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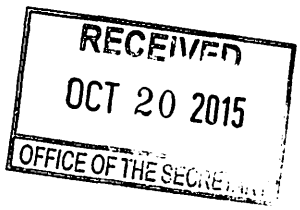

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEEDING
File No. 3-16647

In the Matter of

IREECO, LLC and
IREECO LIMITED,

Respondents.

RESPONDENTS IREECO, LLC'S AND IRREECO LIMITED'S SUR-REPLY TO DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

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Respondents Ireeco, LLC and Ireeco Limited ("Respondents" or "Ireeco"), by and through undersigned counsel, hereby submit their Sur-Reply to the Division of Enforcement's ("Division") Reply in Support of Its Motion for Summary Disposition Against Respondents Ireeco, LLC and Ireeco Limited ("Reply"). The Sur-Reply responds to all of the Division's arguments, as well as its failure to address various substantive arguments, and highly relevant factual and procedural background, all of which impact the remaining issues to be resolved.

I. Statement of Facts

The first line of the Division's Reply begins, "Respondents spill much ink over issues not in dispute." (Reply at I. p. 1) This dismissive, non-substantive response and the argument that follows completely ignore the most important and highly relevant facts central to the remaining issues to be decided, the amount of monetary relief to be awarded, if any, and the Respondents' inability to pay any such award. The offending "ink" consists of just two (2) pages of highly-relevant factual background, all of which is highly relevant, providing proper context to understand and appreciate the factual background and history of the EB-5 program, including the Commission's own admission that this is the ***very first action of its kind*** against "brokers handling investments in the government's EB-5 Immigrant Investor Program," and also that Respondents are precluded from challenging the IOP.[1] Respondents' "ink" addresses the

[1] The fact that this matter is the very first of its kind in a 25 year industry, with no clear legal authorities addressing the issues presented in this action, coupled with the forthright cooperation provided by Respondents and Mr. Parnell during the Staff's investigation, led the Respondents and their principals to appropriately conclude that the Staff had abandoned its investigation and/or changing direction to focus on the other three (3) entities identified in the Formal Order of Investigation. Nevertheless, footnote 2 of the Reply attempts to belittle the Respondents. This tone, found throughout the Reply, is not appreciated by the Respondents or their non-party principals, who have always endeavored to fully cooperate and resolve any and all issues from inception, despite the perception in the EB-5 industry that the Division is plainly attempting to legislate through enforcement, *ex post facto*, in an industry that was never previously regulated by the SEC, and which does not resemble traditional broker-dealer services.

equities of the monetary relief requested by the Division, and also questions the reasonableness and appropriateness of any such relief. Notably, the Division's Motion was completely silent regarding this most salient fact and consideration, which is why the issue was properly raised by the Respondents. The Division's Reply ridicules Respondents' good faith, meritorious defenses, and continues to ignore this pertinent fact. This silence speaks volumes.

Yes, the OIP contains many statements that Respondents are precluded from contesting. However, the Respondents would never contest that they "worked with foreign individual to determine if the EB-5 Visa Program would work for them," or that they provided foreign nationals with "the information and education they would need in choosing the right regional center" for their immigration needs. OIP §III.B.8. Likewise, they would never contest that they received payments from Regional Centers – *but only after the EB-5 Applicants received their conditional green card, following the USCIS' approval of their I-526 petitions* – as opposed to when the investments were actually made through, not with, Regional Centers, months, or more than a year earlier.

Despite making much ado about the fact this action does not involve fraud, the Division's Reply to Respondents' Statement of Facts nevertheless cites SEC v. George, 426 F.3d 786, 797 (6th Cir. 2005) for the proposition that the Respondents, here, are just as liable as the defendants in George, even though they did not work for the Regional Centers, because they were "regularly involved in communications with and recruitment of investors for the purchase of securities." (Reply at I p. 1, quoting George) The Division's reliance on George is completely misplaced. There, the defendants ran a Ponzi scheme in violation of several anti-fraud and registration provisions of the Federal Securities Laws; took their victims' money; and never made the promised investments they solicited. Instead, the defendants in George used the money to further

their scheme and lead extravagant lifestyles (personal expenses, loans, gifts, mortgage payments, lease payments, and 2.6 carat diamond engagement ring, etc.). Id. at 789-91. Thus, both the facts and legal issues in George are completely distinguishable from this matter, just like the other "authorities" that the Division attempts to rely on in its earlier motion.

