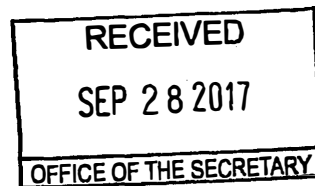


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15617

In the Matter of
LARRY C. GROSSMAN
And GREGORY J. ADAMS,
Respondents.

DIVISION OF ENFORCEMENT'S AND LARRY C. GROSSMAN'S JOINT BRIEF

The Division of Enforcement ("Division") and Respondent Larry C. Grossman ("Grossman") submit this joint brief in response to the Commission's August 31, 2017 Order Scheduling Briefs, directing the parties to submit briefs as to the appropriateness of that portion of the Commission's September 30, 2016 order ("Final Order") that found Grossman liable for disgorgement of \$3,004,180.65 plus \$757,853.75 in prejudgment interest thereon ("Disgorgement Award"), in light of the Supreme Court's recent decision in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017).

The parties agree that *Kokesh* is controlling, applicable and bars the Disgorgement Award.

BACKGROUND

On September 30, 2016, the Commission issued its Final Order finding, among other things, that none of the claims asserted by the Division accrued within the five-year limitations period set forth in 28 U.S.C. § 2462, but rejecting Grossman's argument that disgorgement is subject to Section 2462's limitations period.

Grossman's petition for review of the Final Order to the United States Court of Appeals for the Eleventh Circuit ("Appeal") was stayed pending the outcome of *Kokesh*. (*Grossman v. SEC*, No. 16-16907). During the stay, the Supreme Court decided *Kokesh*, finding that the five-year statute of limitations in Section 2462 applies to claims of disgorgement. *Kokesh*, 137 S. Ct. at 1644. The Commission's appellate counsel then moved to remand the matter to allow the Commission to consider in the first instance the effect of *Kokesh* on the Disgorgement Award. On August 11, 2017, the Eleventh Circuit granted the motion, vacated the Final Order, and remanded the case to the Commission to reconsider the Disgorgement Award in light of *Kokesh*. The remaining portions of the Commission's Final Order, however, are not encompassed by the Eleventh Circuit's vacatur and remand, and thus remain in effect.

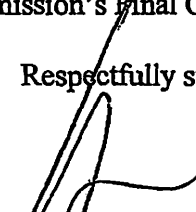
Shortly thereafter, on August 31, 2017, the Commission, pursuant to Rule 450(a) of the Rules of Practice, set a briefing schedule for the parties to file briefs "limited to the appropriateness of the Commission's 'order of disgorgement in light of the Supreme Court's decision in *Kokesh*.'" The parties do not dispute the applicability of *Kokesh* to this proceeding and are filing this joint brief regarding same.

THE DIVISION AND RESPONDENT STIPULATE THAT *KOKESH* BARS THE DISGORGEMENT AWARD AGAINST RESPONDENT


The Commission found that Section 2462's five-year limitations period for the claims asserted against Grossman began on November 20, 2008, that Grossman received all of the funds at issue prior to that date, and that none of the Division's claims asserted against Grossman accrued after November 20, 2008, within the limitations period. (Final Order at 4, 16). The parties therefore stipulate that *Kokesh* is controlling and the statute of limitations bars the award of \$3,004,180.65 in disgorgement and \$757,853.75 in prejudgment interest against Grossman in the Disgorgement Award. Accordingly, the parties respectfully submit the Commission should

vacate the Disgorgement Award. As noted above, however, the remaining portions of the Commission's Final Order remain in effect.

Respectfully submitted, this 28th day of September 2017.



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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2017, an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served on the following persons entitled to notice as follows:

Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
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A handwritten signature in black ink, appearing to read "Patrick R. Costello", written over a light gray rectangular background.

Patrick R. Costello, Esq.