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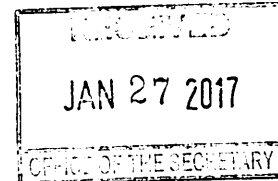
UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-17393

In the Matter Of

CURTIS A. PETERSON

Respondent.



**DIVISION OF ENFORCEMENT'S RESPONSE TO  
RESPONDENT'S POST HEARING SUPPLEMENTAL BRIEF**

Respondent violated the federal securities laws. Respondent earned \$584,550.00 in transaction-based compensation as a reward for his violation. Neither of these facts is in dispute. Respondent, through his briefings and oral argument, has nonetheless asked the Administrative Law Judge ("ALJ") to enter disgorgement at some figure less than the full amount of transaction-based compensation he earned. Respondent's request should be denied and the Division's Motion for Summary Disposition should be granted. Respondent reaped the benefits of his violation of the law, and chose to spend it on how he saw fit – quite obviously never once questioning whether such a sudden influx of money was legitimate. It was not.

In his Supplemental Brief, Respondent first attempts to assert that he should be credited \$15,300 for payments he made to investors. (Brief at 1-2). But Respondent's own attachments belie his entitlement to such a discount. The Division filed its Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and Other Relief on April 7, 2014. This action was precipitated by aggrieved investors having contacted state securities officials and, in mid-fall 2013, the Commission, expressing their concerns about their investments. Investor

complaints accelerated, when, in December 2013 and January 2014, investors stopped receiving their monthly commission checks.

As noted in the memo lines for the checks to Ms. Payne and Mr. Franklin in Exhibit A to Respondent's Brief, Peterson, through his company, VC Capital Corp., simply paid these individuals the monthly commissions they were entitled to. The memo line in the check to Ms. Payne on February 4, 2014 states, "Fronted for January 2014 Commissions," and for Mr. Franklin on February 5, 2014 states, "Fronted for TBTI late commission payment." This was not a refund on their investment, but rather was an obligation that T.B.T.I., and by extension, Peterson, who promoted and sold them the investment, had to Ms. Payne and Mr. Franklin. Peterson does not deserve credit for stringing his investors along another month by paying them royalty payments in a Ponzi scheme.

Respondent then calls into question the Receiver's inclusion of check numbers 4741, 4742, and 4746 in his calculation of the amount Peterson profited from his investment. Peterson claims they were not related to the investments in the VCMs. However, T.B.T.I.'s QuickBooks entries call this assertion into question. For checks numbers 4741 and 4742, the QuickBooks check entries reference "VC" and the transactions are recorded as Cost of Goods," with #4742 also recording "T.B.T.I. Inc." Check Number 4746 also references "VC," and is coded to "Peterson Curtis." (Composite Exhibit A). Thus, it is a dubious assertion that these checks are not related to Peterson's investment in the Virtual Concierge Program.

Additionally, other than a bald assertion, Peterson offers no support that he had a net loss of \$33,600.00, and it should thus be rejected. Even giving Peterson the benefit of the doubt as to these three checks, (\$56,540 in checks/debit) and the four other checks listed on page two in the chart in his Brief (\$42,000 in deposit/credit), the Receiver's conclusion that Peterson was a

profiteer on his investment still stands. The Receiver's declaration originally concluded that Peterson had invested \$474,400 and received \$650,940 in payments, thus profiting \$176,940.00. Allowing for an additional investment of \$42,000 brings Peterson's investment total to \$516,000 (\$474,000 + \$42,000). Subtracting the \$56,540 from the three checks results in \$594,400 in payments (\$650,940 – \$56,540). Thus even giving Peterson every benefit of the doubt for what he concretely asserts, he still made a profit on his investment of \$78,400.00 (\$594,400 - \$516,000). (Exhibit B, pg. 2). As counsel conceded in oral argument, Mr. Sallah's declaration should be given "certain weight." (Exhibit C at 13). Peterson has offered nothing to the contrary.

The ALJ offered Respondent the opportunity after oral argument to provide him case-law in support of his proposition that it was unfair to entertain disgorgement based on his current net worth of over \$2 million because a portion of this was based on a recent inheritance from the passing of his parents. As demonstrated by the absence in his supplemental brief, he failed to do so.

Respondent argues that, "An order of full disgorgement would only have a punitive and not remedial effect for the purposes of returning any ill-gotten gains," and thus asks to be excused. (Brief at 3). This argument is illogical. Respondent is essentially arguing that those who have already spent all of their ill-gotten gains before law enforcement catches up with them should not to have to disgorge their ill-gotten gains. This is contrary to the most basic premises of disgorgement law. Disgorgement is an equitable remedy, distinguishable from damages; "it is a method of forcing a defendant to give up the amount by which he was unjustly enriched." *SEC v. Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987). There is no carve-out because a defendant already spent the money. *SEC v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C. Cir. 2000).

To conclude, Respondent profited enormously from both the sale of the Ponzi-scheme based investment to others and from his own personal investment. The Receiver is working diligently to return funds to aggrieved investors. Respondent's ill-gotten gains, in total, should be part of that pool of money available to return to harmed investors. This is money Respondent has in hand. The Commission thus respectfully requests the Division's Motion for Summary Disposition be granted and that Curtis Peterson be held liable for disgorgement of \$584,550.00 and prejudgment interest of \$17,734.76.

January 26, 2017

Respectfully submitted,

By:



Russell Koonin  
Senior Trial Counsel  
Florida Bar No. 474479  
Direct Dial: (305) 982-6385  
Email: kooninr@sec.gov

Attorney for Plaintiff  
**SECURITIES AND EXCHANGE  
COMMISSION**  
801 Brickell Avenue, Suite 1800  
Miami, Florida 33131  
Telephone: (305) 982-6300  
Facsimile: (305) 536-4146

**CERTIFICATE OF SERVICE**

I hereby certify that 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 by Email and U.S. Mail on this 26<sup>th</sup> day of January 2017, on the following persons entitled to notice:

The Honorable Jason S. Patil  
Administrative Law Judge  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington D.C. 20549

Michael V. Miller, Esq.  
Silverberg & Weiss, P.A.  
1290 Weston Road, Suite 218  
Weston, Florida, 33326  
mmiller@pkslegal.com  
*Attorney for Respondent*

  
\_\_\_\_\_  
Russell Koonin



9:29 AM  
01/23/17  
Accrual Basis

T.B.T.I. INC.  
Custom Transaction Detail Report  
November 1, 2013

Type	Date	Num	Name	Memo	Account	Class	Clr	Split	Debit	Credit	Balance
Nov 1, 13											
Check	11/01/2013	4741	Peterson, Curtis	VC	T.B.T.I. Inc. (Main)		X	COST OF GOOD...		21,000.00	-21,000.00
Check	11/01/2013	4741	Peterson, Curtis	VC	COST OF GOODS			T.B.T.I. Inc. (Ma...	21,000.00		0.00
Nov 1, 13									<u>21,000.00</u>	<u>21,000.00</u>	<u>0.00</u>

T.B.T.I. INC.  
ATM Sales & Service

4741  
63-4/630

10-31-2013

Date

Pay to the  
Order of Curtis Peterson

\$ 21,000.<sup>00</sup>

Twenty one Thousand

00/100 Dollars



Security  
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Details on  
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Bank of America

For

Trade For Cash

MP

4741

*P. H. K.*  
80258885

UNIT 170 4 2 2

20/0048/DCR/128/80258885/90/\$21,000.00  
11/01/13 12:05/191205954

Security Features exceed standards and include

- Tinted security paper
- Microprint
- Colorful background
- Large, clear numerals
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Do not cash if:

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- Color is faded and colored ink is on both
- The word "ONE" appears clearly to the right of the number

1. This is a reminder mark of the Federal Reserve Bank of New York

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9:30 AM

01/23/17

Accrual Basis

T.B.T.I. INC.  
Custom Transaction Detail Report

November 1, 2013

Type	Date	Num	Name	Memo	Account	Class	Clr	Split	Debit	Credit	Balance
Nov 1, 13 Check	11/01/2013	4742	Peterson, Curtis	VC	T.B.T.I. Inc. (Mish)		X	COST OF GOODS		10,020.00	-10,020.00
Nov 1, 13									0.00	10,020.00	-10,020.00

T.B.T.I. INC.  
ATM Sales & Service

4742  
63-4/630

10-31-2013

Date

Pay to the  
Order of

Curtis Peterson

\$ 10,620

Ten Thousand Six hundred Twenty and <sup>00</sup>/<sub>100</sub>

Dollars



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Bank of America

For

Trade Fair Cash

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01/23/17

Accrual Basis

T.B.T.I. INC.  
Custom Transaction Detail Report

November 12, 2013

Type	Date	Num	Name	Memo	Account	Class	Clr	Split	Debit	Credit	Balance
Nov 12, 13 Check	11/12/2013	4746	Peterson, Curtis	VC	T.B.T.I. Inc. (Main)		X	PETERSON, CURTIS		24,920.00	-24,920.00
Nov 12, 13									0.00	24,920.00	-24,920.00

T.B.T.I. INC.  
ATM Sales & Service

4746  
63-4/630



11-8-2013 Date

Pay to the Order of Curtis Peterson

\$ 24,920

Twenty four Thousand nine hundred twenty and <sup>00</sup>/<sub>100</sub> Dollars

Security Features Detailed on Back

Bank of America

For ATM's CASH Trade

MP



*[Handwritten signature]*

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Security features: Standards and include

- 100% cotton paper
- 3-D security watermark
- Tactile features
- Fluorescent fibers
- Security thread
- Microprint
- Hologram
- Color-shifting ink

Do not cash if:

- Any of the features listed are missing
- The watermark is missing or faded
- The color-shifting ink is missing or faded
- The security thread is missing or faded
- The microprint is missing or faded
- The hologram is missing or faded
- The color-shifting ink is missing or faded

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**VOID** if used on the wrong side of the paper.