Respondents' decision to settle this matter, *without admitting or denying the Division's allegations*, does not negate many inescapable facts -- that they never handled, negotiated, transferred, much less received any investor funds, or participated in any activity that resulted in any "victims."[2] To the contrary, Respondents assisted EB-5 applicants with the EB-5 process and were ultimately paid by Regional Centers months or years later, when, and only if, the Applicants received their USCIS government-issued *green cards*, long after the underlying investments were made through the Regional Centers. These facts have no correlation to any of the decisions relied upon by the Division in seeking millions of dollars in monetary relief, here.

II. Respondents' Individual and Collective Inability to Pay

Respondents' Response conclusively demonstrated that Ireeco, LLC and Ireeco Limited are each insolvent and individually and collectively unable to pay any ordered disgorgement, prejudgment interest and/or monetary penalties, by tracking the requirements of SEC Rule 630, and supplying the requisite Financial Disclosures through supporting Declarations. However, the Division's Reply fails to acknowledge or address Rule 630 or the additional legal authorities specifically relied upon by Respondents, in which Administrative Law Judges have found that a

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[2] The Division appears to rely on Ronald Bloomfield, AP File No. 3-13871, 2014 WL 768828, **20-21 (Feb. 27, 2014) (Commission Opinion) for the proposition that commissions are the "appropriate measure of disgorgement with respect to a non-scienter violation." (Reply at II. p. 2 n.3) However, unlike the instant matter, Bloomfield involved highly-speculative penny stocks, unregistered securities transactions, market manipulation, money laundering, tax evasion, and the disregard of multiple warnings of illegal activity, resulting in a failure to supervise or file required suspicious activity reports. It could not be any more distinguishable from this matter.

substantiated inability to pay obviates the public interest to impose disgorgement, civil penalties, or prejudgment interest, completely, or to substantially lower the actual amount of monetary relief ordered.[3] Instead, the Division has two responses.

First, the Division attempts to rely on Scott Stephan, AP File No. 3-16312, 2015 WL 2015 WL 5637557, *4 (Sept. 25, 2015), an Initial Decision, for the proposition that inability to pay "should be given less weight" for disgorgement, as opposed to other forms of monetary relief sought by the Division. There, Stephan was found to have willfully violated and aided and abetted numerous antifraud provisions, by making false and misleading statements to investor clients, and through the use of a "'highly misleading' PPM he assisted in creating." The Division argued that "the egregious nature of Stephan's fraud . . . demands a penalty," and that relieving Stephan of having to pay disgorgement would allow him "to keep profits taken from defrauded investors and suggest an incentive for securities law violators to burn through their profits before they can be held accountable for their misconduct." Stephan was ultimately ordered to pay half of the disgorgement and prejudgment interest requested, despite his financial

[3] The Division ignores each of the following authorities relied upon by Respondents: Thrasos Tommy Petrou, AP File No. 3-16217, 2015 WL 4939697 (Aug. 19, 2015) (finding Petrou "decisively demonstrated a substantial inability to pay" and that "it is not in the public interest to impose civil penalties, and that he should only be ordered to disgorge $15,000, with no separate prejudgment interest," despite 28 willful violations of laws in connection with 20 offerings); Trent L. Tucker, AP File No. 3-12830, 2007 WL 2778641, *3 (Sept. 25, 2007) (despite finding of willful violation of numerous ***antifraud*** provisions, respondent demonstrated inability to pay disgorgement, prejudgment interest, or civil penalties, which the Commission waived); Charles A. Sacco, AP File No. 3-12625, 2007 WL 1285757, *5 (May 2, 2007) (despite finding of willful violation of numerous ***antifraud*** provisions, respondent demonstrated inability to pay disgorgement, prejudgment interest, or civil penalties, which the Commission waived, other than $15,000 in disgorgement); Tyrone Killebrew, AP File No. 3-10286, 2002 WL 31103495, *2 (Sept. 23, 2002) (despite finding of willful violation of numerous ***antifraud*** and other provisions of the Exchange Act, including Section 15(a)(1) and 15(c), the Commission waived payment of disgorgement, prejudgment interest, or civil penalties, based on demonstrated inability to pay).

condition. However, here, there has been no egregious conduct, the matter is one of first impression, and there are no victims! Stephan may be axiomatic, but it is highly distinguishable.

