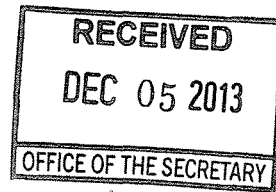


UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
Administrative Proceeding



In the Matter of: )  
 ) File No. 3-45514  
Donald J. Anthony, Jr., et al )  
 )  
Respondents

SEC  
3 World Financial Center  
New York, New York

Thursday, November 21, 2013  
10:00 a.m.

B E F O R E: CAMERON ELLIOT,  
Adminsitrative Law Judge

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A P P E A R A N C E S :

ON BEHALF OF THE SECURITIES AND EXCHANGE COMMISSION:

United States Securities and Exchange Commission  
3 World Financial Center  
New York, New York  
DAVID STOLTING, ESQ.  
HAIMAVATHI MARLIER, ESQ.  
MICHAEL BIRNBAUM, ESQ.

Via telephone:

MICHAEL TOLCOTT, ESQ., for William Lex  
BRIAN MALONEY, ESQ., for Phil Rabinovich, Ryan Mayer  
MATT NIELSEN, ESQ., for Thomas Livingston  
ROLAND CAVALIER, ESQ., for Frank Schiappone  
RICHARD FELDMAN, pro se  
LOREN SCHECHTER, ESQ., for Mr. Ganella

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P R O C E E D I N G S

THE COURT: We're here in the matter of Donald J. Anthony, Jr., et al, Securites and Exchange Commission Administrative Proceeding File number 3-15514. My name is Cameron Elliot, presiding administrative law judge.

May I have appearances from counsel, please?

MR. STOLTING: For the Division of Enforcement, David Stolting, Michael Birnbaum and Haima Marlier.

MR. SCHECHTER: Loren Schechter, for Mr. Ganella.

MR. CAVALIER: Roland Cavalier, for Frank Schiappone.

THE COURT: Is there anyone else on the line, any other respondents?

THE SPEAKER: Yes, your Honor.

(Talking over each other.)

THE COURT: One at a time.

Did I hear Feldman?

MR. FELDMAN: Yes. Richard Feldman, pro se.

THE COURT: Very good. Who else?

MR. NIELSEN: Matt Nielsen, on behalf of Thomas Livingston.

THE COURT: All right.

1 MR. TOLCOTT: Michael Tolcott, from Gilbert  
2 Abramson and Associates, for William Lex.

3 THE COURT: So we have --

4 MR. MALONEY: Your Honor, this is Brian  
5 Maloney from Seward and Kiskell, for respondents Phil  
6 Rabinovich, Ryan Mayer, and Ryan --

7 THE COURT: All right.

8 Do we have any anybody from Mr. Pizetti?

9 No?

10 And Mr. Anthony, anyone for Mr. Anthony?

11 (No response.)

12 Very good.

13 Essentially we have almost everyone on the  
14 line. This is a good opportunity to start out by saying  
15 something you all will be interested in hearing; which  
16 is, the case will not be heard in Washington, D.C. It  
17 turns out that we simply don't have the budget to hold  
18 it in Washington, D.C. so we're going to have to hold it  
19 somewhere in the New York City area for expense reasons.  
20 Where exactly in the New York City area, I don't know.

21 And the second important point that parties  
22 should be aware of, it almost certainly will not be up  
23 to me, because I can't do it in New York, as I indicated  
24 the last time we had a prehearing conference, I simply  
25 don't have the bandwidth at this point.

1           So the case is almost certainly going to be  
2           reassigned. The reassignment is not at this point  
3           finalized, but the decision to move the case out of D.C.  
4           is definitely finalized, we simply can't do that.

5           And the current plan is to reassign the case  
6           after we have completed at least the two settlement  
7           conferences that the two parties who have communicated  
8           with me about this indicated they wanted; that is Mr.  
9           Ganella and Mr. Chiappone.

