

I. INTRODUCTION

In Respondent Angelica Aguilera's Post-Hearing Brief, Aguilera does not dispute that Fabrizio Neves and Jose Luna engaged in a fraudulent markup scheme defrauding LatAm's customers out of millions of dollars during the period she served as President. Rather, Aguilera asserts, despite her position as President, she did not fail to reasonably supervise Neves and Luna because (1) she could not have discovered or prevented the fraud due to Neves and Luna's concealment of their activity; (2) she did not maintain trading supervisory authority; and (3) Maximino Acosta and Neves exerted control at LatAm.

Aguilera's claims, however, fail to rebut the overwhelming evidence establishing she had ultimate supervisory authority over Neves and Luna, and that had she implemented the firm's policies and procedures designed to ensure the fairness of markups, she could have detected and prevented the fraudulent scheme.

To support her contentions, Aguilera relies on assertions the evidence in the record does not support. For instance, Aguilera asks the Law Judge to find that Neves and Luna's efforts to conceal their scheme from the end customers of the structured note transactions prevented her discovery of their misconduct. Aguilera ignores that she had access to information about the structured note transactions the customers did not have, including documents FINRA used to uncover the scheme during its routine examination of LatAm.

Aguilera also claims, despite the responsibilities assigned to her in the firm's Written Supervisory Procedures ("WSPs"), she had no trading supervisory authority. Again, Aguilera ignores testimony of numerous witnesses who stated that Aguilera maintained responsibility for supervising all registered representatives and for approving the trade blotters and ensuring the

fairness of markups. Aguilera failed to discharge those responsibilities, allowing the fraudulent scheme to continue for nearly two years, generating millions in revenue for the firm and substantial compensation for herself.

Finally, Aguilera cannot escape liability for her failure to reasonably supervise Neves and Luna by claiming Neves and Acosta controlled LatAm while she was President. Aguilera has not shown that either Neves or Acosta exerted supervisory control during the relevant period. Rather, Aguilera admitted at the hearing she had ultimate supervisory responsibility as President of LatAm.

In summary, Aguilera does not rebut the evidence the Division of Enforcement presented establishing she bears ultimate responsibility for failing to reasonably supervise Neves and Luna with a view to detecting and preventing the excessive markup scheme.

**II. AGUILERA COULD HAVE DETECTED AND PREVENTED
THE FRAUDULENT MARKUP SCHEME FROM A REVIEW OF
THE FIRM'S BOOKS AND RECORDS**

Aguilera claims Neves and Luna's alteration of the structured notes' term sheets concealed the fraudulent markup scheme, thereby preventing her discovery of their misconduct. Respondent's Reply Brief at ¶¶ 5-6. Aguilera, however, ignores that while Neves and Luna concealed their scheme from the end customers by providing them with altered versions of the term sheets, all of the information necessary to discover the fraud was readily available in LatAm's books and records. Specifically, the firm's trade blotters and financial statements revealed the transactions with intermediary accounts and the substantial markups resulting in millions in commissions paid to Neves. Division's Brief at 18-19. The firm's electronic correspondence contained *both* the original and altered versions of the term sheets. Division's Brief at 18-19. The customers did not have access to any of these records. Aguilera not only ignores that she had

access to far more information than the customers, but also that she had access to the same records FINRA used to uncover the fraudulent scheme. Division's Brief at 17-19.

The Division presented ample evidence at the hearing showing Aguilera failed to review any documents concerning structured notes or to inquire whether the structured note trading complied with the firm's policies and procedures despite her knowledge of LatAm's growing revenues. Division's Brief at 23. According to Luna, Aguilera had access to pricing information for these transactions. Division's Brief at 23. Thus, Aguilera's failure to discover the fraud resulted not from Neves and Luna's alteration of term sheets, but rather her own abdication of her responsibilities.

Additionally, the Law Judge should reject Aguilera's contention that Luna's opening of the HAA International account prevented her from learning about improper payments from Neves to Luna. Respondent's Reply Brief at ¶ 7. Aguilera entirely ignores her role in approving the HAA International opening account documentation identifying Luna's relative as the beneficiary of the account. Division's Brief at 12; DX 91. More significantly, Aguilera ignores her approval of millions in commissions paid to Neves during the relevant time period. Divisions Brief at 22. At a minimum, Aguilera should have questioned whether the trading activity resulting in the substantial commission payments complied with the firm's policies and procedures.

Moreover, Aguilera misstates Howard Landers' testimony concerning his inability to discover the fraudulent scheme. Respondent's Reply Brief at ¶¶ 8-9. Landers testified as part of his audits he reviewed original terms sheets provided by issuers of the structured notes to match the prices charged in the primary transactions only. Division's Brief at 14, n.9; Tr. 335 at L.17-22. Landers explained he could not have discovered the fraudulent markup scheme because customers

that subsequently traded the notes in secondary market transactions would not have received a term sheet. Tr. 336 at L.21 to Tr. 339 at L.22. He, therefore, did not verify the prices for those transactions.