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Securities and Exchange Commission, Plaintiff,  
Case No.: 9:14-civ-80468-DMM  
United States District Court  
Southern District of Florida

EXHIBIT

B

JCS Enterprises Inc., dba JCS Enterprises Services, Inc and T.B.T.I. Inc.  
Transfers to/from Curtis Peterson - Investments  
For the Period of December 1, 2011 through April 30, 2014 (or close of account)

Source: Bank Statements  
Receivership Date: 04/07/14

Bank ID #	Entity	Statement Clearing Date	Type	Check #	Category	Payee/Received From	Memo	Deposits/ Credits	Checks/ Debits
TD-4901	TBTI	03/19/13	Check	42805	Investor	Peterson, Curtis	VC	\$ -	\$ 15,600.00
BOA-2038	TBTI	04/29/13	Credit	4164	Investor	Peterson, Curtis	6 machines VC	18,000.00	
BOA-4820	TBTI	02/21/12	Credit	3752	Investor	Peterson, Curtis		27,000.00	
BOA-2038	TBTI	04/27/12	Wire		Investor	Peterson, Curtis		18,000.00	
BOA-2038	TBTI	07/02/12	Wire		Investor	Peterson, Curtis		24,000.00	
TD-4901	TBTI	08/22/12	Check	41118	Investor	Peterson, Curtis	VC		8,100.00
BOA-2038	TBTI	08/31/12	Credit	4253	Investor	Peterson, Curtis	3 VC Units	9,000.00	
TD-4901	TBTI	09/24/12	Check	41243	Investor	Peterson, Curtis	VC		9,900.00
BOA-2038	TBTI	09/27/12	Credit	4301	Investor	Peterson, Curtis	3 VC	9,000.00	
TD-4901	TBTI	10/19/12	Check	41403	Investor	Peterson, Curtis	VC		10,800.00
BOA-2038	TBTI	01/03/13	Credit	4257	Investor	Peterson, Curtis	2 VCs Units	6,000.00	
BOA-2038	TBTI	02/01/13	Credit	4068	Investor	Peterson, Curtis	curtis peterson-1, janice pacheco-1	3,000.00	
TD-4901	TBTI	03/01/13	Credit	1020	Investor	Peterson, Curtis	6 addtl VCs	18,000.00	
BOA-2038	TBTI	04/29/13	Credit	3800	Investor	Peterson, Curtis	6 VC Units	18,000.00	
BOA-2038	TBTI	11/01/13	Check	4741	Investor	Peterson, Curtis	trade for cash		21,000.00
BOA-2038	TBTI	11/01/13	Check	4742	Investor	Peterson, Curtis	trade for cash		10,620.00
BOA-2038	TBTI	11/12/13	Check	4746	Investor	Peterson, Curtis	ATM's cash trade		24,920.00
<b>Peterson, Curtis Total</b>								<b>\$ 150,000.00</b>	<b>\$ 100,940.00</b>
BOA-2038	TBTI	06/04/12	Credit	2671	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	2 VC Units	6,000.00	
BOA-2038	TBTI	07/31/12	Credit	2752	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	2 VC Units	6,000.00	
TD-4901	TBTI	11/20/12	Check	41603	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	VC		10,800.00
TD-4901	TBTI	12/20/12	Check	41826	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	VC		11,400.00
TD-4901	TBTI	01/18/13	Check	42058	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	VC		12,000.00
TD-4901	TBTI	02/01/13	Credit	2971	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	5 Addl VC unit	15,000.00	
TD-4901	TBTI	02/21/13	Check	42341	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	VC		13,800.00
TD-4901	TBTI	04/01/13	Credit	3055	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	4 vc #26145	12,000.00	
TD-4901	TBTI	04/01/13	Credit	4131	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	inv #21468 4 machines	12,000.00	
TD-4901	TBTI	04/18/13	Check	43261	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	VC		16,800.00
TD-4901	TBTI	04/18/13	Check	43262	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	VC		13,000.00
TD-4901	TBTI	09/19/13	Check	47006	Investor	Peterson, Curtis & Tammy (Miami Sun ATM LLC)	VC		30,000.00
<b>Peterson, Curtis &amp; Tammy (Miami Sun ATM LLC) Total</b>								<b>\$ 51,000.00</b>	<b>\$ 107,800.00</b>
BOA-2038	TBTI	01/11/12	Check	14823	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC=4		1,200.00
BOA-2038	TBTI	02/21/12	Check	15042	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC=4		1,200.00
BOA-2038	TBTI	03/20/12	Check	15236	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC=9		2,700.00
BOA-2038	TBTI	04/24/12	Check	15466	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC=14		4,200.00
BOA-2038	TBTI	05/22/12	Check	15707	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		6,000.00
BOA-2038	TBTI	06/20/12	Check	15942	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		6,600.00
BOA-2038	TBTI	07/20/12	Check	16208	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		7,500.00
BOA-2038	TBTI	08/31/12	Credit	4252	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	3 VC Units	9,000.00	

Securities and Exchange Commission, Plaintiff,  
Case No.: 9:14-civ-80468-DMM  
United States District Court  
Southern District of Florida

JCS Enterprises Inc., dba JCS Enterprises Services, Inc and T.B.T.I. Inc.  
Transfers to/from Curtis Peterson - Investments  
For the Period of December 1, 2011 through April 30, 2014 (or close of account)

Source: Bank Statements  
Receivership Date: 04/07/14

Bank ID #	Entity	Statement Clearing Date	Type	Check #	Category	Payee/Received From	Memo	Deposits/ Credits	Checks/ Debits
TD-4901	TBTI	05/24/13	Check	43686	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		60,350.00
BOA-2038	TBTI	05/30/13	Credit	104	Investor	Peterson, Curtis & Tammy (VC Capital Corp)		54,000.00	
TD-4901	TBTI	05/30/13	Credit	4203	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	2 VCs 1-curtis 1-jan	3,000.00	
TD-4901	TBTI	06/25/13	Check	44365	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		54,550.00
BOA-2038	TBTI	06/28/13	Credit	105	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	4 VC Units	12,000.00	
TD-4901	TBTI	07/19/13	Check	45148	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		66,500.00
TD-4901	TBTI	07/31/13	Credit	111	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	5 addl VCs	15,000.00	
TD-4901	TBTI	08/20/13	Check	45854	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		27,000.00
TD-4901	TBTI	08/20/13	Check	46180	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		51,400.00
TD-4901	TBTI	08/30/13	Credit	121	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	10 VCs	30,000.00	
TD-4901	TBTI	09/26/13	Credit	131	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	5 VCs	15,000.00	
TD-4901	TBTI	10/18/13	Check	48250	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		31,500.00
TD-4901	TBTI	10/29/13	Credit	136	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	15 VC units	45,000.00	
TD-4901	TBTI	11/22/13	Credit	141	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	15 VC	45,000.00	
TD-4901	TBTI	11/25/13	Check	50057	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		36,000.00
TD-4901	TBTI	12/24/13	Check	51104	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		40,500.00
TD-4901	TBTI	12/27/13	Credit	152	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	15 VC	45,000.00	
TD-4901	TBTI	01/27/14	Check	52696	Investor	Peterson, Curtis & Tammy (VC Capital Corp)	VC		45,000.00
<b>Peterson, Curtis &amp; Tammy (VC Capital Corp) Total</b>								<b>\$ 273,000.00</b>	<b>\$ 442,200.00</b>
								<b>\$ 474,000.00</b>	<b>\$ 650,940.00</b>
Hypothetical Adjustments If Peterson Affidavit Accepted:									
Reduction for check Nos. 4741, 4742 and 4746									\$ (56,540.00)
Addback of investments not credited								\$ 42,000.00	
Adjusted totals								\$ 516,000.00	\$ 594,400.00
<b>Adjusted net profit amount</b>									<b>\$ 78,400.00</b>



UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:                     )  
   ) File No. 3-17393  
CURTIS PETERSON                     )

ADMINISTRATIVE PROCEEDINGS - ORAL ARGUMENT

PAGES:     1 through 51  
PLACE:     Securities and Exchange Commission  
           801 Brickell Avenue  
           Suite 1800  
           Miami, Florida  
DATE:     Wednesday, December 28, 2016

The above-entitled matter came on for hearing,  
pursuant to notice, at 10:00 a.m.