10          So, if that changes anything, positions that  
11          the parties want to take, let me know. But if Mr.  
12          Ganella and Mr. Chiappone are still interested in a  
13          settlement conference, we can set the time and place for  
14          that right now.

15          MR. SCHECHTER: For Mr. Ganella, yes your  
16          Honor, we would like to.

17          THE COURT: Very good.

18          MR. CAVALIER: This is Mr. Cavalier for Mr.  
19          Chiappone. And the reasons for setting the settlement  
20          conference now are obviously that, given the extreme  
21          amount of documents and trial prep, so that parties want  
22          to determine, sooner rather than later settlement is  
23          feasible, and want to have that conference.

24          My case is a little bit different from Mr.  
25          Ganella's in that I had also been speaking directly to

1 the SEC, and we in fact scheduled a settlement  
2 conference for tomorrow in New York City, just with the  
3 SEC, myself and my client. But that may or may not take  
4 place.

5 And one thing I wanted to confirm. Even if  
6 we do have direct negotiations with the SEC and those  
7 negotiations are not successful, that we still have a  
8 right to have a settlement conference with your Honor  
9 presiding.

10 THE COURT: To answer to first of all, your  
11 client's name is Chiappone?

12 MR. CAVALIER: The "E" is pronounced as if  
13 it's an "I."

14 THE COURT: All right. The short answer to  
15 the question is, I encourage you to talk settlement with  
16 whatever circumstances you want. There is absolutely  
17 nothing stopping you from doing that. And I don't  
18 consider any previous settlement discussions that you  
19 had prior to any settlement conference that I may  
20 participate in to have any sort of conclusive effect on  
21 anything.

22 I'm happy to come to New York or, for that  
23 matter, the Albany region. I'd rather do it in New York  
24 City, but wherever I need to go to have a settlement  
25 conference and try to facilitate things.

1           So that's fine. So we can set a settlement  
2 conference for -- let's start with Mr. Ganella.

3           MR. SCHECHTER: New York City is fine with  
4 us.

5           THE COURT: All right.

6           What about a location for you?

7           THE SPEAKER: I'm good to go to New York  
8 City, and you would know more how long these conferences  
9 take when you are involved. We're happy to come on the  
10 same day, or if that's not feasible, the preceding or  
11 following day, so your Honor doesn't have to come to New  
12 York twice. We have flexibility on our end.

13          THE COURT: All right.

14          Let me say that my schedule over the next  
15 couple of weeks is a little tight, including, even the  
16 week after Thanksgiving. The only real days that I can  
17 do this over the next two weeks or so would be this  
18 coming Tuesday; that is, Tuesday the 26th, and the  
19 Friday after Thanksgiving week, that is, December 6.

20          If either of you are available either of  
21 those days I'm happy to come up on one day and hold it  
22 with one party and then come up on December 6 and hold  
23 it with the other party.

24          THE SPEAKER: I'm okay on both days.

25          THE SPEAKER: Both days.

1 THE SPEAKER: I'll take the 26th.

2 THE COURT: Mr. Stolting, what is your  
3 availability?

4 MR. STOLTING: We are available on either  
5 the 26th or December 6 or both.

6 THE COURT: In my experience, I have done a  
7 settlement conference with two different respondents  
8 before. However, I suspect it would not be as effective  
9 doing that in this case. I think it would be more  
10 effective if we did them one at a time.

11 The one time I did it before with  
12 respondents they were very differently situated relative  
13 to each other, and one of them in fact had pretty much  
14 already worked out a settlement with the Division. And  
15 so, the settlement conference was really hardly  
16 necessary in his case.

17 In any event, I don't know the facts of this  
18 case, obviously. It appears that the respondents are  
19 somewhat variously situated to each other. There may be  
20 a certain commonality of evidence and issues, but I'm  
21 concerned that it would really take up too much time if  
22 we try to squeeze two people into one day.

23 So I think it would be best to do one day  
24 for Mr. Ganella and one day for Mr. Chiappone.

25 Mr. Stolting, can we conduct this in the SEC



1 regional office?