Aguilera, on the other hand, could have reasonably detected and prevented the scheme had she reviewed the trade blotters, which would have identified the sale of structured notes to intermediary accounts before the final sale to the end customers. As the Division's expert stated, even a cursory review of the firm's trade blotters by Aguilera should have raised serious concerns about the size of the markups charged in the structured note transactions. Division's Brief at 28-29. Accordingly, the Law Judge should reject Aguilera's defense that she could not have discovered the fraudulent markup scheme.

III. AGUILERA FAILED TO REASONABLY SUPERVISE NEVES AND LUNA

A. Aguilera Maintained Ultimate Supervisory Authority Over Neves and Luna's Trading of Structured Notes

Noticeably absent from Aguilera's brief is any discussion of established case law holding the President of a broker-dealer is ultimately responsible for its supervision. Division's Brief at 40-41 (citing cases). Rather, Aguilera contends she did not have supervisory authority over Neves and Luna because she was President only for a "limited time" and had no experience in trading or trading supervision. Respondent's Reply Brief at ¶¶ 12, 17, 19. In reality, Aguilera served as LatAm's President for more than two years. Division's Brief at 4-5. Moreover, Aguilera's contention that she did not place securities trades is irrelevant to whether she had trading supervisory responsibility.

Aguilera fails to rebut evidence demonstrating that all registered representatives reported to her, even in a sales supervisory capacity. Division's Brief at 21. Aguilera also fails to rebut evidence showing that, among other things, she maintained responsibility for review and approval of the trade blotter and approval of markups. Division's Brief at 21. Aguilera's reliance on Luna's testimony concerning her failure to review trade tickets and trade blotters demonstrates Aguilera's failure to comply with her responsibilities as President, including the responsibilities set forth in the WSPs requiring her to review trade tickets and trade blotters to evaluate the fairness of markups charged to the firm's customers. Respondent's Reply Brief at ¶ 26; Division's Brief at 19-20.

Aguilera argues her responsibilities as President were merely administrative, and any other duties set forth in the WSPs were inaccurate. Respondent's Reply Brief at ¶¶ 13-15. At the hearing, however, Aguilera testified that although she knew the WSPs were inaccurate with respect to her trading supervisory responsibilities, she made no attempt to correct them. Division's Brief at 22. Aguilera fails to provide any explanation why, as President, she knowingly permitted the WSPs to contain inaccuracies and failed to correct them. Aguilera's defense, therefore, is not credible, and the record as a whole corroborates the WSP's assignment of duties to Aguilera.

B. Aguilera's Delegation of Supervisory Authority to Vera Was Unreasonable

The evidence does not support Aguilera's claims that she delegated supervisory responsibility to Vera and adequately verified his work. Division's Brief at 25-27; 29-30; 41-44. Aguilera's brief does not address Vera's role in supervising Neves and Luna. As discussed in the Division's Brief, the evidence shows Vera lacked supervisory authority over Neves and Luna and

merely maintained compliance responsibilities with a duty to report concerns to Aguilera. Division's Brief at 42.

In addition, Aguilera knew any delegation of supervisory authority to Vera was deficient due to her concerns about his work. Division's Brief at 41-42 (citing cases). Aguilera fails to explain why she did not fire Vera as CCO or more closely monitor his work when she had numerous concerns about his performance. Division's Brief at 25-26; 43.

Remarkably, without any citation to the record, Aguilera asserts she verified Vera's trade blotter signatures and ensured the blotters were properly bound. Respondent's Reply Brief at ¶¶ 20-21. The evidence in the record refutes this claim.¹ At the hearing, Aguilera conceded she "trusted but did not verify" with respect to her duties to oversee Vera's work. Division's Brief at 25. Aguilera further testified she relied on the firm's outside compliance consultant to ensure the accuracy of Vera's blotter reviews rather than monitor Vera's work herself. Division's Brief at 26. In addition, the Division's expert found no evidence Aguilera adequately confirmed Vera's reviews of the blotters or tested the adequacy of any reviews conducted by the outside compliance consultant. Division's Brief at 29.

Moreover, Aguilera ignores testimony of several witnesses demonstrating Vera never actually signed the trade blotters. Vera himself testified that while he reviewed the trade blotters, he never signed them. Division's Brief at 21. Lashkari testified he never saw any of the blotters initialed. Tr. 461 at L.7-11. Indeed, Lashkari recounted a discussion with Vera in which Vera said "he doesn't sign off on anything." Tr. 461 at L. 16-20. Lashkari further testified he discussed

¹ Aguilera may not introduce the investigative testimony of Lashkari and Vera, which is not part of the record in this matter to support her defense. Respondent's Reply Brief at ¶¶ 18, 22. The Law Judge did not admit any of the Division's investigative testimonies as evidence. Tr. 13 at L.2-13; Tr. 719 at L.3-25.