BEFORE (via telephone):  
           JASON PATIL, ADMINISTRATIVE LAW JUDGE

Diversified Reporting Services, Inc.  
(202) 467-9200

1 APPEARANCES:  
 2  
 3 On behalf of the Securities and Exchange Commission:  
 4 RUSSELL KOONIN, ESQ.  
 5 GLENN GORDON, ESQ.  
 6 Division of Enforcement  
 7 Securities and Exchange Commission  
 8 801 Brickell Avenue  
 9 Suite 1800  
 10 Miami, Florida 33131  
 11  
 12 On behalf of the Respondent:  
 13 PAUL SILVERBERG, ESQ.  
 14 MICHAEL MILLER, ESQ.  
 15 Silverberg & Weiss  
 16 1290 Weston Road  
 17 Suite 218  
 18 Weston, Florida 33326  
 19 Appeared via telephone.  
 20  
 21  
 22  
 23  
 24  
 25

1 argument today would be something that would  
 2 significantly aide the decisional process so I  
 3 would like to give you that opportunity to address  
 4 those issues which you think need further  
 5 explanation or clarification as well as any  
 6 discussion of the Division of Enforcement's reply  
 7 in support of its motion given that you did not  
 8 have the opportunity to have a sur-reply.  
 9 Once you've provided that presentation  
 10 I've given you a list of questions through Mr.  
 11 Pearlman which I'll pretty much go down in order  
 12 subject to some sort of follow-up questions, and at  
 13 that time once I've -- we've finished our  
 14 discussion with respondent's counsel I'll give the  
 15 Division of Enforcement an opportunity to address  
 16 anything that has come up in that discussion should  
 17 they wish to that they believe merits some points  
 18 or where there is disagreement by the Division with  
 19 the position, a position articulated by  
 20 respondent's counsel, and then finally at the end  
 21 of the list there are some questions for the  
 22 Division of Enforcement, and these are things that  
 23 just came to me as I've read the briefs and looked  
 24 at the underlying authorities and then I'll go  
 25 ahead and ask you those questions.

1 PROCEEDINGS  
 2 JUDGE PATIL: This is an oral argument on  
 3 motion for summary disposition on the issue of  
 4 disgorgement in the matter of Curtis A. Peterson,  
 5 file number 3-17393.  
 6 I am the Administrative Law Judge, Jason  
 7 Patil, and with me in the room is my attorney  
 8 advisor who assists on the case Benjamin Pearlman.  
 9 First I would like appearances for the Division of  
 10 Enforcement.  
 11 MR. KOONIN: Good morning, Russell  
 12 Koonin, senior counsel, and Glenn Gordon, associate  
 13 regional director of the Miami Regional Office of  
 14 the Securities and Exchange Commission.  
 15 JUDGE PATIL: And I would please like  
 16 appearances for counsel for respondent.  
 17 MR. SILVERBERG: Paul Silverberg and  
 18 Michael Miller, Silverberg & Weiss.  
 19 JUDGE PATIL: Thank you very much. I had  
 20 Mr. Pearlman provide an e-mail indicating how we'll  
 21 proceed but let me just go into it in a little more  
 22 detail.  
 23 The first thing I would like to hear is  
 24 respondent's argument that they requested in the  
 25 motion for oral argument they indicated that an

1 Then at the end if there is any last  
 2 comments from the respondent we'll hear those and  
 3 then we'll conclude.  
 4 Is that understood?  
 5 MR. KOONIN: Thank you, yes.  
 6 JUDGE PATIL: Without further ado counsel  
 7 for respondent please proceed.  
 8 MR. SILVERBERG: This is Paul Silverberg  
 9 again, I'm going to start, Mr. Miller will help me  
 10 as we go through the issues.  
 11 Thank you for the time today and happy  
 12 holidays to everybody.  
 13 What we have here is a situation where  
 14 Mr. Peterson was not an active wrongdoer in the  
 15 sense of the people that committed a fraud. He was  
 16 an early participant where he lost money in  
 17 actually investing and gained money on the  
 18 commission side by making referrals to the company.  
 19 These referrals included his sister and his mother  
 20 who lost money that Mr. Peterson had to compensate  
 21 for their losses. The family members were involved  
 22 in this process and lost money. Mr. Peterson lost  
 23 money on the investment side.  
 24 What he did is when he referred people to  
 25 the company and to the wrongdoers they then sold

1 the concierge systems to people. Mr. Peterson was  
2 not involved in setting rates and terms and  
3 financial positions of any of these investments.

4 What also is important because this is an  
5 equitable measures to understand at the time that  
6 the situation was going on at the time we were  
7 participating with the receiver and the SEC Mr.  
8 Peterson's personal financial condition was  
9 significantly different than it appears today. And  
10 a large part of that is due to the unfortunate  
11 death of both of his parents. Due to the death of  
12 both of his parents he received a significant  
13 inheritance with his sister, again, a sister who  
14 lost money in the subject investments with Mr.  
15 Peterson.

16 His net worth and his assets before the  
17 inheritance were approximately \$582 thousand. His  
18 ability to pay based on those factors with the  
19 taxes and his unfortunately his medically ill and  
20 disabled son affect his ability to pay. We believe  
21 that the financial's of today should not be  
22 utilized because of the change in circumstances,  
23 nevertheless, with a number compared to his ability  
24 as if it was done at the time and the downfall of a  
25 Ponzi and, therefore, we ask for the Court to

1 consider the equitable side both of Mr. Peterson  
2 not being actively involved in the actual fraud,  
3 the concept that he actually lost money in the  
4 investments, and the fact that this year he had the  
5 loss of both of his parents which significantly  
6 changed his ability. The fact that he is married  
7 and he does care for his son, and I've produced  
8 some records related to bills. One of his most  
9 recent hospital bills for his son was approximately  
10 \$80 thousand.

11 And that's the large part in which we  
12 requested this hearing today and we appreciate the  
13 time.

14 JUDGE PATIL: This is Judge Patil. One  
15 thing which is not quite clear to me, and I'm  
16 hoping that you can assist me in understanding is  
17 in the Division's reply brief they attached an  
18 affidavit from an individual named Sallah who seems  
19 to indicate that contrary to your statement that  
20 Mr. Peterson lost money while investing he actually  
21 profited from that investment to the tune of \$176  
22 thousand. I don't know if you have that -- do you  
23 have that affidavit handy? If not I can quote the  
24 language for you.

25 MR. SILVERBERG: We're generally familiar

1 with it. I'm going it to leave it to Mr. Miller to  
2 respond specifically to that set of questions.

3 MR. MILLER: Sure, Your Honor, Michael  
4 Miller for respondent.

5 The affidavit by Mr. Sallah conflates the  
6 in-containments from the investment and the  
7 commissions payments.

8 MR. KOONIN: Mike, I'm sorry. Can you  
9 speak up, I'm having a little trouble hearing you?

10 MR. MILLER: Sure. The affidavit filed  
11 by Mr. Sallah conflates the commission payments  
12 received by Mr. Peterson and some of the investment  
13 payments. The only profits that Mr. Peterson had  
14 came from the commissions. In fact, based on his  
15 investment he lost approximately \$30,600. He  
16 invested \$447 thousand and he had a net return of  
17 \$416 thousand. So his only profits came from the  
18 commissions from the referrals. He was an  
19 aggrieved investor like anyone else.

20 I would also point Your Honor on Exhibit  
21 A to the declaration where it lists out the check  
22 numbers about halfway through the page it says  
23 Peterson Curtis total, it has a number of \$150  
24 thousand. The three checks preceding that number,  
25 4741, 4742, and 4746 are what's called trade for

1 cash. What happened there was that TBTI purchased  
2 separate ATM machines not the VCM's in our  
3 opposition from Mr. Peterson pretty much dollar for  
4 dollar. So those were purchases for something  
5 completely outside of the investment which the  
6 receiver counsel includes in the investment returns  
7 received from Mr. Peterson.