2 MR. STOLTING: Yes, your Honor, we'll make a  
3 conference room available. We can try to get two rooms  
4 so there can be breakout rooms if people want to have  
5 conversations.

6 THE COURT: That would be helpful, certainly  
7 helpful. Because as I explained in my general  
8 prehearing order, what I usually require --

9 (Phone disconnection, and brief discussion  
10 off the record.)

11 THE SPEAKER: I can get rooms at the law  
12 firm.

13 MR. STOLTING: We have rooms here.

14 THE COURT: I think perhaps what you missed,  
15 Mr. Stolting, was my discussion of the various waivers  
16 that the parties have to give. All of these are spelled  
17 out in my general prehearing order, but I wanted to go  
18 over that orally, as well.

19 MR. STOLTING: I think because the court  
20 reporter sitting next to me would have missed the last  
21 thirty seconds or so.

22 THE COURT: I will mention briefly again,  
23 you need to waive the right to claim bias based on  
24 things I say during the conference; to waive the right  
25 to a public proceeding, the right to an on the record

1 proceeding, and you need to waive the right to claim  
2 error on the basis of ex parte contacts.

3 And again, this all in the general  
4 prehearing order I put out. I believe Mr. Schechter and  
5 Mr. Cavalier indicated their clients were acceptable  
6 with those conditions.

7 MR. CAVALIER: Yes, your Honor.

8 MR. SCHECHTER: That's correct.

9 THE COURT: Okay. So, I think, Mr.  
10 Schechter, I think you indicated you'd rather do the  
11 conference on Tuesday?

12 MR. SCHECHTER: Yes, sir.

13 THE COURT: And so, Mr. Cavalier, any  
14 objection to doing yours on Friday, December 6?

15 MR. CAVALIER: If your Honor had something  
16 sooner that would be great, but we'll make ourselves  
17 available whenever your Honor is free.

18 THE COURT: Unfortunately, I think the 6th  
19 is the first I can do it after Thanksgiving.

20 So I will issue an order after we complete  
21 this conference call that simply says that we're going  
22 to hold settlement conferences on Tuesday the 26th and  
23 December 6th in the first case; in the second case for  
24 Mr. Chiappone at the Commission's New York regional  
25 office.

1 THE SPEAKER: What time do you want to  
2 start, your Honor? Because we've got to give you time  
3 to come up from Washington.

4 THE COURT I will probably have to spend the  
5 night there beforehand. I'd like to spend as much time  
6 as I can doing this. So we'll probably start at 9:00.

7 MR. SCHECHTER: If it's more convenient to  
8 start later we can go later in the morning if you want.

9 THE COURT: I think we'd better not do that.  
10 Sometimes these settlement conferences go pretty late  
11 even if you start at 9:00, and I'd rather start at 9:00.  
12 Let's start at 9:00. I believe I'm going to have to be  
13 badged in just like everyone else. So if we don't start  
14 exactly at 9:00 the explanation is probably I'm still  
15 working at getting through security. But I will try to  
16 get there earlier so I can get that all taken care of.

17 MR. CAVALIER: The earliest train out of  
18 Albany is 6:00, which gets you in between 8:00 and 8:30,  
19 but then I have to get from Penn Station down to the SEC  
20 offices downtown, which means we might be anywhere from  
21 15 to 20 minutes late. I want you to know that in  
22 advance.

23 And it's very convenient to use the train,  
24 because it's a lot quicker than driving down and so on.  
25 Let's schedule it for 9:00 and we'll do our very best,

1 but obviously some things are beyond our control, which  
2 mostly has to do with New York City traffic.

3 THE COURT: Okay. In that case, why don't  
4 we set it for 9:30 in your case?

5 MR. CAVALIER: Okay. We'll set it for 9:30,  
6 and we will have hopefully made substantial progress by  
7 then in our direct discussions; perhaps not, but we'll  
8 know more about that soon; 9:30 for us is great.