Regardless, the Division's primary argument seems to focus not on the Respondents, but their non-party principals. This Division appears to concede that the Respondents are insolvent, but suggests that this results "entirely from Respondents' distributions to their principals," by evenly distributing all funds to the Respondents' principals. The Division implies that this is part of some nefarious scheme, and argues that, "Respondents have failed to show that their self-created inability to pay should be considered at all." (Reply at III. P. 6)[4]

The Respondents in this action are not swindlers (like all of the other respondents/defendants in the purported "authorities" relied upon by the Division), nor are they individuals. To the contrary, the Respondents are a dissolved Florida LLC and a similar, if not equivalent Hong Kong Limited Company, where all funds that were not expended were routinely distributed to their members, as it always did, since inception, long before the SEC opened its investigation, as part of its routine business operations, nothing more.[5] As admitted in the

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[4] The Division attempts to bootstrap using SEC v. Pentagon Capital Mgmt. PLC, 2012 WL 1036087, *16 (S.D.N.Y Mar. 28, 2012); however, Pentagon is yet another inapplicable decision. There, the SEC named both an individual and the company he formed to facilitate mutual fund trading in European markets using a late trading scheme that was found to have violated the antifraud provisions of the Federal Securities laws, following a 17 day bench trial. Notably, the defendants in Pentagon failed to timely raise their inability to pay argument, raising it only after trial. They also failed to submit documentation or even estimates of their current or future financial condition, and also failed to demonstrate that they were unable to pay the civil penalty imposed. It is unclear how Pentagon has any similarity or application to the instant matter.

[5] The Division's insinuations regarding "mysterious expenses" are simply misplaced. The referenced expenses and payments were merely the initial administrative payments made by Ireeco Limited to Ireeco, LLC, when it assumed business operations, nothing more. During that transitional point in time, the related parties did not issue formal invoices and receipts, which prompted the referenced notation by the former auditor. Thereafter, all such payments were documented. It is, of course, improper to issue after-the-fact documentation to account for earlier transactions and accounting. To imply anything else is improper. Had the Division inquired about any of this, earlier, the Respondents would have been more than happy to explain.

Motion, the Reply, and the Division's supporting Declaration of Brian James, the Division has been aware of this fact throughout the course of the underlying investigation.

Despite this knowledge, the Commission knowingly entered into a negotiated, partial-settlement with the Respondent entities, only, with the understanding that their principals would not be named in this action, as Respondents or even Relief Defendants. Thus, the Division cannot claim that it is surprised by the Financial Disclosures. Respondents' financial condition was fully disclosed to the Staff, as well as Respondents' intent to seek protection under Rule 630, prior to the execution of the Respondents' Offers of Settlement, and prior to the Commission's acceptance of the Offers and issuance of the OIP.

Why then does the Division attempt to take the Respondents to task for the so-called "self-created inability to pay," and why does the Division repeatedly focus on non-parties in the OIP and in its various filings? The focus of the Reply on the foregoing individuals is more than disingenuous, particularly when the Division knowingly chose to partially settle this matter in a mutually desirable manner, by excluding any of the individuals from this enforcement action. Rather than addressing the merits of the overwhelming evidence, which plainly militates in favor of wavier, the Division chooses to focus on non-parties, and supports its requested relief with distinguishable "authorities" involving the most flagrant violations of the antifraud provisions of the Federal Securities laws. The Division is espousing a "do what I say and not what I do" attitude directed to Respondents and the very non-parties the Division knowingly chose to exclude.

Based on the foregoing, it is not at all surprising that the Division also chose to ignore each of Respondents' supporting authorities, in which the triers of fact chose to exercise

discretion in waiving the requested relief. Respondents continue to rely on each of those applicable authorities (see n.3, above), to demonstrate that waiver is appropriate, here.

III. Remedies Sought by the Division

As previously demonstrated by Respondents' Response and Supporting Declarations and Financial Disclosures, filed in compliance with Rule 630 and its progeny, and further illustrated above, neither Respondent has the ability to pay any of the Division's requested Disgorgement, Prejudgment Interest, or Penalties. Nevertheless, Respondents will now address the Division's Replies to each category of monetary relief sought, as well as matters it chose to ignore.