8 So it's our position that the declaration  
9 does not accurately reflect losses from the  
10 investment and that the only profits made by Mr.  
11 Peterson came from those referral commissions.

12 JUDGE PATIL: All right. I think I  
13 understand what you're saying but if he walked away  
14 with -- so he lost \$30 thousand on his investment  
15 you're saying. Correct?

16 MR. MILLER: Yes, Your Honor, he was in  
17 the same boat as the other investors that lost  
18 money.

19 JUDGE PATIL: When you say he's in the  
20 same boat I obviously don't have detailed financial  
21 records with respect to all the other investors but  
22 based on the allegations and the OIP which are  
23 deemed true I believe for the sake of this  
24 litigation it appears that some investors lost much  
25 more than say the equivalent of losing \$30 thousand

1 on the \$470 thousand investment. And that was one  
2 of the issues that I -- it's not clear from the  
3 evidence was Mr. Peterson's loss on his investment  
4 characteristic are typical of the losses suffered  
5 by investors in this overall scheme or did he do  
6 better than the average investor, and that's  
7 excluding the issue of his transaction based  
8 compensation in asking that question?

9 MR. SILVERBERG: From the respondent's  
10 side obviously we don't know because Mr. Peterson  
11 wasn't involved in the internal operations of the  
12 fraud scheme so we don't have numbers of whatever  
13 were lost. I can tell you his mother and his  
14 sister lost more than he did. But part of this is  
15 is due to timing in which people come in which is  
16 typical Ponzi schemes. It doesn't mean that he's a  
17 wrongdoer or that he did anything wrong it's just  
18 typically when someone is earlier on in a Ponzi  
19 scheme they tend not to do as bad as the later  
20 people that come in.

21 And we want to note that there was  
22 clawbacks of people that were profitable and we  
23 learned that from the receiver. So, he's not on  
24 the side of people that made money from the concept  
25 of these investments and he's not the worst

1 checks are specifically related to those ATM  
2 machines and are completely unrelated. So this is  
3 just another example of how those numbers are off,  
4 and we're talking this is alone we've identified is  
5 over \$70 thousand of mistakes associated therewith.  
6 So, unfortunately, we weren't given access, we  
7 didn't contest the overall concept in certain  
8 issues with this.

9 By example also, if we look six checks  
10 up, check 4068, this is a mixed deposit associated  
11 with Curtis and Janice, which is his sister. So  
12 there are clear mixups associated with the numbers  
13 that go directly to Mr. Peterson. And what we're  
14 showing you is that there are numbers that  
15 aren't correct and they haven't contested what Mr.  
16 Peterson has said and, therefore, we're asking you  
17 to understand that their numbers aren't accurate  
18 due to they're trying to unravel a fraudulent  
19 scheme and not every fraudulent scheme keeps truly  
20 accurate reflection of numbers and books and  
21 reports.

22 JUDGE PATIL: All right. So, what's  
23 respondent's position as to what I should do with  
24 this declaration? Should I not admit it and  
25 consider it or --

1 investor, we recognize that.

2 JUDGE PATIL: Back to the issue of the  
3 Sallah declaration and your explanation. If Mr.  
4 Peterson lost \$30 thousand on his investment and  
5 this declaration conflates commissions with income  
6 payments wouldn't the Sallah declaration have to  
7 say he profited to the tune of a much greater  
8 amount than \$176 thousand overall from his  
9 compensation?

10 Paragraph 15. I understand your argument  
11 that there is some mistake in this declaration, but  
12 the individual is giving to a figure of \$176  
13 thousand or so in profit and yet if the author of  
14 this declaration is really conflating income on the  
15 investment with commission based compensation it  
16 seems like that number should be much higher.

17 MR. SILVERBERG: There is also as Mr.  
18 Miller points out, this Mr. Silverberg, of three  
19 checks that we noted, so just a bit of background,  
20 and I don't want to repeat what we wrote in our  
21 papers.

22 Mr. Peterson knew some of these people  
23 from prior business relationships which were ATM's,  
24 the traditional ATM machines, not the concierge  
25 machines which are part of the fraud. These three

1 MR. SILVERBERG: Well, I mean, I think  
2 you have to give it certain weight, I don't think  
3 it's beyond approach where it should be given zero  
4 weight. What we're trying to show you is that it  
5 was an effort by someone who is coming in under  
6 difficult circumstances to try to analyze records  
7 without assistance of truthful people to assist  
8 them. And, you know, we don't have a question  
9 about the quality of effort that the receiver made  
10 it's just they have a lack of access to truthful  
11 information or necessarily accurate information, so  
12 to really make it a terrible pun, garbage in  
13 garbage out, and it's not the work done it's just  
14 that there is some bad numbers mixed in.

15 JUDGE PATIL: Understood. I have a couple  
16 of questions about points you raised in your  
17 initial argument. I understand your explanation  
18 that at the time of sort of the completion of this  
19 scheme that Mr. Peterson at that time wouldn't have  
20 had enough money to satisfy the requested  
21 disgorgement, and that subsequently due to really  
22 unfortunate circumstances he came into a position  
23 where he would have money that could potentially  
24 satisfy the disgorgement.

25 Do you have any authority or analogous

1 sort of case law you can point me to that suggests  
2 it's appropriate to look at the financial standing  
3 of private respondent at the time that the acts  
4 were completed as opposed to what that person can  
5 satisfy at the present time far in the future from  
6 that previous period?

7 MR. SILVERBERG: Unfortunately it doesn't  
8 seem something like this has occurred where we can  
9 draw a very simple analogy. What we rely on the  
10 understanding that this is an equitable remedy,  
11 that it is disgorgement, that the concept of -- I  
12 mean, this is like a Tort separate intervening act,  
13 I mean, losing both parents in a year which leaves  
14 children with the inheritance, you know, is cruelly  
15 not a circumstance and it's cruelly not equitable  
16 to take this money away from the wife and the  
17 child, I mean, you know, Mr. Peterson was  
18 unfortunately part of this. He is not a true  
19 wrongdoer. I mean, if Mr. Peterson was of that  
20 mentality we could have locked up the estate for  
21 two years and never reported the numbers. But he  
22 is a truthful person that got caught up in a bad  
23 situation.

24 But no, if we were able to settle with  
25 the receiver like we did with the -- with Mr.

1 consideration in we don't want him to be pegged  
2 twice, so to speak.

3 Mr. Peterson did pay a substantial amount  
4 of taxes. This is money going back, he did pay  
5 over \$250 thousand in taxes. So when you decide to  
6 look at disgorgement amount we're merely asking you  
7 to look at the final number and back out the  
8 interest if you're going to award it and not award  
9 a number and then add the interest trying to, you  
10 know, come to a resolution of a number in a  
11 totality that would be appropriately equitable  
12 circumstances we're deal with.

13 JUDGE PATIL: Okay. I think I understand  
14 your argument and I agree with you that if the  
15 Commission hadn't already entered an order saying  
16 that prejudgment interest should attach to the  
17 disgorgement you would have a pretty good argument.  
18 But you would agree that where the Commission has  
19 ordered something I should follow what they've  
20 ordered. Correct?

21 MR. SILVERBERG: Correct. And we're  
22 merely asking you when you determine a number to  
23 consider the number as a whole with the interest  
24 including and backout the interest.

25 JUDGE PATIL: Okay, I think I understand

1 Peterson's sister it would have been before the  
2 inheritance like it was for her. And it is only  
3 because the time period that this took and,  
4 therefore, we ask that, you know, look at the  
5 timing in which this started, look at Mr.  
6 Peterson's cooperation, look at his honesty by not  
7 locking up the estate and reporting these matters.  
8 You know, if this was at the time we were  
9 discussing settlement he would have never had any  
10 of these monies but we've not been able to find an  
11 analogy.

12 JUDGE PATIL: Thank you for that. I want  
13 to refer you to my list of questions, there is a  
14 few that I do want you to address.

15 The first one on that list is the issue  
16 of prejudgment interests which gets briefed in the  
17 motion in the response, in the order instituting  
18 proceedings paragraph 4(d), that language in my  
19 mind seems relatively plain on the issue of  
20 prejudgment interests and suggests that to the  
21 extent disgorgement is ordered there shall be  
22 prejudgment interest. What's your position on  
23 that?

24 MR. SILVERBERG: I think the language is  
25 clear but as we ask you to take the equitable

1 that.

2 On the third question I have is just to  
3 understand from you it seems from Mr. Peterson's  
4 affidavit paragraph five that he is gainfully  
5 employed, and I would just appreciate some further  
6 detail about that, whether that's the type of  
7 employment that's likely to persist into the  
8 future, whether it's full-time employment, or  
9 whether his ability to work has been adversely  
10 impacted as a result of his involvement in the  
11 proceeding.

