

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 645/September 8, 2008

ADMINISTRATIVE PROCEEDING  
File No. 3-13008

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In the Matter of	:	
	:	ORDER DENYING RESPONDENTS'
MITCHELL M. MAYNARD and	:	MOTION TO CORRECT MANIFEST
DORICE A. MAYNARD	:	ERRORS OF FACT

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**Background**

I issued an Initial Decision in this proceeding on August 18, 2008. (Initial Decision Rel. No. 354.) Respondents filed a Motion to Correct Manifest Errors of Fact (Manifest Error Motion) on September 2, 2008, pursuant to Rule 111(h) of the Securities and Exchange Commission's (Commission) Rules of Practice. 17 C.F.R. § 201.111. The Division of Enforcement (Division) filed in Opposition on September 5, 2008.

**Alleged Manifest Errors in the Initial Decision<sup>1</sup>**

A. Page 1, paragraph 1 of the Initial Decision:

The statement is incorrect that the Division made its investigative file available to Respondents because Respondents did not receive records from the Commission's Pacific Regional Office. In fact, the Initial Decision found these records were unrelated to the existence of Mitchell M. Maynard and Dorice A. Maynard, Docket No. 02-009-S (Vermont Order), issued by Vermont's Department of Banking, Insurance, Securities, and Health Care Administration that became final on February 2, 2007.

B. Page 3, paragraph 2 of the Initial Decision:

The statement is inaccurate that Mitchell M. Maynard has been an investment adviser since 1995 because he ceased all investment advisory activities in 2001. In fact, the statement in

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<sup>1</sup> Motion paragraphs E., H., and P. each propose two corrections so the number of alleged errors is twenty-two, not nineteen.

the Initial Decision is taken from a finding of fact in the Vermont Order. (Division's Motion for Summary Disposition (Motion) Ex. 1 at 2.)

C. Page 3, paragraph 5 of the Initial Decision:

The statement in the Initial Decision is prejudicial because the Leveraged Index Management Company (LIMCO) deregistered voluntarily. In fact, the statement in the Initial Decision that LIMCO was ordered to deregister is taken from a finding of fact in the Vermont Order. (Motion Ex. 1 at 5.)

D. Page 5, paragraph 1 of the Initial Decision:

The statement in the Initial Decision does not show that shareholders did not oppose LIMCO's bankruptcy proceeding. In fact, the statement in the Initial Decision that Respondents discharged their obligations to LIMCO shareholders by filing the bankruptcy proceeding in 2002 is taken from a finding of fact in the Vermont Order. (Motion Ex. 1 at 6.)

E. Pages 5 and 7, paragraphs 2 on both, of the Initial Decision:

The Initial Decision is incorrect that Maynard promoted himself as a genius, rather he permitted others to use that information in promotional and marketing efforts. In fact, the statement in the Initial Decision is taken from a finding of fact in the Vermont Order. (Motion Ex. 1 at 4.)

F. Page 5, paragraph 3 of the Initial Decision:

The Initial Decision states that consulting fees were not disclosed to investors. In fact, the statement in the Initial Decision is taken from a finding of fact in the Vermont Order. (Motion Ex. 1 at 5-6.)

G. Page 5, paragraph 4 of the Initial Decision:

The Initial Decision's statement that Mitchell M. Maynard was "living off of LIMCO" ignores disclosure. In fact, the statement in the Initial Decision is taken from a finding of fact in the Vermont Order. (Motion Ex. 1 at 10.)

H. Page 5, paragraph 5 of the Initial Decision:

The Initial Decision is incorrect because no false valuations were given to investors. In fact, the statement in the Initial Decision is taken from a finding of fact in the Vermont Order. (Motion Ex. 1 at 13; Motion Ex. 2 at 11.)

I. Page 5, paragraph 6 of the Initial Decision:

The Initial Decision is incorrect in stating that LIMCO's initial business plan had no reasonable basis in fact and was unfounded. In fact, the statement in the Initial Decision is taken

from a finding of fact in the Vermont Order. (Motion Ex. 1 at 18.)