A. Disgorgement

The Division is seeking $3,625,750 in total disgorgement from the Respondents, which Respondents take very seriously. Contrary to the Reply's accusation, the Respondents are not disputing the appropriate *legal standards* to be applied. However, the Respondents do take issue with the Division's approximation, as well as each of its cited and highly distinguishable authorities. The Division keeps trying to place Respondents in a "box" that does not fit, in any way. That is why the Respondents properly distinguished each and every decision cited by the Division, to demonstrate this is by no means a "normal and usual" case. Here, the Respondents did not engage in any egregious conduct. They did ***not*** sell any products, they did ***not*** engage in any fraudulent activities, and there were ***no*** victims of any kind. The foregoing, alone, makes this case unique, separate and apart from the SEC's own admission that it is the first of its kind.

The Division argues that, "The regional centers compensated Respondents for their unlawful conduct, paying them 'for each registered investor who invested funds in an EB-5 offering.'" (Reply at II. P. 2-3, citing OIP III.B.16) However, the foregoing is less than accurate and plainly omits portions of the OIP paragraph cited, which actually states, "Respondents

earned the fee once the investor's I-526 petition (conditional green card) was approved by USCIS. The fee was a commission based on a fixed portion of the 'administrative fee' the investor paid to the regional center and averaged around $35,000 per investor." (Id.)[6]

The Division argues that Respondents have failed to challenge the Division's disgorgement approximations, but that is not entirely correct. Respondents' earlier Response explained that the Division relies on the Declaration of Brian T. James, who simply totaled all of the "consultancy fees" paid to the Respondents from January of 2010 through February of 2014, without regard to any business expenses, or any of the many different types of services the Respondents actually provided the EB-5 Applicants. Mr. Parnell previously provided sworn testimony, explaining that Respondents provided a plethora of services to immigrant Applicants, explaining American businesses, American culture, how American schools operate, how to obtain licenses, medical care, etc. (Reply at II. p. 3; Response Exh. C, at 29:21-30:5) The foregoing are not "brokerage" services by any stretch of the imagination. As explained in the Response, the Regional Centers did not have the knowledge, manpower, or desire to assist the immigrant Applicants, which is why the Respondents facilitated those services, for the benefit of the Applicants, as well as the Regional Centers. (Response at 12-13, Parnell Tr. pps. 48-49)

The Division criticizes Respondents for not valuing those services or proffering a basis "to determine if any portion of the commissions they received is attributable to the 'help' to which Mr. Parnell was referring." (Reply at II. p. 3) Well, since the Division has now opened this otherwise closed door, Respondents must properly respond and truthfully explain, as it has always and consistently done, that all of the services it provided were part of this "help," having nothing to do with the sale of securities (performed solely by the Regional Centers). The

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[6] Exhibits 1 and 2 to the Division's supporting Declaration (pages 19-23) plainly shows that the actual fees Respondents received were usually far less than this "average" amount.

Respondents helped immigrant Applicants understand the EB-5 process; identify historically successful Regional Centers with a proven track record of job creation and green card realization; and assimilate into the U.S. The services provided by Respondents did not touch upon any of the numerous factors enumerated and analyzed in SEC v. Kramer, 778 F. Supp. 2d 1320, 1334-40 (M.D. Fla. 2011), other than the receipt of "transaction-based compensation."[7]

As the OIP itself notes, the "commissions" at issue herein were provided to the Respondents upon the occurrence of the issuance of the immigrant Applicant's green card. (OIP III.B. 8, 16) Commissions were not tied to the timing of the investment made by the Applicant through the Regional Center. To the contrary, the Regional Centers received an additional "administrative fee" over and above the required investment amount (Id. at 7), a portion of which was eventually paid to Respondents between 6 and 16 months after the alleged investments at issue were even made by the Applicant in the approved EB-5 project, but only when the green card was issued. Respondents provided services to their clients for, on average, thirteen (13) to twenty-seven (27) months, and even as long as three (3) years, in some cases. (Response at 12)

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[7] Notably, the District Court in Kramer, following a two-week bench trial, explained:

> Furthermore, the Commission's proposed single-factor "transaction-based compensation" test for broker activity (i.e., a person "engaged in the business of effecting transactions in securities for the accounts of others") is an inaccurate statement of the law both in 2003 and in 2011. As this order exhaustively explains, an array of factors determine the presence of broker activity. In the absence of a statutory definition enunciating otherwise, the test for broker activity must remain cogent, multi-faceted, and controlled by the Exchange Act.

