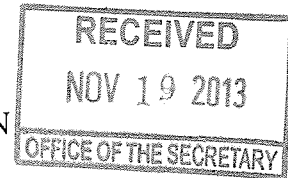


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15514

In the Matter of:

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

Respondents

**ANSWER AND AFFIRMATIVE DEFENSES OF
RESPONDENT WILLIAM P. GAMELLO**

Respondent, William P. Gamello, admits the allegations of Paragraph's 4 and 55 of the Order Instituting Administrative and Cease-and-Desist Proceedings.

Respondent, William P. Gamello, denies the allegation of the paragraphs of the Order Instituting Administrative and Cease-and-Desist Proceedings set forth below except as otherwise specified below:

Paragraph 20: As to the first and third sentences, lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged. Denies the second and fourth sentences as to Gamello. Gamello lacks and is unable to obtain sufficient

knowledge and information to form a belief as to the truth of the matters alleged in the second and fourth sentences with regard to the other Respondents.

Paragraph 34: Deny

Paragraph 36 Deny

Paragraph 35: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 37: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 38: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 39: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 40: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 41: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 42: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 44: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 45: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 46: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 47: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 50: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 51: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 66: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 67: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Paragraph 68: Deny as to Gamello. Gamello lacks and is unable to obtain sufficient knowledge and information to form a belief as to the truth of the matters alleged with regard to the other Respondents.

Respondent, William P. Gamello, lacks and is unable to obtain sufficient knowledge or information to form a belief as to the truth of the matters alleged in Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 43, 48, 49, 52, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 of the Order Instituting Administrative and Cease-and-Desist Proceedings.

AFFIRMATIVE DEFENSES

Mr. Gamello states the following affirmative defenses to the Securities and Exchange Commission's Complaint:

FIRST AFFIRMATIVE DEFENSE

The Securities and Exchange Commission's claims are barred by the applicable statute of limitations. The Securities and Exchange Commission has failed to meet the statute of limitations with respect to its allegations relating to conduct that occurred more than five years prior to the date the Order Instituting Administrative and Cease-and-Desist Proceedings was filed. The statute of limitations, pursuant to 28 U.S.C. § 2462, bars any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise,...

unless commenced within five years from the date when the claim first accrued.” 28 U.S.C. § 2462. Mr. Gamello asserts that any allegations of misconduct prior to May 1, 2008 contained in the Order Instituting Administrative and Cease-and-Desist Proceedings are barred by 28 U.S.C. § 2462. To the extent that the Order Instituting Administrative and Cease-and-Desist Proceedings alleges any act or omission of Mr. Gamello prior to September 23, 2008, Mr. Gamello seeks a dismissal of the Order Instituting Administrative and Cease-and-Desist Proceedings.

The Supreme Court held in *Gabelli v. SEC*, 133 S. Ct. 1216 (2013), that in cases brought by the government, the five-year period of limitations for enforcing a "civil fine, penalty, or forfeiture" prescribed in 28 U.S.C. § 2462 begins to run when the act giving rise to the liability occurs, not when the government discovers the act. 133 S. Ct. at 1221. The Securities and Exchange Commission seeks remedial action including but not limited to civil monetary penalties against Mr. Gamello under Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act. 28 U.S.C. § 2462 governs the SEC's penalty claims, and requires those claims to be "commenced within five years from the date when the claim first accrued." *Id.* 1221. The Supreme Court has said that the discovery rule is unavailable in SEC enforcement actions governed by 28 U.S.C. § 2462. *Id.* 1223. The Court found no support for applying the discovery rule in the context where the plaintiff is the Government bringing an enforcement action for civil penalties and not a defrauded plaintiff seeking compensation. The Court in *Gabelli* found that "the discovery rule exists in part to preserve the claims of victims who do not know they are injured and who reasonably do not inquire as to any injury," and "to ensure that the injured receive recompense." *Id.* 1222-1223. The Court did not find that the same conclusion should

not apply to the Government “in the context of enforcement actions for civil penalties.” *Id.* 1222.

SECOND AFFIRMATIVE DEFENSE

The Securities and Exchange Commission has failed to demonstrate that Mr. Gamello violated Section 10(b) of the Exchange Act and Rule 10b-5.

THIRD AFFIRMATIVE DEFENSE

The Securities and Exchange Commission has failed to demonstrate that Mr. Gamello violated Sections 5(a), (c) and 17(a) of the Securities Act.

FOURTH AFFIRMATIVE DEFENSE

No act or omission on the part of Mr. Gamello was or could have been the legal cause of harm


FIFTH AFFIRMATIVE DEFENSE

Any allegations or prayers for relief set forth in Securities and Exchange Commission’s Order Instituting Administrative and Cease-and-Desist Proceedings that are not expressly admitted, denied, or otherwise responded to are hereby denied.

PRAYER FOR RELIEF

Respondent, William P. Gamello, denies the remaining paragraphs of the Order Instituting Administrative and Cease-and-Desist Proceedings.

WHEREFORE, Mr. Gamello demands judgment dismissing the Order Instituting Administrative and Cease-and-Desist Proceedings and for attorneys’ fees and costs and for whatever other relief the Court deems appropriate. Mr. Gamello reserves the right to amend or assert additional separate and other defenses as facts are developed in the course of the additional investigation and discovery.

By: 
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Attorneys for Respondent
William P. Gamello

Dated: November 18, 2013
New York, New York