J. Page 5, last paragraph of the Initial Decision:

The Initial Decision is incorrect that the Commission's Pacific Regional Office's examination is not relevant to the action by the State of Vermont. Respondents' contention is not supported by the contents of the final action by the State of Vermont that is the basis of this administrative proceeding.

K. Page 6, paragraph 3 of the Initial Decision:

The Initial Decision is in error in granting the Division's Motion because genuine issues of material fact exist concerning Respondents' arguments that the Commission abused its discretion. This contention is unsupported by the record.

L. Page 7, paragraph 1 of the Initial Decision:

The Initial Decision is incorrect in stating that Mitchell M. Maynard did not disclose his 1994 bankruptcy to LIMCO investors. In fact, the statement in the Initial Decision is a finding of fact in the Vermont Order. (Motion Ex. 1 at 73.).

M. Page 7, paragraph 1 of the Initial Decision:

The Initial Decision is incorrect that Respondents misappropriated close to half a million dollars. In fact, the State of Vermont found that "Respondents defrauded investors to the tune of over \$400,000.00." (Motion Ex. 1 at 6-13, 74.)

N. Page 7, paragraph 2 of the Initial Decision:

The Initial Decision should note that Respondents' licenses are not currently active. Clearly, this is not a manifest error of fact, as the statements listing Respondents' designations and/or licenses earned are correct. (Motion Ex. 5.)

O. Page 7, paragraph 2 of the Initial Decision:

Respondents contend that the administrative law judge cannot determine the degree of scienter without relitigating the underlying Vermont action. Clearly, this is not a manifest error of fact.

P. Pages 7 and 8, paragraphs 3 and 2, respectively, of the Initial Decision:

Respondents contend that assertions of innocence and failure to acknowledge wrongdoing cannot be used as evidence for lack of remorse. Clearly, these are not manifest errors of fact.

Q. Page 7, paragraph 3 of the Initial Decision:

Respondents claim that their logical, reasonable arguments of innocence and the flaws in the case against them have received no weight. Clearly, these are not manifest errors of fact.

R. Page 8, paragraph 1 of the Initial Decision:

Respondents claim that the Initial Decision finding that their present occupations present opportunities for future violations of the Investment Advisers Act of 1940 is in error. Clearly, this is not a manifest error of fact.

S. Page 8, paragraph 1 of the Initial Decision:

Respondents would eliminate from the Initial Decision reference to action taken by the State of California against Respondents in 2007, which barred Respondents from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser. Clearly, this is not a manifest error of fact. It is a matter of public record. (Motion Ex. 6.)

### **Ruling**

A filing pursuant to Rule 111(h) of the Commission's Rules of Practice allows a party to file a motion to correct a manifest error of fact within ten days of issuance of the Initial Decision, delaying the date for filing exceptions to the Initial Decision. 17 C.F.R. § 201.111(h). Respondents' lengthy repetitive pleadings, including this one, filed following a final decision by the State of Vermont show an intent to postpone as long as possible an inevitable decision and sanction.

Ten of the nineteen allegations of manifest error (paragraphs B., C., D., E., F., G., H., I., L., and M.) target findings of fact in the underlying Vermont Order that are not subject to dispute in this follow-on proceeding. Paragraphs N. and S. involve information from publicly available records that are not subject to dispute, and the others disagree with my interpretation of the evidence or disapprove of my use of words.

A motion to correct a manifest error is properly filed only if the basis for the motion is "a patent misstatement of fact in the initial decision." A patent misstatement is something that is "readily visible or intelligible; obvious." Merriam-Webster's Collegiate Dictionary, 849 (10th ed. 2001). I DENY Respondents' Motion to Correct Manifest Errors of Fact because it comes nowhere close to meeting this standard.

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Brenda P. Murray  
Chief Administrative Law Judge