9 I have one question before we hang up. We  
10 would like to send some pre-conference submittals to  
11 your Honor to familiarize him what our arguments are.  
12 And that would basically be giving you a copy of the  
13 Wells submission which we've already long ago given to  
14 toe SEC.

15 Is there any problem with that?

16 THE COURT: Let's talk about this. We can  
17 do this in any number of different ways. I've done it  
18 before where the parties were not really in dispute  
19 about certain substantive things, but they just had, the  
20 respondent in particular had particular concerns. And  
21 so the settlement conference consisted of just a  
22 conversation really between the respondent and the  
23 Division, and I occasionally ask questions or interject.

24 In this case, I'm assuming -- this may not  
25 be a good assumption -- that there are certain issues

1 the parties dispute, perhaps very vigorously. For  
2 example, I'm guessing that the question of scienter is  
3 vigorously disputed between the parties. And scienter  
4 is an important factor in evaluating any potential  
5 sanction.

6 If that's the case, then a possible way of  
7 proceeding in the settlement conference is, if the  
8 parties want to give me a presentation regarding their  
9 evidence, their contentions and so forth regarding  
10 scienter or any other issue -- there may be some other  
11 issues that are hotly disputed and that is important.

12 And the way I've dealt with that sort of  
13 situation in the past is, we start out with kind of, a  
14 combination opening statement closing argument, say,  
15 half an hour from the Division and half an hour from the  
16 respondent, and then maybe we have a little more back  
17 and forth and I meet with the parties privately, and  
18 then come back together and have another discussion,  
19 which could be about anything, depending on what the  
20 parties tell me and what the evidence is.

21 So if you want to proceed by way of  
22 submitting things to me beforehand, that's fine. Of  
23 course I'll give the opportunity -- to do that also. If  
24 you want to wait on that until we show up at the  
25 settlement conference and then either just stand up and

1 talk or make a PowerPoint presentation or something like  
2 that, we can do that too.

3 So let me first start with the Division.  
4 How do you think would be productive to proceed?

5 MR. STOLTING: I don't think that we would  
6 like to see briefs or Wells submissions being submitted.  
7 I think we can give an oral presentation on Tuesday  
8 summarizing our case, and highlight evidence or have a  
9 PowerPoint or something to show. I think that's the  
10 best way to proceed.

11 We have our opposition to eight motions to  
12 dismiss that brief, for us is due on Monday. So it's  
13 going to be hard for us to prepare something for a  
14 meeting happening on Tuesday.

15 THE COURT: All right. Mr. Schechter?

16 MR. SCHECHTER: I agree with Dave. I think  
17 just an oral presentation on Tuesday. I'm sure we both  
18 want exhibits or something -- that lists who the people  
19 sold to, that kind of routine, to just pass around. I  
20 don't mean exhibits in the formal sense. Or if we want  
21 to do PowerPoints by Tuesday.

22 THE COURT: All right. It's entirely up to  
23 you.

24 MR. SCHECHTER: Frankly, your Honor, I don't  
25 have as wide a difference on the facts as you might

1 expect.

2 THE COURT: Very good.

3 Mr. Cavalier, what are your views?

4 MR. CAVALIER: What I'm hearing your Honor  
5 say is we can have written or oral submissions, but not  
6 both. In that case I would go along with Mr. Stolting.  
7 We will give a summary -- it's no so much a difference  
8 on what the facts are, it's a question of the  
9 implication of the facts and so on.

10 I'm happy to have a half hour to explain why  
11 we believe our client should be treated in a certain  
12 fashion. That's okay with me.

13 THE COURT: Okay. So let's not have any  
14 presettlement conference submissions. This is not to  
15 discourage you from coming to the settlement conference  
16 with papers you may want to show me. If there's  
17 something particularly important, an exhibit or item of  
18 evidence you want to show me, that's fine, bring it with  
19 you. I will take a look at it.

