00 in McGinn-Smith notes (late 2007), and he could have redeemed them all, he informed McGinn that they could hold off on his redemptions if they were having a temporary cash flow problem, until new money came in. After waiting six months, in May 2008 he asked for $150,000.00 of his $600,000.00 to be redeemed if new money had come in. Hardly the character of a person trying to usurp "priority" on redemptions. (DE 159, 163).

8. While the Division points to e-mails where Lex seems to be complaining about delays in payment (in 2008 and 2009) as demonstrating knowledge or scienter, Lex explained that he was trying to induce McGinn-Smith to be more efficient in making its payments so that McGinn-Smith's and Lex's credibility could be maintained. It should be noted that prior to Smith's letter of October 2008 (with respect to the Four Funds), for almost 5 years, every one of Bill Lex's customers were redeemed and all their interest payments were made, and on senior notes, interest was paid until April 2010. It should also be noted that up until the SEC came in April of 2010, all of his Trusts customers were redeemed and interest paid.[9] (N.T. 4918:2-6).

[9] This is true except for Firstline when it was disclosed to the brokers in September of 2009 that there had been a bankruptcy, and McGinn and Smith were making the interest payments.

Mr. Lex understood there could be cash flow issues given the state of the economy and difficulty in refinancing. But he nonetheless pressed McGinn-Smith vigorously for his clients to be paid timely and used provocative language to move McGinn and Smith to make payments to customers more timely.

9. Having failed to file a Petition For Review, the Division is precluded under Rule 410(b) and (c) and may not now seek to alter the ALJ's I.D.

10. Having learned in September of 2009 of the Firstline bankruptcy, in March and April 2010 McGinn sought to raise money to buy the Firstline assets out of bankruptcy. McGinn attempted to condition original investors' rights to interest and redemption in Firstline on their making a new investment to "rescue" the Firstline assets which were in bankruptcy. Lex volunteered himself and his wife to put up $125,000.00 (borrowed from a line of credit) on condition that all of his Firstline investors would be entitled to interest and redemption under the terms of the original Firstline investment, even though those investors would not put up additional money. (N.T. 4918:7-4920:12). The Division suggests that this was done to assist McGinn-Smith's liquidity. (See Division Brief, p. 20). But at this point (March and April of 2010) Lex was no longer with McGinn-Smith, and his only motive was to assist his customers who had invested in Firstline.

VI. <u>Sanctions</u>

The Division claims that Lex's disciplinary history supports significant sanctions. The fact is that for 40 years, Lex never had a disciplinary claim against him. It was not until the failure of McGinn-Smith that there were FINRA Arbitration claims brought against him. In both cases the claims were for over concentration. In the *Chang* case in which there was the boiler plate claim of misrepresentation, in a lengthy opinion, there was no finding of misrepresentation. To the contrary, the panel found that:

> "Furthermore, Mr. Lex seems to be a conscientious broker and insurance salesman who is congenial. McGinn, Smith & Company

> as the supervisor of Mr. Lex had necessary procedures and policies in place to carry out its duties to potential customers as they had standard education programs for brokers and industry-standard supervision procedures for individual broker accounts.
>
> . . .
>
> Dr. Chang and Kee Mann Chang are found to be responsible for the consequences of their own investment decisions after their stating repeatedly verbally and in writing that they had the opportunity to read investment literature and query resources such as Mr. Lex about the risks and rewards of the subject private placement notes." [DE 513, p. 3].

This Award has been challenged and is still pending in the Pennsylvania Courts. (*McGinn, Smith & Co., Inc. v. Chang,* 32 A.3d 821 (Pa.Super. 2011); C.C.P., February Term, 2010, No. 000144.

As to the *Weinar* decision, there was similarly no finding by the panel of any misrepresentation. This matter is still in litigation, also in Pennsylvania State Courts, and the Award has not been confirmed. (*Weinar v. Lex*, C.C.P. Chester County, No. 2015-08168).

Lex has been barred since 2010 from FINRA because of his inability to pay the $805,000.00 award which was left solely to him because of the McGinn-Smith receivership.

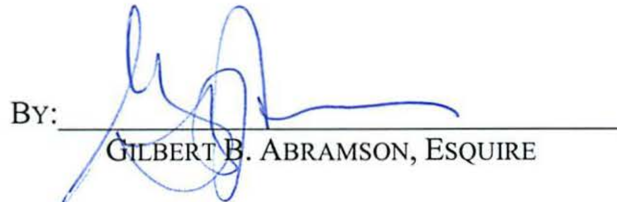
Lex and his immediate family have $1,381,230.00 (R-Lex-153) invested and, to this point, unreimbursed and likely lost, as a result of the McGinn-Smith fraud. The cost and shame of even being involved in these proceedings have inflicted sufficient punishment on him and deterrents for others.

CONCLUSION

For these reasons and those set forth in Lex's Individual Brief and the Joint Briefs the Commission should dismiss the proceedings against Respondent William Lex.

