



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office
Brookfield Place, 200 Vesey St., Suite 400
New York, NY 10281

RECEIVED

JAN 22 2018

OFFICE OF THE SECRETARY

DIVISION OF
ENFORCEMENT

David Stoelting
Senior Trial Counsel
(212) 336-0174 (direct)
(212) 336-1324 (fax)

January 19, 2018

BY EMAIL/UPS

The Honorable Brenda P. Murray e
Chief Administrative Law Judge e
U.S. Securities and Exchange Commission
100 F Street, NE
Mail Stop 1090
Washington, DC 20549

Re: Matter of Chiappone, et al., File No. 3-15514

Dear Chief Judge Murray:

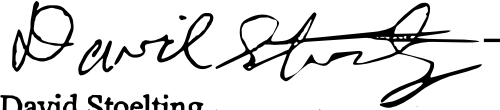
On November 30, 2017, the Commission issued an order ratifying the prior appointment of its administrative law judges to preside over administrative proceedings. *See In re: Pending Administrative Proceedings*, Securities Act Release No. 10440 (Nov. 30, 2017). As applied to this proceeding, the order directs the administrative law judge to determine, based on a de novo reconsideration of the full administrative record, whether to ratify or revise in any respect all prior actions taken by any administrative law judge during the course of this proceeding. *Id.* at 1-2.

It is well established that subsequent ratification of an earlier decision rendered by an unconstitutionally appointed officer remedies any alleged harm or prejudice caused by the violation. *See Doolin Sec. Sav. Bank, F.S.B. v. Office of Thrift Supervision*, 139 F.3d 203, 213-14 (D.C. Cir. 1998); *FEC v. Legi-Tech, Inc.*, 75 F.3d 704, 707-09 (D.C. Cir. 1996). And that principle applies whether or not the ratifying authority is the same person who made the initial decision, so long as “the ratifier has the authority to take the action to be ratified,” and, “with full knowledge of the decision to be ratified,” makes a “detached and considered affirmation of th[at] earlier decision.” *Advanced Disposal Services East, Inc. v. NLRB*, 820 F.3d 592, 602-03 (3d Cir. 2016).

Accordingly, to implement this remedy, the administrative law judge should conduct a de novo review of the administrative record, engage in an independent evaluation of the merits through the exercise of detached and considered judgment, and then determine whether prior actions should be ratified and thereby affirmed. This process ensures “that the ratifier does not blindly affirm the earlier decision without due consideration.” *Advanced Disposal Services East*, 820 F.3d at 602-03.

The Division submits that the previous decisions issued by an administrative law judge in this proceeding, including the initial decision issued on February 25, 2015,¹ were well-founded and respectfully requests that they be ratified. To that end, the Division attaches a proposed draft order to this letter.

Respectfully submitted,



David Stoelting

cc (by email): All counsel

¹ At the time of the Initial Decision, this Matter was titled *Matter of Anthony, et al.*, File No. 3-15514.

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.

[PROPOSED] ORDER

After a de novo review and reexamination of the record in these proceedings, I have reached the independent decision to ratify and affirm all prior actions made by an administrative-law judge in these proceedings, including the initial decision issued on February 25, 2015. This decision to ratify and affirm is based on my detached and considered judgment after an independent evaluation of the merits.

By: _____
Brenda P. Murray
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I, David Stoelting, hereby certify that on January 19, 2018, I caused the following documents:

Letter from Division of Enforcement of Judge Murray dated January 19, 2018.

To be sent by email and by UPS Next Day Air upon:

Matthew G. Nielsen
Stanton LLP
1717 Main Street, Suite 3800
Dallas, Texas 75201

Gilbert B. Abramson
Gilbert B. Abramson & Associates, LLC
One Presidential Blvd., Suite 315
Bala Cynwyd, PA 19004

M. William Munno
Seward & Kissell LLP
One Battery Park Plaza
New York, NY 10004

Roland Cavalier
Tuczinski Cavalier & Gilchrist, P.C.
54 State St. - 8th floor
Albany, NY 12207

Mark Astarita
Sallah Astarita & Cox, LLC
60 Pompton Ave.
Verona, NJ 07044

And by UPS Next Day Air and to alj@sec.gov upon:

Office of the Secretary (original plus three copies)
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Dated: January 19, 2018
New York, New York

Respectfully submitted,

DIVISION OF ENFORCEMENT

A handwritten signature in blue ink, appearing to read "David Stoelting", written over a horizontal line.

David Stoelting - (212) 336-0174
Securities and Exchange Commission
New York Regional Office
200 Vesey St., Suite 400
New York, NY 10281