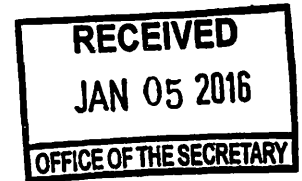


HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16386

In the Matter of

TRACI J. ANDERSON, CPA
TIMOTHY W. CARNAHAN
AND CYIOS CORPORATION,

Respondents.

DIVISION OF ENFORCEMENT'S
RESPONSE TO RESPONDENTS
TIMOTHY CARNAHAN'S AND CYIOS
CORPORATION'S MOTION TO
CORRECT MANIFEST ERRORS OF
FACT

The Court should deny Respondents Timothy Carnahan's and CYIOS Corporation's December 24, 2015 "Motion under (sic) Rule 111 to Correct Manifest Errors of FACT (sic)" (the "Motion"). Carnahan and CYIOS (collectively, the "Respondents") cite no "patent misstatements of fact" in the December 21, 2015 Initial Decision. Rather, the Respondents simply disagree with the Court's factual findings and legal conclusions. This is not the proper basis for overturning or modifying the Initial Decision. Thus, the Motion should be denied.

I. Legal Standard

Rule of Practice 111(h) permits a party to file a "motion to correct a manifest error of fact in the initial decision." *See, e.g., In the Matter of David R. Wulf*, Rel. No. 2979 at 1, A.P. File No. 3-16374 (July 28, 2015) (citing 17 C.F.R. § 201.111(h)). A motion to correct is properly filed under Rule 111(h) only if the basis for the motion is a patent misstatement of fact in the initial decision. *Id.* A manifest error is an "error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." *Id.* (citing

Black's Law Dictionary (2009)).

II. Argument

The Respondents cite no patent misstatement of fact in the Initial Decision. In reality, virtually all of the facts forming the basis for the Respondents' liability remain undisputed to this day. This is shown through the extensive record developed both in this litigation and the preceding investigation. These facts have been thoroughly briefed by both sides and were considered by the Court as part of the issuance of the Initial Decision. The Division will not duplicate that briefing here. However, the Division highlights the following points in response to the arguments raised in the Motion.

A. *Claims Under Exchange Act Section 13(a) and Rules 13a-1 and 13a-13*

The Respondents take issue with the Initial Decision's finding that Carnahan "purposefully" decided to stop making CYIOS' required periodic filings.¹ Motion at 2. But it remains undisputed that the Respondents deliberately failed to make the required filings—and thus acted in deliberate disregard of regulatory requirements. As the Initial Decision correctly notes, Carnahan admitted this when he explained the underlying reasons for this failure—namely, the cost of remaining compliant with CYIOS' filing obligations. Initial Decision at 16. Thus, there is no misstatement of fact in the Initial Decision. The Respondents admittedly acted in deliberate disregard of regulatory requirements. The Court should thus reject the Respondents' request that these claims be dismissed, and should also decline to adjust the remedies imposed for these violations.

¹ As the Court correctly noted in the Initial Decision, *scienter* is not required to establish violations of these statutory provisions. Initial Decision at 16 (citing cases). Thus, to establish liability it is irrelevant whether or not the failure to file was purposeful. Whether the failure to file was purposeful is only relevant to the remedies imposed against the Respondents.

B. Claims Under Exchange Act Rules 13a-14 and 13a-15

As they have throughout the case, the Respondents claim that Carnahan assessed CYIOS' internal controls over financial reporting ("ICFR") using the COSO Framework. Motion at 5. Yet even after litigating this case to a hearing, there is no evidence to support this assertion. And the Respondents cite none in their Motion. Rather, the undisputed evidence shows that if the ICFR assessments were done at all, they were not done using the COSO Framework—as claimed in CYIOS' public filings, which Carnahan signed and certified. As the Initial Decision correctly notes, it does not matter that CYIOS' internal CYIPRO product was mapped to the ISO 9001 framework [Motion at 4]. Initial Decision at 9. It is undisputed that compliance with the COSO standards cannot be achieved merely by compliance with ISO standards. *Id.* The Respondents' statements to the contrary are simply wrong and unsupported by any evidence. Thus, the Court should reject their arguments that they did not violate Exchange Act Rules 13a-14 and 13a-15.

C. Claims Under Securities Act Section 17(a)(3)

For similar reasons, the Court was correct to conclude that CYIOS violated and Carnahan caused CYIOS' violations of Securities Act Section 17(a)(3). It is undisputed that CYIOS' public filings stated that ICFR had been assessed using the COSO Framework. And notwithstanding the Respondents' wholly unsupported claim that these statements "are true" [Motion at 5] it is undisputed that the evidence shows them to be false. This evidence includes the Respondents' own documents, which contain no reference to COSO, as well as other evidence—including the expert testimony of Charles Lundelius. The undisputed evidence also shows that these statements were made with *scienter*—since Carnahan knew that the assessments were not made using the COSO Framework. The Respondents admit this, since they claim the assessments were somehow done using the CYIPRO product (which is mapped ISO 9001). Motion at 4.

Finally, the Motion does not dispute that the statements were material and in the offer or sale of securities. Thus, the Court should reject the Respondent's arguments that they did not violate Securities Act Section 17(a)(3).

Respectfully submitted,

Handwritten signature in blue ink that reads "Janice L. Frank for Chris Davis". The signature is written in a cursive style.

Chris Davis
Texas Bar No. 24050483
Timothy McCole
Mississippi Bar 10628
United States Securities and
Exchange Commission
Fort Worth Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
(817) 900-2638 (Davis)
(817) 978-6453 (McCole)
(817) 978-4927 (facsimile)

SERVICE LIST

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the Division of Enforcement's Response to Respondents Timothy Carnahan's and CYIOS Corporation's Motion to Correct Manifest Errors was served on the following on January 4, 2016 via United Parcel Service, Overnight Mail:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Chris Davis, Esq.
Fort Worth Regional Office
Securities and Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, TX 76102

Traci J. Anderson, CPA
[REDACTED]
Charlotte, NC [REDACTED]

Timothy W. Carnahan
President and CEO and Chairman
CYIOS Corporation
Ronald Reagan Building
1300 Pennsylvania Ave., 700
Washington DC 20004

CYIOS Corporation
c/o Timothy W. Carnahan, President, CEO and Chairman
Ronald Reagan Building
1300 Pennsylvania Ave., 700
Washington, DC 20004


Chris Davis