

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 9486 / November 25, 2013

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 70942 / November 25, 2013

Admin. Proc. File No. 3-14266

In the Matter of

JOHNNY CLIFTON
11680 Stephenville Drive
Frisco, TX 75035

**ORDER DENYING MOTIONS FOR RECONSIDERATION, THE
INTRODUCTION OF NEW EVIDENCE, AND A NEW HEARING**

On July 12, 2013, we issued an opinion ("the July 12 Opinion") and order finding that from 2009 to 2010 Johnny Clifton, president, chief executive officer, and principal of MPG Financial, LLC, a former Commission-registered broker-dealer, violated Section 17(a) of the Securities Act of 1933¹ by making and causing to be made material misrepresentations and omissions in the offer and sale of oil-and-gas limited partnership interests.² We also found that Clifton violated Section 15(b) of the Securities Exchange Act of 1934³ by failing to supervise a sales representative with a view to detecting and preventing the sales representative's Securities Act Section 17(a) violations.⁴ For these violations, we found it to be in the public interest to bar Clifton from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, to order him to cease and desist from violating Securities Act Section 17(a), and to assess a \$150,000 civil money penalty.

Clifton thereafter timely moved for reconsideration of the July 12 Opinion. By order dated October 9, 2013 ("the October 9 Order"), we denied the motion, finding, among other things, that Clifton failed to show any manifest error of fact or law warranting our reconsideration of the

¹ 15 U.S.C. § 77q(a).

² *Johnny Clifton*, Securities Act Rel. No. 9417, 2013 WL 3487076, at *1 (July 12, 2013).

³ 15 U.S.C. § 78o(b).

⁴ *Clifton*, 2013 WL 3487076, at *1.

issues resolved in the July 12 Opinion.⁵ On October 29, 2013, Clifton filed a second motion for reconsideration of the July 12 Opinion, supported by motions for the introduction of new evidence and a new hearing (collectively, "the October 29 Motions").

Our Rule of Practice 470 provides that a motion for reconsideration "shall be filed within ten days after service of the order complained of."⁶ Clifton already filed such a motion and received a decision on that motion on October 9, 2013. Our rules of practice do not provide for a second motion to reconsider the same decision. Moreover, the second reconsideration motion is untimely because it was brought more than three months after the July 12 Opinion.⁷

Clifton argues that reconsideration is nonetheless warranted based on "newly discovered evidence" consisting of handwritten notes of former MPG Financial sales representatives and a disclaimer that Clifton purportedly read to investors during a December 23, 2009 conference call. He also complains, for the first time, that the Commission failed to consider as mitigating factors that he suffered job and holiday-related stress.

Under Rule 470, we will accept only such additional evidence that "the movant could not have known about or adduced before entry of the order subject to the motion for reconsideration."⁸ Clifton's October 29 Motions do not meet this standard. They fail to explain why the handwritten notes or the disclaimer could not have been discovered before the Commission issued the July 12 Opinion; indeed, it appears that with reasonable diligence this evidence could have been produced at the hearing before the administrative law judge. Nor do they explain Clifton's failure to raise his argument about job and holiday-related stress in his prior briefs to the Commission.⁹

⁵ *Johnny Clifton*, Corrected Order Denying Motions for Reconsideration and a Stay, Securities Act Rel. No. 9465, 2013 WL 5553865 (Oct. 9, 2013).

⁶ 17 C.F.R. § 201.470(b).

⁷ *See Institutional Networks Corp. and National Association of Securities Dealers, Inc.*, Order Denying Second Request for Reconsideration, Securities Exchange Act Rel. No. 21832, 1985 WL 545574, at *1 n.10 (Mar. 8, 1985) (considering a second motion for reconsideration to be untimely; "[t]o treat [the motion] otherwise would be to allow repeated attacks on the finality of the Commission decisions in contravention of the purposes of administrative economy"). Even if the Commission were to construe Clifton's motion as seeking reconsideration of the October 9 Order, rather than the July 12 Opinion, the motion would still be untimely because it was brought outside the ten-day period set forth in Rule 470(b). *See* 17 C.F.R. § 201.470(b).

⁸ *Johnny Clifton*, 2013 WL 5553865, at *1 & n.11.

⁹ *See Richard G. Cody*, Order Denying Motion for Reconsideration, Exchange Act Rel. No. 65235, 2011 WL 3840536, at *2 n.8 (Aug. 31, 2011) (reiterating that "reconsideration is properly denied when respondents cite arguments and authority in a motion for reconsideration that could have been, but were not, developed in the original briefs").

Accordingly, for the reasons stated here and in the October 9 Order, IT IS ORDERED that the motions for reconsideration, the introduction of new evidence, and a new hearing filed by Johnny Clifton be, and they hereby are, DENIED.

By the Commission.

Elizabeth M. Murphy
Secretary