Respectfully submitted,

GILBERT B. ABRAMSON & ASSOCIATES, LLC



BY:______________________________

GILBERT B. ABRAMSON, ESQUIRE

One Presidential Boulevard, Suite 215
Bala Cynwyd, PA 19004
gabramson@gbalaw.com
Tel. 610-664-5700
Fax 610-664-5770
Attorneys for Respondent,
William F. Lex

DATE: October 28, 2015

UNITED STATES OF AMERICA
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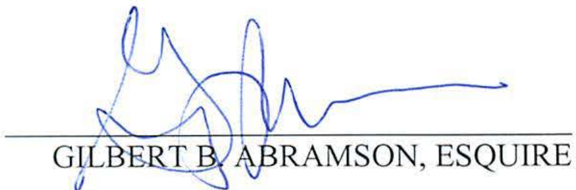
ATTORNEY'S CERTIFICATION REGARDING WORD REQUIREMENTS

GILBERT B. ABRAMSON, states that he is the attorney for Respondent William F. Lex in this matter and that he was the person primarily responsible for the individual Brief being submitted on behalf of Mr. Lex. According to the electronic word count obtained from the Microsoft word program upon which the Brief was prepared, the Brief contains less than 5,000 words, excluding cover page, table of contents and table of authorities.

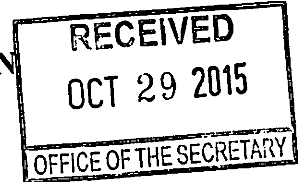
GILBERT B. ABRAMSON & ASSOCIATES, LLC

DATE: 10/28/15



GILBERT B. ABRAMSON, ESQUIRE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15514

In the Matter of

FRANK H. CHIAPPONE,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER, and
PHILIP S. RABINOVICH,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, copies of Respondent William F. Lex's Individual Reply Brief, and Attorney Certification of Word Requirements were served upon the following persons via e-mail, addressed as follows:

David Stoelting, Esquire
Haimavathi V. Marlier, Esquire
Michael D. Birnbaum, Esquire
U.S. Securities and Exchange Commission
Division of Enforcement
Three World Financial Center
New York, NY 10281
stoeltingd@sec.gov
marlierh@sec.gov
birnbaumm@sec.gov

Also served via Federal Express

M. William Munno, Esquire
Brian P. Maloney, Esquire
Seward & Kissel LLP
One Battery Park Plaza
New York, NY 10004
munno@sewkis.com
maloney@sewkis.com
weitman@sewkis.com

Counsel for Respondents Philip S. Rabinovich, Bryan T. Mayer and Ryan C. Rogers

Roland M. Cavalier, Esquire
Jon Tingley, Esquire
Tuczinski, Cavalier & Gilchrist, P.C.
54 State Street
Suite 803
Albany, NY 12207
RCavalier@tcglegal.com
JTingley@tcglegal.com

Counsel for Respondent Frank H. Chiappone

Mark J. Astarita, Esquire
Sallah, Astarita & Cox, LLC
60 Pompton Avenue
Verona, NJ 07044
mja@sallahlaw.com
handelsman@beamlaw.com

Counsel for Respondent Andrew G. Guzzetti

Matthew G. Nielsen, Esquire
Andrews Kurth LLP
1717 Main Street
Suite 3700
Dallas, TX 75201
MatthewNielsen@andrewskurth.com
CrystalJamison@andrewskurth.com

Counsel for Respondent Thomas E. Livingston

DATE: 10/28/15

GILBERT B. ABRAMSON, ESQUIRE

Law Offices

GILBERT B. ABRAMSON & ASSOCIATES, LLC

www.gbalaw.com

1801 Market Street
Suite 1100
Philadelphia, Pennsylvania 19103
(215) 772-1070
Fax: (610) 664-5770

www.abramsonlawfirm.com

One Presidential Boulevard
Suite 215
Bala Cynwyd, Pennsylvania 19004
(610) 664-5700
Fax: (610) 664-5770

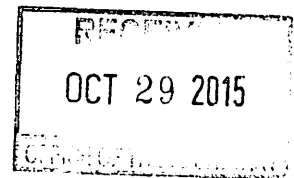
RESPOND TO BALA CYNWYD OFFICE

GILBERT B. ABRAMSON

EMAIL: gabramson@gbalaw.com

October 28, 2015

Via facsimile (202-772-9324) & Federal Express Overnight Delivery



Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Mail Stop1090
Washington, D.C. 20549

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

Dear Sir/Madam:

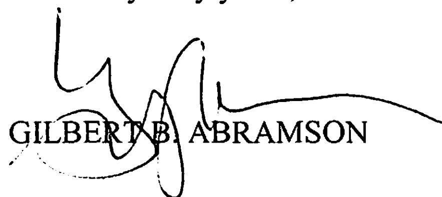
Enclosed with this fax please find a copy of the following documents, pertaining to Respondent William F. Lex's Petition for Review by the Commission of the Initial Decision of Hon. Brenda Murray:

1. Respondent William F. Lex's Individual Reply Brief;
2. Certificate of Service upon all parties, including the Division of Enforcement; and
3. Attorney Certification of compliance with word requirements.

The original and three copies of the above documents are being sent today via Federal Express with the hard copy of this letter.

If there are any deficiencies with respect to the above-stated enclosures, please contact me immediately at (610) 664-5700, and I will address any such matters immediately.

Very truly yours,



GILBERT B. ABRAMSON

Encl.
ccs follow on next page

cc: David Stoelting, Esquire (stoelting@sec.gov)
Haimavathi Varadan Marlier, Esquire (marlier@sec.gov)
Michael D. Birbaum, Esquire (birnbaum@sec.gov)
By Federal Express and Email

M. William Munno, Esquire (munno@sewkis.com)
Brian P. Maloney, Esquire (maloney@sewkis.com)
Michael Weitman, Esquire (weitman@sewkis.com)
Matthew J. Nielsen, Esquire (matthewnielsen@andrewskurth.com)
Mark J. Astarita, Esquire (mjh@sallahlaw.com)
Roland M. Cavalier, Esquire (rcavalier@tclegal.com)
Jon Tingley, Esquire (jtingley@tcglegal.com)
By Email