Id. at 1341 n.54. The foregoing is a statement of law; it is not a denial of the findings of the OIP by the Respondents. In fact, the SEC Advisory Committee on Small and Emerging Companies recently recommend to the SEC in its September 23, 2015 letter that the SEC should take steps to clarify that persons receiving transaction-based compensation, solely for providing names of or introductions to prospective investors, are not subject to broker-dealer registration. http://www.sec.gov/info/smallbus/acsec.shtml

As noted in Mr. Parnell's sworn testimony and as illustrated by the Division's own supporting Declaration and exhibits, the payments received by Respondents varied widely, and those payments were not itemized. It would be wholly improper for Respondents to now attempt to document prior events that were not contemporaneously documented; however that is not necessary. To the contrary, Respondents have simply demonstrated that, while the Division has proffered an approximation of disgorgement, it is not, under these most unique and compelling circumstances, reasonable.[8] In this case, it is the Division that has failed to meet its required burden of providing a proper basis to conclude that its approximation is at all reasonable.

The Division refuses to acknowledge that the technical violation at issue did not result in the Respondents unjustly enriching themselves at the expense of others. There were no victims here, not even a record of any complaints by any immigrant Applicants. This is not one of the few EB-5 case involving a fraudulent Regional Center, fraudulent offering, or misappropriated funds, like all other EB-5 cases, to date. The Division's Reply does not contest this simple truth.

Thus, in addition to the Respondents' inability to pay any award, all of the foregoing demonstrates that Respondents have not been unjustly enriched, to the detriment of anyone. To the contrary, the extensive services provided by Respondents to the immigrant Applicants for which they were compensated – *unlike any traditional broker-dealer services* -- should further militate against the total amount of Disgorgement requested by the Division.

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[8] Again, the Division's continued reliance on Stephan, 2015 WL 5637557, *3, for the proposition that "it is proper to assume that all profits gained while defendants were in violation of the law constituted ill-gotten gains," (Reply at II. p. 3) is less than disingenuous, where Stephan, himself, was found to have engaged in highly egregious behavior, such as willfully violated and aided and abetted numerous antifraud provisions, by making false and misleading statements to investor clients, and through the use of "'highly misleading' PPM he assisted in creating," resulting in defrauded victims. This case is nothing like Stephan, not by any stretch of the imagination.

B. Prejudgment Interest

Despite requesting a total of $128,755.70 in prejudgment interest, the Division's Reply fails to address any portion of the Respondents' Response, challenging this component of requested relief. In their Response, the Respondents addressed and distinguished the only "authority" relied upon by the Division, and effectively demonstrated why this matter is truly "***unique and compelling circumstance***" where prejudgment interest should not be awarded (a possibility acknowledged by the Division in its Reply).[9] There is no question that the violation at issue is singular, technical, and is the first of its kind. As explained in Respondents' Response, the SEC is using this case to send a message to the entire EB-5 Visa industry, making the Ireeco entities the poster children for broker-dealer registration, despite the fact that they never actually bought or sold any securities, placed trades, analyzed the financial needs of issuers, distributed investment documentation, or handled investor funds of any kind.[10] Regardless, there were simply no victims here, none whatsoever. Thus, separate and apart from Respondents' inability to pay, this is truly a "most unique" case, as plainly admitted by the SEC, as well as the compelling facts and circumstance that warrants the denial of any requested

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[9] See Motion, Section B. p. 9, citing Terence Michael Coxon, AP File No. 3-9218, 2003 WL 21991359 (Aug. 21, 2003) (Commission Opinion), aff'd, 137 F. App'x 975 (9th Cir. 2005).

[10] With liability established by negotiated settlement, the Division's Reply ignores the pertinent factors in assessing broker dealer activity, as set forth in Kramer, 778 F. Supp. at 1334-40 (providing exhaustive analysis of the various relevant factors considered by factfinders in determining whether a person/entity qualifies as a broker under Section 15(a) of the Exchange Act). Nevertheless, it is highly relevant that, in May of 2014, Steve Cohen, the SEC's Associate Director of Enforcement, gave a speech to the IIUSA (Invest in the USA) Advocacy Conference, Mr. Cohen stated that "we have been looking at and are interested in non-fraud related issues such as unregistered broker-dealers, unregistered investment advisors and alike," while also conceding, "that is not to say that everybody who is involved in soliciting people into EB-5 program needs to be registered broker dealer – I'm not saying that – but I am, again, trying to sensitize people to the notion that if you're doing that, you may be required to register as a broker dealer," while also noting that not all EB-5 investments actually fall under the definition of a security.

prejudgment interest. The Division's silence on this issue is a tacit admission that prejudgment interest should be waived, or denied.

