UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94441/March 14, 2022

INVESTMENT ADVISORS ACT OF 1940
Release No. 5977/March 14, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20795

In the Matter of

LAURENCE G. ALLEN,

Respondent.

RESPONDENT'S RESPONSE TO DIVISION OF ENFORCEMENT'S NOTICE OF NEW AUTHORITY

Respondent Laurence G. Allen ("Mr. Allen") respectfully submits this response to the Division of Enforcement's Notice of New Authority, filed October 28, 2022, which served to "notify the Commission that, on October 20, 2022, the New York Court of Appeals denied Allen's motion for leave to appeal the trial court's decision, and dismissed Allen's appeal." While the Division is correct that Mr. Allen's appeal was dismissed, the dismissal was not on the merits but "upon the ground that no constitutional question is directly involved." Div. Notice, Ex. A. Mr. Allen's appeal of the trial court's order in *NYAG v. Allen, et al*, was based solely on legal issues (*e.g.*, statute of limitations, federal preemption), and therefore the denial of the appeal has no impact whatsoever on the arguments raised by Mr. Allen in opposition to the OIP, which are based on the facts in the underlying action.

OS Received 11/03/2022

Indeed, once the trial court in the state court action made factual determinations – even if those determinations were contrary to the evidence and plainly wrong – Mr. Allen had little recourse. In New York, "*the decision of the fact-finding court should not be disturbed upon appeal* unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence, especially when the findings of fact rest in large measure on considerations relating to the credibility of witnesses." *Security Pac. Natl. Bank v. Evans*, 175 AD3d 410, 411 (1st Dept 2019) (emphasis added); *see also Richstone v Q-Med, Inc.*, 186 AD2d 354 (1st Dept 1992) ("[u]pon review of a bench trial, the findings of fact should be viewed *in a light most favorable to sustain the judgment*") (emphasis added). In other words, since the trial court is afforded significant discretion in interpreting the evidence and determining the facts, and the appellate standard favors sustaining a judgment based on those determinations, there is not much a litigant negatively impacted by those determinations can do about an order which interprets the facts in a manner that is technically plausible yet fundamentally wrong.[1] Thus, it has been incumbent upon Mr. Allen in this action to demonstrate to the Commission for public interest purposes how and why the trial court got the facts wrong, and why the trial court's decision was contrary to the plain language of the contracts which govern the private equity fund which was the subject of the action (contracts which, as Mr. Allen has stressed, the court did not even bother to address in its orders).

[1] This unforgiving standard is evident in the Appellate Division's affirmation of the trial court's decision in Mr. Allen's initial appeal. The appellate court held, in cursory fashion, that the trial court's "finding of fraud was not against the weight of the evidence." *People v. Allen*, 198 AD3d 531, 533 (1st Dept 2021). Notably, the appellate court's discussion on this point consisted of one brief paragraph which contained no analysis whatsoever. No court has ever acknowledged, much less addressed, any of the substantial mitigating evidence and testimony presented by the defense at trial and raised by Mr. Allen in this administrative proceeding.

November 3, 2022

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: /s/ John K. Wells
John K. Wells One International Place
Suite 2000
Boston, MA 02110
(617) 310-6000
wellsj@gtlaw.com

Attorneys for Respondent Laurence G. Allen

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2022, I caused a copy of the foregoing document to be served on counsel of record by electronic mail to Jack Kaufman at KaufmanJa@sec.gov and Rhonda L. Jung at jungr.@sec.gov.

/s/ John K. Wells
John K. Wells