Vera's refusal to sign the blotters with Aguilera. Tr. 462 at L. 11-18. According to Lashkari, Aguilera responded that Vera's refusal to sign the blotters was one of the reasons she decided to replace him. Tr. 463 at L.6-12. Lashkari also testified the trade blotters were "not in good order." Tr. 460 at L. 21 to Tr. 461 at L.11. Specifically, Lashkari testified the blotters were "[n]ot in consecutive day order" and were kept "in a pile" rather than being bound in a book. Tr. 460 at L.25 to Tr. 461 at L.6.

Aguilera appears to dispute whether Vera wrote the compliance memoranda setting forth concerns about markups charged in structured note transactions. Respondent's Reply Brief at ¶¶ 24-25. Even if Aguilera lacked knowledge of Vera's memoranda or concerns, evidence presented at the hearing demonstrates Aguilera's awareness of certain issues regarding markups. For instance, Luna testified Aguilera questioned him about markups on two or three occasions but the prices were never changed. Division's Brief at 24. Thus, regardless of whether or not the Law Judge accepts Vera's testimony about the memoranda, Aguilera cannot escape her overall failure to fulfill her responsibilities with respect to the review and approval of the trade blotter and markups. If Aguilera had properly implemented LatAm's procedures, including procedures designed to ensure fairness of markups, she would have uncovered the fraudulent scheme.

C. Aguilera Cannot Establish that Neves and Acosta Controlled LatAm or Exerted Supervisory Authority During the Period She Served as President

Aguilera asserts she should not be liable for failing to reasonably supervise Neves and Luna because Acosta and Neves exerted control at LatAm. Respondent's Reply Brief at ¶¶ 27-34. As addressed in the Division's Brief, there is no merit to this argument. Division's Brief at 24-25. Aguilera does not offer any evidence showing that either Neves or Acosta exerted supervisory

authority during the period she served as President.² Neither Neves nor Acosta had any supervisory responsibilities pursuant to the WSPs during the relevant time period. DX 21; DX 24; DX89; DX90.

Aguilera asserts, without supporting evidence, the voting trust giving her control of Acosta's shares during the relevant time period was a "sham." Respondent's Reply Brief at ¶ 32. However, at the hearing Landers explained Acosta no longer had a role in the day-to-day management of LatAm after his departure as a principal of the firm. Division's Brief at 7. The Division also presented evidence showing Acosta did not make trading decisions during the relevant time period and was seldom in the office, turning his attention to other businesses. Division's Brief at 24-25.

Finally, the evidence does not support Aguilera's assertion that she was "highly pressured by Mr. Acosta." Respondent's Reply Brief at ¶ 32. In fact, Aguilera confirmed at the hearing she never felt threatened while at LatAm. Division's Brief at 24, n.17.

In summary, Aguilera fails to rebut the evidence presented at the hearing concerning her responsibilities as President to supervise the firm's registered representatives and her failure to question the significant revenue and commissions generated from the trading of structured notes. Accordingly, as LatAm's President during the relevant period, Aguilera bears ultimate responsibility for the failure to reasonably supervise Neves and Luna with a view to detecting and preventing their fraudulent markup scheme.

² Aguilera appears to contradict herself with respect to Neves' control. At the hearing Aguilera claimed that Vera was Neves' boss, but offers no explanation in her brief as to how Vera could have any supervisory authority over someone who she claims "controlled" the firm. Division's Brief at 25.

IV. REMEDIES

The arguments set forth in Aguilera's Post-Hearing Brief further demonstrates her continued failure to either comprehend or accept her responsibilities as President of LatAm.³ Aguilera, therefore, does not recognize the wrongfulness of her conduct and fails to offer any assurance against future violations. As a result, significant remedial sanctions are appropriate in this case. As described in detail in the Division's Post-Hearing Brief, permanent supervisory and industry bars against Aguilera are in the public interest due to, among other things, the nature of the fraudulent conduct in this matter, the substantial losses the victims suffered, and Aguilera's reckless disregard for her supervisory responsibilities for nearly two years. Division's Brief at 44-48.

Additionally, Aguilera does not dispute the amount of money she earned in large part from the proceeds of the fraudulent scheme. Division's Brief at 30-31. Aguilera failed to submit any evidence concerning her ability to pay disgorgement, interest, or civil penalties in accordance with the Post-Hearing Order dated March 1, 2013. Therefore, disgorgement, pre-judgment interest and a civil penalty should be imposed as discussed in the Division's Brief. Division's Brief at 48-53.

V. CONCLUSION

For all the forgoing reasons, the Division submits that based on the evidence presented at the hearing in this matter, the Law Judge should find that Aguilera failed reasonably to supervise Neves and Luna within the meaning of Section 15(b)(4)(E) as incorporated by reference in Section 15(b)(6) of the Exchange Act. The Law Judge should impose the sanctions we request, including

³ Aguilera's claim that she performed well as a "rainmaker" in her role as President is irrelevant to whether she reasonably supervised Neves and Luna. Respondent's Reply Brief at ¶ 34.

permanent supervisory and industry bars, disgorgement and pre-judgment interest in the amount of \$1,405,074.75, and a third-tier civil penalty of \$150,000.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'LR Smith', written over a horizontal line.

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