C. Civil Penalties

The Division seeks a first-tier penalty against the Respondents, pursuant to 17 C.F.R. § 201.1005, in order to "punish" the Respondents and label them as "wrongdoers." The Respondents' Response highlights the unique facts presented in this case and demonstrates that "punishment" is simply unwarranted. In response, the Reply seems to imply that, merely because the Division is asking for a first-tier penalty, the lowest available, and only a single penalty per Respondent, that its request is nevertheless reasonable. However, the Reply fails to actually address the substance of Respondents' Response.

Respondents have distinguished each and every plainly inapplicable decision cited by the Division's Motion, each of which involve rank fraud, clear harm to investors, and abhorrent, if not completely sociopathic behavior. The authorities purportedly relied upon by the Division are exemplars of the very worst kind of conduct giving rise to violations of the ***antifraud*** provisions of the Federal Securities Laws; and, in one case, equally egregious conduct during the enforcement proceedings. None of the decisions have any similarity to the conduct at issue herein, involving a matter of ***first impression,*** in the context of an alleged technical violation, in an industry that had been left alone by the SEC for nearly twenty-five years – a specific Immigration Program designed to fast-track wealthy immigrants who can loan $500,000 to a new domestic U.S.-based EB-5 Project, and to create domestic U.S.-based jobs, in return for a "Green Card". There can be no question that there has been ***no alleged damage caused to anyone resulting from the technical violation of the broker-dealer laws at issue***, here, in what must be

the most ***non-traditional*** broker-dealer case in history.[11] Thus, any penalty award against Respondents in this matter would also be inequitable, based on the total absence of any victims.

The Division completely ignores Respondents' step-by-step analysis of the various factors set forth in the Division's Motion. The facts are abundantly clear. There was ***no*** fraudulent misconduct, ***no*** harm to others, ***no*** victims, ***no*** restitution, and ***no*** claim of wrongdoing by any EB-5 Applicant or Regional Center. In fact, Respondents have ***never*** been subject to any prior violations, and ***never*** had any intention of participating in the securities industry. Contrary to the Division's assertion, Respondents' opposition does not consist "almost entirely of demonstrating that they did not commit fraud." (Reply at III. P. 4) Thus, there is no basis for a "punishment" of prior conduct. Furthermore, Respondents have been subject to an injunction since March of 2015, when they voluntarily ceased all of their prior business operations. The investigative and related expenses incurred by the entities and their Principals for more then three (3) years, alone, is punishment enough. And the widely publicized injunction is sufficient, in and of itself, to deter any future violations by any other un-registered/non-exempt affinity groups in the EB-5 industry.

The Division attempts to make short shrift of Respondents' "hint" of a Statute of Limitations argument, pursuant to 28 U.S.C. § 2462.[12] Again, the Division attempts to belittle

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[11] Taking the Division's logic to the ultimate conclusion, would it have made any sense for the Respondents' prior business model to be subject to "net capital rules," books and records requirements, and FINRA oversight, when the Respondents never handled client funds, or executed trades, as opposed to explaining the EB-5 program to applicants and introducing them to Regional Centers with a proven track record of job creation?

[12] The Division can characterize the argument as a "hint" if it likes; however, the Response is clear, and the Division's Reply equally ignores Respondents' limited reliance on the Division's own, cited authorities (for purposes of statute of limitations, ***only***). See, e.g., Eric J. Brown, AP File No. 3-13532, 2012 WL 625874, at *18 (Feb. 27, 2012) ("We do not believe, however, that imposing civil penalties for customers to whom Brown sold variable annuities

Respondents' argument, suggesting it is meritless and inapplicable. Instead, the Division argues that it ***could have*** sought numerous penalties based on the conduct alleged, but that it is choosing only to seek a *single penalty* against each Respondent. (Reply at III., p. 4), as follows:

> Finally, Respondents hint at a statute of limitations issue based on the fact that they received some fraction of the fees in question (which were paid between January 2010 and February 2014) prior to the pertinent limitations date of June 23, 2010. However, the issues of fees received prior to June 23, 2010 would be relevant only if the Division were seeking a separate penalty for each fee paid. Here, most of the fees were paid after June 2010, and even a single violation by a Respondent after that date would permit imposition of the requested $75,000 penalty.