12 MR. SILVERBERG: Fortunately for Mr.  
13 Peterson he's been gainfully employed, this was  
14 never his full-time employment. This was  
15 additional income earned for him. Unfortunately, he  
16 did take actions based on the additional income  
17 associated with his disabled son and put him in  
18 certain schooling and did certain treatments and  
19 hospitalizations that obviously he would like to  
20 continue for his son that have -- you know, this  
21 income changed how he started down the road, so to  
22 speak.

23 He has had some feedback from his  
24 employer about being named and associated with  
25 that. It has what it looks like changed at least

1 temporarily, we can't say long-term, promotion that  
2 he may have been entitled to be promoted within the  
3 sales structure, but it has not dramatically  
4 changed his income at that job, its lost future  
5 revenues but not ongoing.

6 JUDGE PATIL: How long has he been  
7 employed approximately in this sales job?

8 MR. SILVERBERG: Let me look. We're  
9 trying to find out.

10 JUDGE PATIL: If you don't have that  
11 that's fine.

12 MR. SILVERBERG: We believe it's over  
13 three years preceding this issue so it's been some  
14 time.

15 JUDGE PATIL: Okay, thank you. The next  
16 question I had relates to paragraph 12. There was  
17 a discussion of emotional and psychological impact  
18 and I was interested in hearing whether you were  
19 able to identify any case law or authority which  
20 suggested those types of impacts on a respondent  
21 were appropriate in considering a reduction in  
22 disgorgement?

23 MR. SILVERBERG: The only thing we found  
24 is in the equitable consideration realm, and  
25 considering what we're talking about with the son,

1 aware of that he lost significant money for his  
2 family members.

3 JUDGE PATIL: So to clarify, here's my  
4 issue. And I'm sure the division may have a  
5 position on it, but if, for example, and maybe it's  
6 not this case, if there is someone involved in a  
7 scheme wittingly or unwittingly that results in  
8 loss to investors and that respondent is charged  
9 but while those charges are pending or before that  
10 respondent has through some means paid back a  
11 certain amount of money to an investor who lost  
12 money in the scheme that to me would be one of the  
13 types of actions which could appropriately limit  
14 the extent of disgorgement.

15 Here I don't think I have those facts as  
16 far as the X financial's in evidence, and I'm not  
17 prejudging the issue, it just appears to me that  
18 that sort of action in a case, again, that may not  
19 be the case here, that may perhaps be an  
20 appropriate way to limit the amount of  
21 disgorgement.

22 So, I understand if your client didn't  
23 want to make as you say an issue of it or the  
24 family losses or anything he's done to compensate  
25 for that, but if he has actually paid back investor

1 the loss of both parents that changed his assets  
2 dramatically in a year, that would be the type of  
3 consideration.

4 You know, again, fortunately for Mr.  
5 Peterson he was able to resolve some issues with  
6 his sister and his mother about the loss of their  
7 money, you know, in this issue. Again, it was for  
8 the consideration of what he's doing with his son,  
9 he's got a son on a path of treatment and, you  
10 know, disgorgement of that nature would change  
11 that.

12 JUDGE PATIL: Okay. Can you talk more  
13 about this issue of him resolving losses of his  
14 mother and sister? Specifically, is there any  
15 evidence that I have before me in your filings  
16 which shows that he's paid back his mother and  
17 sister for their investor losses?

18 MR. SILVERBERG: Well, his mother never  
19 got paid too because she passed before he was  
20 resolving it. His sister recently resolved her  
21 problems with the receiver and there are  
22 discussions ongoing. We didn't present anything  
23 yet. I'll be honest with you, the client did not  
24 want to make a big deal about the issue, this is  
25 something that we believe that the Court should be

1 losses it would be something which would be useful  
2 for me to understand at least in deciding the issue  
3 of disgorgement.

4 Do you understand what I'm saying?

5 MR. SILVERBERG: A hundred percent I  
6 understand what you're saying, unfortunately, we  
7 don't have any evidence because the client's  
8 decision not to drag his family into it further for  
9 what as he believes that would — we don't have any  
10 evidence to present or specifics to provide.

11 JUDGE PATIL: Okay. So, if I understand  
12 from your position here that you're waiving the  
13 opportunity to present such evidence. Is that  
14 correct?

15 MR. SILVERBERG: If you would consider a  
16 supplemental filing I can go back to the client  
17 based on your response and advocate for that  
18 position but I don't have anything currently so I  
19 wouldn't want to waive anything if you were  
20 maintaining an open mind to accepting something  
21 subsequent to this hearing.

22 JUDGE PATIL: What I'll do is that in the  
23 order after this hearing is I'll give you a couple  
24 of weeks and I'll specify or I'll reiterate what  
25 sort of evidence I would be willing to look at and

1 then I'll give the Division of Enforcement a couple  
2 of weeks to respond and that way if your client  
3 maintains the position that he doesn't want to  
4 provide such information that's all right, but if  
5 that's the case after you discuss it with him you  
6 can then just go ahead and let the Division of  
7 Enforcement counsel know that there won't be a  
8 supplemental filing, but if you intend to make one  
9 I'll set a deadline and give you a couple weeks.  
10 And I'm giving you a couple of weeks in part  
11 because we're just about to reach the New Year's  
12 holiday and I know people have commitments  
13 associated with that. All right?

14 MR. SILVERBERG: I appreciate on both  
15 accounts the time and the consideration.

16 JUDGE PATIL: All right. Now, I've heard  
17 some of your argument on this and obviously there  
18 is some evidence in the -- in your papers, but one  
19 thing I am trying to understand more fully is the  
20 sort of financial hardship that would be incurred  
21 should the Division's position prevail and your  
22 client be forced to disgorge a substantial sum of  
23 money. One thing you identified is treatment for  
24 his disabled son which he would have to cut back  
25 on.

1 Are there any other sort of tangible  
2 examples that you are offering with respect to the  
3 sorts of hardship he and his family members would  
4 suffer if he were required to disgorge that sum of  
5 money?

6 MR. MILLER: Yes, Your Honor, Michael  
7 Miller. In addition to his son's ongoing treatment  
8 he also has a daughter who is graduating high  
9 school this year and will be going to college so  
10 they're expecting to use the funds from the  
11 inheritance in part to pay for any tuition. As of  
12 now because of his son's expenses he's actually  
13 using some of the money from the tuition because  
14 it's not being covered by his regular income. So,  
15 it's our position that disgorging that additional  
16 inheritance money would place him at a financial  
17 hardship.

18 JUDGE PATIL: Okay. And without going  
19 into the specific numbers from the financial  
20 affidavit which you provided to me, which was very  
21 helpful, it seems that his -- that the amount being  
22 sought for disgorgement is approximately one  
23 quarter to as much as a third roughly of the total  
24 amount of assets that he has. Understanding that  
25 not all of those assets are liquid.

1 But, there would still be it seems a  
2 majority of that that he has as a result of the  
3 inheritance and so it's your position with  
4 two-thirds to three-quarters of his assets  
5 remaining he wouldn't be able to pay for college  
6 for his daughter or the better level of treatment  
7 for his son; do I have that right?

8 MR. SILVERBERG: No, that's not what  
9 we're saying. This is Paul Silverberg again, I'm  
10 sorry. What we're saying is if you were to look  
11 at this as the position before he received the  
12 inheritance from his family that he would be a  
13 typical American making it by. And we think  
14 considering the equitable nature that the  
15 inheritance shouldn't be included at all in the  
16 determination of the ability to pay. That this is  
17 not something that is typical or expected at the  
18 time, and again, I don't want to reargue the whole  
19 position and waste everyone's time.

20 JUDGE PATIL: Right, I understand. I do  
21 understand that point. It's an issue that this is  
22 an equitable form of relief and the argument I  
23 understand is somewhat a reasonable one, but I'm  
24 not familiar with any precedence in this context or  
25 related context dealing with compensation or

1 restitution or the payment of damages where there  
2 is a principle that says because at some point in  
3 the past one couldn't pay the future or the present  
4 ability to pay should be discounted.

5 So that's sort of what I'm wrestling  
6 with, I'm not saying I disliked your argument, it  
7 would be more persuasive if there was some  
8 persuasive authority on that point, that's all.

9 MR. SILVERBERG: And I can appreciate  
10 that, and obviously every time it takes the first  
11 time for the Judge to lay down a principle and a  
12 concept, you know, considering this is equitable,  
13 but when we first took this position that he was  
14 going to concede, that he wanted to cooperate and  
15 participate there was no expectation that both of  
16 his parents would die and that he would essentially  
17 come into an unfortunate windfall.

