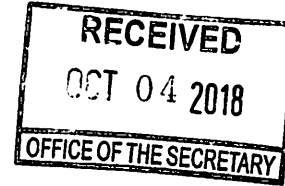


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-18508



In the Matter of

Gregory M. Bercowy,

Respondent.

**ANSWER AND AFFIRMATIVE DEFENSES
OF RESPONDENT GREGORY M. BERCOWY**

Respondent Gregory M. Bercowy, by his attorneys, asserts the following answers to the allegations contained in the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing ("OIP"), upon knowledge with respect to himself and his own acts and upon information and belief with respect to all other matters.

GENERAL DENIAL

Except as expressly admitted in this Answer, Mr. Bercowy denies each and every allegation contained in the OIP. Mr. Bercowy denies that the Securities and Exchange Commission ("SEC" or "Commission") is entitled to any of the relief sought in the OIP. Mr. Bercowy expressly reserves the right to seek to amend and/or supplement this Answer as may be necessary.

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Gregory M. Bercowy ("Respondent" or "Bercowy").

Answer to Section I: Mr. Bercowy denies having sufficient information to address what the Commission deemed "appropriate" and in the "public interest," as set forth in Section I, except to state that the OIP was not appropriate or in the public interest. Mr. Bercowy admits that the Commission has instituted proceedings against him pursuant to Section 203(f) of the Investment Advisers Act of 1940.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. During the relevant time period underlying allegations contained in the Commission's complaint described below, Bercowy was associated with a state-registered investment adviser. Respondent, 54 years old, is a resident of St. Petersburg, Florida.

Answer to paragraph 1: Mr. Bercowy admits that during the relevant time period he was 54 years old and a resident of St. Petersburg, Florida. Mr. Bercowy denies that he was associated with a state-registered investment adviser.

B. ENTRY OF THE INJUNCTION

2. On May 22, 2018, a final judgment was entered against Bercowy, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Sections 9(a)(2), 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Gregory M. Bercowy, Civil Action Number 8:18- CV-792, in the United States District Court for the Middle District of Florida.

Answer to paragraph 2: Mr. Bercowy admits that on May 22, 2018, a final judgment was entered against Bercowy, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Sections 9(a)(2), 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, in the

civil action entitled Securities and Exchange Commission v. Gregory M. Bercowy, Civil Action Number 8:18- CV-792, in the United States District Court for the Middle District of Florida.

However, Mr. Bercowy asserts that the judgment can still be reopened at this time and denies that the allegations in the Commission's complaint are true.

3. The Commission's complaint alleged that Bercowy, who, during the relevant period, was affiliated with a registered investment adviser, participated in a scheme to manipulate a penny stock security. In August 2016, Bercowy attempted to manipulate the stock of Aureus, Inc., a penny stock company, through amassing over three million shares of Aureus in the brokerage accounts of his relative through his online access of his relative's accounts. While amassing those shares Bercowy entered and quickly canceled a large number of orders at prices that were much higher than the prevailing quoted market price. Bercowy took those actions with the intention to fraudulently increase the price of the security.

Answer to paragraph 3: Mr. Bercowy admits that the Commission's complaint alleged that, during the relevant period, was affiliated with a registered investment adviser, participated in a scheme to manipulate a penny stock security. Except as expressly admitted, Mr. Bercowy denies the allegations in paragraph 3.

AFFIRMATIVE DEFENSES

Further answering the OIP, Mr. Bercowy sets forth the following defenses. By asserting these affirmative defenses, Mr. Bercowy does not admit that he bears the burden of proof on any issue, and does not accept any burden he would not otherwise bear. Mr. Bercowy reserves the right to amend this Answer with additional defenses of which he may become aware through review of the investigative file or other investigation.

First Affirmative Defense

1. The OIP fails to state a claim upon which relief may be granted.

Second Affirmative Defense

2. This proceeding is not warranted by the facts and, in any event, is unsupported by substantial evidence.

Third Affirmative Defense

3. The claims alleged in the OIP are barred, in whole or in part, because the OIP fails to state a claim upon which the Commission can take any remedial action.

Fourth Affirmative Defense

4. The claims alleged in the OIP are barred, in whole or in part, because the Commission lacks jurisdiction over this proceeding.

Fifth Affirmative Defense

5. The claims alleged in the OIP are barred, in whole or in part, because this administrative proceeding is the product of an impermissible delegation of legislative authority in contravention of Article I of the United States Constitution.

Sixth Affirmative Defense

6. The claims alleged in the OIP are barred, in whole or in part, because this administrative proceeding violates Article II of the United States Constitution because it impermissibly shields an inferior office from removal by the President.

Seventh Affirmative Defense

7. The claims alleged in the OIP are barred, in whole or in part, because this administrative proceeding violates the doctrine of separation of powers.

Eighth Affirmative Defense

8. The claims alleged in the OIP are barred, in whole or in part, because this administrative proceeding violates Mr. Bercowy's right to a jury trial under the Seventh Amendment of the United States Constitution.

Ninth Affirmative Defense

9. The claims alleged in the OIP are barred, in whole or in part, because the imposition of a penalty against Mr. Bercowy is not in the public interest and is not consistent with the requirements of justice.

WHEREFORE, having fully answered, Mr. Bercowy requests that the relief described in the OIP be denied and the proceedings herein be dismissed.

Dated: October 2, 2018

Respectfully Submitted,

By: 

Diana K. Lloyd
CHOATE, HALL & STEWART LLP
Two International Place
Boston, MA 02110
Tel.: (617) 248-5000
Fax: (617) 248-4000
dlloyd@choate.com
Attorney for Gregory M. Bercowy