With all due respect to the foregoing, the Division has nonetheless failed to identify the specific fee for which they seek to punish. More importantly, ***the Division has failed to identify the specific <u>date</u> of any such alleged violation***. Thus, despite being directly confronted with Respondents' affirmative defense, the Division has failed to meet its absolute, required burden, and the time to have done so has now passed, leaving the Administrative Law Judge with the unfortunate task of having to ***guess*** whether or not such relief may be statutorily barred – and guessing is never the role of the trier of fact.

IV. Conclusion

The Respondents set out with an entrepreneurial business model that was premised on helping immigrants avoid the mistakes that Respondents' own principals made when they immigrated to America, to help maximize the opportunity to realize the "American Dream." Respondents truly understood the immigrant Applicant's needs, and could help them solve their assimilation problems better than others. They were very good at doing just that, providing immigration and relocation guidance to thousands of potential immigrants (many of whom never

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outside the statute of limitations is appropriate."); <u>SEC v. Pentagon</u>, 725 F.3d 279, at 287 (2d Cir. 2013) ("any profit earned through late trading earlier than five years before the SEC instituted its suit against the defendants may not be included as part of the civil penalty").

made any EB-5 investments through Regional Centers), often without any form of remuneration. Because Respondents were not employees of, beholden to any Regional Centers, they freely told immigrant Applicants that they could take the information they provided and use it wherever and with whomever they wished.

Applicants approached Respondents for advice because they knew, from Respondents' writings and from talking with them, that they really understood their needs and cared for them. Many immigrant Applicants came to Respondents after being led astray by other advisors, often coming close to blowing deadlines and losing the opportunity to bring their families to the United States. However, with Respondents' help, they realized their dream of becoming citizens. Respondents' former clients are not complaining. To the contrary, they routinely thank Respondents for changing their lives.

Unlike others acting in the EB-5 industry, the Respondents always put their clients' interests above their own and, as of the date they entered into the voluntary settlement with the SEC, not one of their clients has ever been denied their visa, or been refused unconditional resident status. In fact, those that have reached the end of their EB-5 journey have also recouped their $500,000 investments, following their visa approval. Zero failures, zero complaints, not a penny taken from the clients, not a penny lost by Respondents' clients. Respondents' advised their clients publicly that they were not providing securities advice, as did their contracts with Regional Centers. Respondents made every effort to avoid any problems, by trying to follow rules, which, for more than 23 years, were not forthcoming. Respondents also sought, as all SEC public spokespersons advise, legal counsel at the first instance of SEC intervention, and then confirmed that they did not meet any of the applicable factors in Kramer, necessary to find broker-activity, other than the receipt of "transaction-based compensation," which, as the District

Court in Kramer expressly stated, is not, by itself, sufficient. When finally faced with an actual, unavoidable enforcement action, the Respondents entered into a voluntary injunction and ceased their prior business operations. That is the simple truth.

For all of the reasons set forth in their initial Response, as well as this Reply, Respondents respectfully request that the Division's Motion for Summary Disposition be denied in this matter of first impression.

Alternatively, based on their proven inability to pay, conclusively established by the sworn Declarations of Stephen Parnell (Composite Exhibit A to the Response) and Gary Trugman, CPA/ABV, MCBA, ASA, MVS (Exhibit B to the Response), and the extensive financial statements and related disclosures supplied by Respondents and analyzed by Mr. Trugman (attached as Composite Exhibit 1 to the Parnell Declaration), submitted in accordance with Rule 630, Respondents respectfully request that the Administrative Law Judge exercise appropriate discretion and find that all of the Division's requested relief, including disgorgement, prejudgment interest, and civil penalties, are unwarranted and should be waived, as contrary to the public interest.

Respectfully submitted this 19th day of October, 2015.

/s/

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CERTIFICATE OF SERVICE

I hereby certify that this Response was timely submitted to the Office of the Secretary by Facsimile (202) 772-9324 and that an original and three true and correct copies of this filing were simultaneously submitted by overnight courier (FedEx), as directed by the Office of the Secretary, to the U.S. Securities and Exchange Commission, Office of the Secretary, Attn: Brent J. Fields, 100 F Street, N.E., mail stop 10900, Washington, D.C. 20549-2557, this 19th day of October, 2015.

Additionally, courtesy copies were served via email on the following persons, this 19th day of October, 2015:

The Honorable Jason S. Patil
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