18 This is not winning the lottery. I mean,  
19 this is his family's money that he would rather  
20 have his family than the money. So our client  
21 marched down this path with an agreement, you know,  
22 with the understanding that he did not have the  
23 ability to pay \$600 thousand before his family  
24 died. And that we were going to ask considering  
25 his position involved that he made money on the

1 commissions that he wasn't selling from the concept  
2 of, he was forwarding the scheme of selling numbers  
3 and selling return investments, he was merely  
4 introducing people, and the fact of his son and the  
5 fact of his life circumstances that that's what we  
6 gauged and advised our client in entering into this  
7 deal.

8 This happened just months earlier he  
9 would be in the position with less than 580 -- \$582  
10 thousand worth of global assets sitting here on the  
11 phone with you. So, I mean, that's the real  
12 concept of when we entered into this, that's the  
13 real concept of the road we went down.

14 JUDGE PATIL: Thank you.

15 MR. SILVERBERG: This is not a lottery  
16 winning, this is not a lottery winning where he  
17 could pay back disgorgement and you know what, he's  
18 got the ability to pay, it is that money -- if he  
19 received that money the day after you enter your  
20 disgorgement order because of a death in his family  
21 no one would say hey that's wrong, that guy got  
22 away with something. Maybe if he won the lottery  
23 it would be a different concept. You know, drawing  
24 the line needs to be drawn somewhere and I don't  
25 think today's hearing is the date in which it

1 even without fraudulent intent. There was no entity  
2 set up by Mr. Peterson for the purpose of doing  
3 referral fees or investments. He was selling  
4 Brickell Concierge machines, tangible items. These  
5 weren't necessarily considered securities or  
6 investments.

7 In terms of authority which we weren't  
8 able to provide for, you know, future  
9 circumstances, I've yet to see any authority cited  
10 of where I completely let's say innocent investor  
11 with no fraudulent intent who was not part of the  
12 underlying scheme was penalized in a full  
13 disgorgement amount simply for being an unwitting  
14 participant.

15 JUDGE PATIL: All right. Thank you. Hold  
16 on one second, I want to confer with my attorney  
17 about something.

18 All right. Thank you for that brief  
19 moment.

20 For the Division of Enforcement, Mr.  
21 Koonin, if you'll be speaking I would like to give  
22 you an opportunity if you so wish to address  
23 anything which has come up in the respondent's  
24 presentation that you would like to. And before --  
25 and then before we get to the questions that had

1 should be drawn.

2 JUDGE PATIL: Thank you, I think I  
3 understand your position on that.

4 One issue that had come up in the  
5 briefing was the position taken by the respondent  
6 that the Division had cited no authority on  
7 15(a)(1) violation where without fraudulent intent  
8 there was respondent ordered to pay maximum  
9 disgorgement. I wanted to know if you looked at  
10 the Division's authority that they cited in their  
11 reply on that point on 15(a)(1) individuals who  
12 were required to disgorge the full amount of  
13 transaction based compensation, and I wanted to  
14 know if you felt that those were satisfactorily  
15 made the point the Division had argued in its  
16 original motion that disgorgement of the full  
17 amount may be appropriate even where there is no  
18 fraudulent intent.

19 MR. MILLER: Your Honor, Michael Miller.  
20 I did take a look at the Ricco case, and it seems  
21 the disgorgement in that case was -- it was  
22 limited, it wasn't the full amount that was ordered  
23 based on the circumstances. But I also think it's  
24 important to note how factually distinguishable  
25 this particular instance is from the other cases

1 been provided to you in advance if you could  
2 address what seems to be some confusion about the  
3 Sallah declaration I would appreciate that.

4 MR. KOONIN: Yes, Your Honor. I will  
5 address the Sallah declaration and I'll do it right  
6 now. But I just want to put it in context. I don't  
7 believe that the amount of profits that the  
8 respondent made should be such a focus of the  
9 parties here. As we put forth in our brief the  
10 simple fact of the matter is that, you know, while  
11 Rule 161 -- excuse me, no, Rule 630 does allow for  
12 the Court to consider, you know, the respondent's  
13 ability to pay for purposes of disgorgement.

14 The case law is abundantly clear that the  
15 way the respondent spent the money is just  
16 basically irrelevant, that, you know, the cases  
17 that we cite such as en re Moshe Cohen, and the  
18 cases that en re Moshe Cohen cites to such as the  
19 district court cases in both Benson and Mohn point  
20 out that, you know, the consideration is really,  
21 you know, not prominent for purposes of how the  
22 respondent spent his money and be that, you know,  
23 yachts, cars, or boats, or on charity.

24 And, you know, we certainly understand  
25 that the respondent, you know, has an issue as it



1 pertains to his special needs son and we're not  
2 attempting to minimize the hardship that that is on  
3 him but we would also note that there are hundreds  
4 of investors out there who were harmed by this  
5 and -- well, I can't say to you a specific example,  
6 I think it's safe to say that many of those  
7 investors have, you know, same or similar issues.

8 And this sort of ties into one of your  
9 bullet point questions, Your Honor, so if I could  
10 address it. The wording in OIP specifically is  
11 tailored so that all funds both penalty and  
12 disgorgements are set up for the Fair Fund which  
13 goes to the receiver, the receiver is set to then  
14 disburse the funds. So none of this money is going  
15 to treasury.

16 And so the purpose of, you know, the  
17 settlement with Mr. Peterson as well as the  
18 settlement that we have with a variety of other  
19 folks in full as it pertains to the transaction  
20 based compensation that they earned, you know, the  
21 Commission has ordered disgorged is for full  
22 compensation to the aggrieved investors. And we  
23 really don't want lose sight of those aggrieved  
24 investors who are -- obviously it's our job to  
25 represent them as a whole and so, you know, I think

1 know, it's a hypothetical, and it actually goes as  
2 a lot of different ways that if the law breaker  
3 made ill-gotten gains and, you know, was able to  
4 invest that money or even just earned basic  
5 interest off that money and then that investment  
6 that he made off the disgorgement, you know, off  
7 the amount that should have been disgorged he's  
8 then able to use that money to make a profit and  
9 that profit gets returned to the aggrieved  
10 investor. Right? So it's money that he never  
11 should have had in the first place that he was able  
12 to parlay into additional money that he then, quote  
13 unquote, "made the investor whole," but, you know,  
14 he's using money that he shouldn't have had in the  
15 first place to assist him with that. So, it's not  
16 entirely clear to me that in situations that we're  
17 sort of hypothetically discussing or even, you  
18 know, potentially it's going to be represented, you  
19 know, by a respondent that that is an automatic  
20 justification for reducing a disgorgement amount.

21 JUDGE PATIL: I was not presuming to have  
22 decided the issue I was interested in your  
23 position.

24 Would that be the same, for example, as  
25 in this case the respondent is arguably an

1 that's really important to note. As it --  
2 JUDGE PATIL: I'm sorry. Excuse me. I  
3 just want to follow-up on that issue and a previous  
4 point you made. You indicated it's the Division's  
5 position that however the money is spent is  
6 irrelevant to disgorgement, but what if a  
7 respondent had given money to make investors whole  
8 would that not be relevant to the issue of  
9 disgorgement?

10 Even if it was just a friend of his who  
11 happened to be an investor, if he made up that  
12 investor's losses say to a tune of a hundred  
13 thousand dollars and so that investor was whole why  
14 shouldn't I not consider that hundred thousand  
15 dollars that was paid back to an aggrieved investor  
16 in determining the amount he should have to  
17 disgorge further?

18 MR. KOONIN: Your Honor, I personally  
19 have not run into case law that addresses that  
20 issue. I certainly can understand, you know, the  
21 Court's position that that does seem to be a common  
22 sense approach in respect to the fact that to the  
23 extent the respondent had ill-gotten gains and he  
24 returned those to investors that, you know, the  
25 Court may want to consider that, but that is, you

1 aggrieved investor in that assuming that  
2 respondent's counsel's position is true that he  
3 lost \$30 thousand on his investment, is your answer  
4 the same, that if he can't take 30 -- that \$30  
5 thousand and use it as a factor in decreasing the  
6 amount of disgorgement?

7 MR. KOONIN: We're dealing with sort of  
8 two different fraud cases, Your Honor, we're  
9 dealing with transaction based compensation and  
10 then the separate bucket is investment income. The  
11 disgorgement in this case, the 584 thousand is the  
12 transaction based compensation.

13 And then obviously I think now it's time  
14 to turn to our receiver's declaration, and I think  
15 in turning to that declaration I think we should  
16 also turn to Mr. Peterson's declaration which is  
17 conspicuously absent as it pertains to the fact  
18 that he personally lost money.

19 Now, I understand counsel is making  
20 representations here but there is nothing in the  
21 record that indicates that Mr. Peterson lost money  
22 on his investment. And in fact, what is in the  
23 record is that Mr. Peterson profited \$174 thousand  
24 from his investment. And I understand respondent  
25 has poked holes in three of those checks as

1 potentially, you know, trade for cash, ATM's for  
2 cash, but that's totaling 45, 50 -- about \$56  
3 thousand. So even at a minimum if you want to just  
4 eliminate those three just for purposes of this  
5 conversation conceding that those are not part of  
6 the factor he's still profiting approximately \$125  
7 thousand.

8 And, you know, the declaration is clear,  
9 and it includes Curtis Peterson himself as well as  
10 the two entities owned by Curtis Peterson and his  
11 wife, Miami Sun ATM, LLC, and DC Capital Corp. So  
12 those three entities are what comprise the total  
13 calculation figures.

14 So, we have an individual who has  
15 profited, you know, at least what's on the record  
16 174 thousand, you know, potentially left but there  
17 is certainly nothing in the record indicating he  
18 was in the red. We have an individual who has  
19 significant current income, and not only is his  
20 income, you know, we understand based at least in  
21 part on an inheritance but it's not a lump sum one  
22 time thing, he's continuing to generate income  
23 based on his rental property, so those rental  
24 properties are going to continue to generate income  
25 which we believe cuts against the argument of an

1 case, and towards the end if I could read it, it  
2 says finally Grossman says that disgorgement of all  
3 the ill-gotten gains should be reduced by his  
4 payment from 1.37 million in taxes to the IRS on  
5 those ill-gotten gains but it is well-settled that  
6 disgorgement will not be reduced because the  
7 wrongdoer has paid an ordinary tax liability.  
8 Grossman must seek from the IRS not us any relief  
9 from the taxes that he paid on the ill-gotten gains  
10 that we are now ordering disgorged.

11 JUDGE PATIL: Right. And I think that's  
12 a very accurate statement. The thing that I'm sort  
13 of unable to follow from Grossman and looking at  
14 applicable IRS precedent is what tax treatment this  
15 actually gets and whether it's in fact possible to  
16 have it returned from the IRS.

17 Are you familiar with any authority in  
18 which an individual has been subject to a  
19 disgorgement order who has paid the taxes on the  
20 transaction base compensation then is able to  
21 cancel that tax liability?

22 MR. KOONIN: Your Honor, as it pertains  
23 to the tax liability the Commission's position is  
24 deferred to the IRS and it would be for the  
25 respondent to, you know, take it up with the IRS.

1 inability to pay when there is, you know, income  
2 property that's generating -- there's property  
3 that's generating income.

4 So, you know, I think that's an important  
5 consideration.

6 JUDGE PATIL: Thank you. Can you turn to  
7 the tax issue that gets raised in respondent's  
8 papers?

9 And I'm familiar with the general  
10 commission precedent that says, you know, tax  
11 payments don't cancel disgorgement liability, but  
12 could you just walk me through here specifically  
13 this case assuming respondent's counsels assertion  
14 is accurate that on the money received in  
15 transaction based compensation respondent paid to  
16 the treasury a quarter million dollars in taxes,  
17 and if he then has to satisfy the entire amount of  
18 disgorgement plus prejudgment interest what tax  
19 treatment is that payment to the Fair Fund going to  
20 receive?

21 MR. KOONIN: Your Honor, I know you  
22 referenced that you're familiar with the law so  
23 excuse me if I'm being redundant, but I do want to  
24 point out the case that your attorney advisor cited  
25 in the e-mail to us which is the Larry Grossman

1 As Your Honor is likely familiar there is  
2 guidance, nonbinding guidance coming from the IRS  
3 which is, you know, their chief counsel memorandums  
4 number 201619008 relief date May 6, 2016, but  
5 again, that guidance is non-precedential and not  
6 binding on the Commission but it does lay out  
7 certain factors for purposes of whether, you know,  
8 the disgorgement would be deductible or not.

9 JUDGE PATIL: Is that the opinion on the  
10 FCPA matter?

11 MR. KOONIN: Yes, Your Honor.

12 JUDGE PATIL: Okay. I understand your  
13 position. Just the reason why I'm asking is not  
14 because I feel it's reasonable to depart from an  
15 established Commission precedent but rather if  
16 there is not in fact if that case was decided  
17 without a complete understanding of what tax  
18 treatment this would actually that that may be  
19 something the Commission would want to consider in  
20 refining or clarifying its position. It was in that  
21 vein that I raised it.

22 To get back to your position with respect  
23 to disgorgement, are there any circumstances that  
24 are evident in this case as alleged that it's the  
25 Division's position would be appropriate in

1 reducing the disgorgement amount if the  
2 respondent -- if I were to accept respondent's  
3 argument that I should look at his assets before  
4 the windfall of the inheritance and he didn't  
5 really have the ability to pay, are there any  
6 factors, you know, if his assets basically equal  
7 the disgorgement amount are any of these hardship  
8 factors cognizable under Commission precedent in  
9 reducing the disgorgement amount?

10 MR. KOONIN: Your Honor, we recognize  
11 that disgorgement is an equitable remedy. But, you  
12 know, we think the precedent is abundantly clear,  
13 inability to pay by virtue of spent ill-gotten  
14 gains or due to financial hardship is not relevant  
15 in defense to a motion for order of disgorgement,  
16 and that's in re Moshe Marc Cohen opinion.

17 Then there's other district court  
18 opinions that we cite in our brief, Universal  
19 Express opinion and the Benson opinion.

20 JUDGE PATIL: I understand the position,  
21 just I'm sort of coming at it from a perspective of  
22 here I understand your argument and I think it  
23 resonates a little bit more fully because this is  
24 really a question of hardship as opposed to a  
25 question of inability to pay.

1 Would you agree with me there?  
2 MR. KOONIN: Yeah, you know, the  
3 respondent's net worth is approximately 2.4  
4 million, understanding that some of that is not  
5 liquid in a 401K, but that's a pretty significant  
6 amount of net worth. So, you know, while we  
7 understand the respondent has, you know, personal  
8 obligations and family obligations, again, by no  
9 means do we mean to discount the importance of  
10 those, particularly a special needs son and  
11 daughter pursuing her further education, there are  
12 countervailing circumstances not only to the  
13 investors but, you know, the respondent himself you  
14 can see per his own declaration spent six figures  
15 in home renovations in what could only have been  
16 obvious, you know, windfall and wondering why this  
17 is too good to be true, the money just all of a  
18 sudden started pouring in. Those are sort of the  
19 factors that we believe need to be considered as it  
20 pertains to the order that we believe should be  
21 entered for the full amount.

22 JUDGE PATIL: All right. I've got a  
23 couple more questions along this line. One is in  
24 the second from the bottom in the list I gave you  
25 that if this individual's compensation had only

1 been transaction based compensation and he wasn't  
2 also a salesman and that was all of his money that  
3 he'd ever made the Division's position is that he  
4 would have to give back all the money he had ever  
5 made?

6 MR. KOONIN: Well, your question is --

7 JUDGE PATIL: The question is essentially  
8 is that here you have an individual the respondent  
9 that counsel pointed out wasn't aware he had  
10 committed any wrongdoing, and assuming that this  
11 was his only job, meaning selling interests in  
12 these Virtual Concierge machines, and he had done  
13 that his whole life, from reading the authorities  
14 and points in the Division's motion and reply it  
15 seems to me that you're saying an individual like  
16 that would have to disgorge his entire lifetime of  
17 income.

18 Do I have that right?

19 MR. KOONIN: Your Honor, I mean,  
20 obviously there are hypotheticals that warrant  
21 consideration of, you know, equitable factors. If  
22 this really was 30 years old the Court could  
23 potentially take that into consideration.

24 I refer back to the Grossman case where  
25 he essentially argued, you know, this is unfair,

1 the evidence, the disgorgement there was at issue  
2 where here the actual number is not at issue, it's  
3 just a matter of whether or not, you know, it  
4 should be ordered to pay but the actual amount of  
5 transaction base compensation is not at issue in  
6 this case. But Grossman he argued that the  
7 evidence was stale as it pertained to actually  
8 coming to the final number and, you know, the  
9 Commission, you know, rejected that argument saying  
10 it wasn't that remote. Here the facts are not that  
11 remote, we're dealing with March of 2013 through  
12 December of 2013.

13 I should also point out for purposes of  
14 prejudgment interest that respondent is getting,  
15 you know, benefit, I think the Court is certainly  
16 correct that the Commission's order mandates the  
17 entry of prejudgment interest, I understand also,  
18 you know, counsel's argument that he's just kind  
19 asking it all sort of even out in a sense that he's  
20 not questioning the language of the order, but it  
21 should be noted that, you know, the prejudgment  
22 interest is actually a finite period. It's just the  
23 actual period of his wrongdoing. We limited it to  
24 that. As opposed to, you know, arguably and  
25 sometimes in other matters it goes up until the

1 point final judgment is entered. So respondent is  
2 getting a benefit in that respect as it pertains to  
3 the actual prejudgment interest number.

4 JUDGE PATIL: Excuse me. Was that  
5 prejudgment interest calculation you just  
6 discussed, was that something that was agreed to by  
7 the parties before --

8 MR. KOONIN: Yes, that was part of our  
9 settlement negotiations and that was part of our  
10 informal offer to the respondent which of course  
11 got memorialized in his offer in the Commission's  
12 order.

13 JUDGE PATIL: Thank you. One more  
14 question on the disgorgement issue with respect to  
15 hardship.

16 If I accepted the proposition that  
17 disgorgement of the full amount would adversely  
18 impact the treatment of the disabled child it's the  
19 Division's position that that adverse impact is  
20 irrelevant to me ordering the full disgorgement?

21 MR. KOONIN: Your Honor, you know, it's  
22 not the nature of the disabled child because,  
23 again, we obviously have consideration as to that  
24 circumstance. Though I wouldn't say the fact that  
25 respondent has a disabled child is irrelevant

1 money, you know, the Division aggressively pursues  
2 lawsuits on behalf -- you know, going after relief  
3 defendants are ordered to pay back money even  
4 though they did nothing wrong, and those relief  
5 defendants, you know, are often have personal  
6 stories as well that, you know, they've already  
7 spent the money for one reason or another, being  
8 on, quote unquote, "justified reason or not," but  
9 nonetheless, the Division pursues and the courts  
10 have agreed that those type of funds should be  
11 ordered to be returned to the treasury and  
12 potentially to aggrieved investors.

13 So while, you know, of course every case  
14 has its own circumstance, when you look at this  
15 from a holistic point of view that, you know, Mr.  
16 Peterson is no differently situated than any of  
17 those folks that I've just describe and consistent  
18 with the case law that we cited in our briefs. We  
19 ask for the disgorgement amount as agreed to  
20 pursuant to the transaction based compensation  
21 number that was agreed to in the offer and  
22 memorialized.

23 JUDGE PATIL: All right. Thank you very  
24 much, Mr. Koonin. I appreciate your point.  
25 And right now I would just like to give

1 because, you know, that's not being human.

2 But what we would say, Your Honor, is  
3 that there are a varieties of issues of anyone who  
4 is in this type of situation may or may not have  
5 for purposes of making that type of argument. And  
6 as we saw from the case law, you know, charitable  
7 contributions and things of that nature are just  
8 simply not to be considered for purposes of the  
9 disgorgement calculation and, you know, that's our  
10 position in this case as well.

11 JUDGE PATIL: All right. Thank you. Is  
12 there anything else that you wanted to address  
13 before I give the respondents an opportunity to  
14 address anything that you've raised and have the  
15 last word?

16 MR. KOONIN: Your Honor, I would just  
17 point out more generally while we understand, you  
18 know, the respondent and his argument, you know, if  
19 you just look at the broader scope of things, for  
20 example, Ponzi schemes, folks are subject to  
21 clawback lawsuits and they're not even have alleged  
22 to have violated the law, they just profited.

23 There is also situations such as relief  
24 defendants. Relief defendants also no violation of  
25 the law that they come into a sum of money and that

1 the respondent the opportunity to have the last  
2 word if there is anything further you would like to  
3 address that the Division has raised or that I have  
4 raised please go ahead.

5 MR. SILVERBERG: Thank how very much,  
6 Paul Silverberg.

7 There's a couple of things that I want to  
8 point out. We were originally negotiating with the  
9 receiver about resolving Mr. Peterson's position.  
10 And Mr. Peterson -- I represented several of his  
11 family members and friends associated with the  
12 receiver. And I can say all sincerity and all  
13 ethically the receiver has been settling for  
14 substantially fractional of the amount of the total  
15 amount received in mediation and otherwise. So,  
16 this is not a comparison of dollar for dollar that  
17 the receiver is doing. What happened in this case  
18 we were negotiating with the receiver, we were  
19 working with the receiver producing documents, the  
20 SEC steps in.

21 You know, obviously I can't discuss about  
22 his client, the client did not -- and at that time  
23 without his parents inheritance not having the  
24 ability to fight the SEC although he believes and  
25 continues to believe he was innocent and not

1 involved in any wrongdoing, and the SEC is not  
2 punishing him for that way, but I understand we've  
3 agreed to the facts and we're not disputing it.

4 But the bottom line is is they keep  
5 pointing to the concept of this is going to go back  
6 to the alleged loss investors. And let's talk  
7 practical for a second. We're all attorneys and  
8 judges essentially in the room. We all know that  
9 the first cut goes to expenses, so this is dollar  
10 for dollar not going back to aggrieved investors  
11 that lost money, this is going to cover  
12 administrative costs, fees, and other matters.

13 No less I have personally sat in  
14 mediation and settled for less than one-third of  
15 the amount or about, I can't give you the specific,  
16 about one-third of the amount that was alleged  
17 owed. Other lawyers that I've discussed with have  
18 settled for far less than 40 percent of the amount,  
19 therefore, in order to eliminate the litigation  
20 because most of these people including Mr. Peterson  
21 would not have been the real wrongdoers in the  
22 circumstances plus bring in the money.

23 So, this is -- if we're going to draw the  
24 analogy to the money that's going to the harmed  
25 parties let's draw the full analogy is that no one

1 Court to look at Mr. Peterson's position before the  
2 inheritance and how that would have affected his  
3 position, the fact that he would have been left in  
4 a 582 neighborhood of total overall assets, and we  
5 ask the Court to consider those.

6 JUDGE PATIL: All right, thank you very  
7 much for your argument on both sides. I really  
8 appreciated it. I don't mean to ask tough  
9 questions other than it's raising issues that I  
10 really feel will assist me in preparing a decision  
11 in this case.

12 What I'm going to do in addition to the  
13 two weeks to give respondent's counsel the  
14 opportunity to describe any investor losses he's  
15 paid back to the family members or others I'll also  
16 allow you in those two weeks if there are points  
17 you want to raise with respect to the Sallah  
18 affidavit, including most particularly from my  
19 perspective whether Mr. Peterson actually sustained  
20 losses on his investment, that would also be --  
21 well, not necessarily relevant it would be  
22 something that I would like to have a better  
23 understanding of. So if there are issues with  
24 inadequacy of the Sallah affidavit then you can  
25 address those in your filing as well. And I'll

1 that I have seen in any of the cases that are  
2 people situated like Mr. Peterson are receiving a  
3 hundred cents on the dollar of the money that could  
4 be disgorged.

5 As to the fact that Mr. Peterson's  
6 affidavit doesn't have certain things we note that  
7 the declaration by the receiver was part of the  
8 reply and we were not able to respond in writing  
9 prior today to the declaration by the receiver and  
10 that's why we came prepared to point out by several  
11 examples the checks. So, therefore, that's why,  
12 you know, Mr. Peterson's affidavit predates that  
13 affidavit and doesn't have specific positions  
14 because there was no sur-reply. The income that Mr.  
15 Peterson receives is subsequently split three ways,  
16 it's a four way split among the family.

17 As to the rental properties, I'm sorry,  
18 to point that out, specifically and, you know, the  
19 Grossman case and a lot of the cases that have been  
20 cited these are generally specifically cases of the  
21 actual wrongdoer and those facts are entrenched in  
22 the concept of the final orders and the handling by  
23 the Court. We believe like we cited in the Warren  
24 case that there is about ability to pay, we think  
25 it's clearly within the equitable means of the

1 spell out what I would allow you to do in a post  
2 hearing order that we'll issue later this week.

3 I do understand the Division's position  
4 that even if the amount of profit or less or even  
5 if he broke even that may not ultimately matter  
6 with respect to the total amount of disgorgement  
7 which could be ordered but I still would appreciate  
8 the respondent should you wish to providing me with  
9 better facts on any money paid back to investors or  
10 his own losses as opposed to profit that's  
11 articulated in the declaration of the receiver.

12 With that I thank everyone for their  
13 participation and thank the court reporter of  
14 course. Have a good day.

15 (Whereupon, at 11:00 a.m., the  
16 oral argument was concluded.)

17 \* \* \* \* \*

PROOFREADER'S CERTIFICATE

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In The Matter of: CURTIS PETERSON  
ADMINISTRATIVE PROCEEDING - ORAL ARGUMENT  
File Number: FL-03868-A  
Date: Wednesday, December 28, 2016  
Location: Miami, FL

This is to certify that I, Maria E. Paulsen, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

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(Proofreader's Name) (Date)