20 If you want to do an entirely oral  
21 presentation, that's fine too. But let's not have  
22 anything beforehand. We'll show up and then you can  
23 brief me once we show up.

24 MR. CAVALIER: See you 9:00 Tuesday.

25 THE COURT: Very good. So 9:00 on Tuesday

1 for Mr. Ganella, 9:30 on December 6 for Mr. Chiappone.  
2 I'll go down the list.

3 Any comments from other participants in the  
4 call? Mr. Feldman, anything to say?

5 MR. FELDMAN: Not at this time, your Honor.

6 THE COURT: Sorry, I've forgotten everyone's  
7 names. For Mr. Lex, any comments?

8 MR. TOLCOTT: No, your Honor.

9 THE COURT: Mr. Livingston?

10 MR. NIELSEN: Yes, your Honor. This is  
11 Matthew Nielsen. We may also want to pursue a  
12 settlement conference. What would be the best way of  
13 going about that as far as to find a date? Should we  
14 see what you have available now and then work something  
15 out with the SEC if that's indeed what we want to pursue  
16 or notify you, or?

17 THE COURT: Well, let me look at my schedule  
18 real quick. So far, my schedule for the week of  
19 December 9 and December 13 appears to be open, but I'm  
20 going to have to check on that.

21 So I'd suggest that if you want a settlement  
22 conference, send me a motion. I know it's very common  
23 practice in New York courts to do that by letter. You  
24 can send me a letter. I really prefer motions, but if  
25 you send me a letter requesting a settlement conference



1 along the lines of what Mr. Schechter did, then that  
2 would be acceptable.

3 MR. STOLTING: Your Honor, I wanted to offer  
4 one thought on these conferences, and maybe it would  
5 help scheduling. But as Mr. Schechter and Mr. Cavalier  
6 suggested, I don't think this is a case where there is  
7 radically different versions of what happened or what  
8 the facts are.

9 These brokers are, except for Gazetti the  
10 supervisor, are all brokers that worked at McGinn Smith,  
11 they all sold these securities to their customers. And  
12 that's what the case is about and the facts are not  
13 disputed.

14 So I don't think there's going to be hours  
15 or arguing about what happened and what e-mails say. I  
16 think there is a dispute about scienter and recklessness  
17 and what is the appropriate sanction, assuming you buy  
18 into the Division's theory.

19 So I don't think eight hours will be  
20 required for each conference, and it might even be  
21 possible to do one respondent in the morning and fit in  
22 Mr. Livingston in the afternoon on one of the other days  
23 you are here.

24 I don't want to shortchange anybody, but I  
25 do think that this is something where we can cut to the

1 chase pretty quickly and maybe get something  
2 accomplished.

3 THE SPEAKER: In my own experience a full  
4 day is better at getting something accomplished.

5 THE COURT: I'll tell you, I've done maybe  
6 half a dozen times so far since I've been at the SEC,  
7 and I've yet to have one go less than six hours; maybe  
8 five and a half, actually.

9 In any event, I think, let's play it by ear,  
10 if it turns out Mr. Ganella's and Mr. Chiappone's go  
11 very quickly I may change my procedure for anyone else  
12 in the future like Mr. Livingston. But let's assume a  
13 full day for everybody so far.

14 MR. STOLTING: Okay, your Honor.

15 THE COURT: And for Mr. Rabinovitch and  
16 Rogers?

17 MR. MALONEY: This is Brian Maloney.

18 Just a question, your Honor. You mentioned  
19 that the current plan was to move the proceeding to New  
20 York City and possibly to reassign it after the  
21 completion of any settlement conferences.

22 Did you say any more about timing or when  
23 there will be an official notice of that plan?

24 THE COURT: Well, based on what I knew  
25 yesterday, the idea was that it would be reassigned

1 after the conferences for Mr. Ganella and Mr. Chiappone  
2 were completed. However, that may get pushed back if we  
3 conduct some more, for example, for Mr. Livingston. And  
4 at this point I just don't know, nor do I know who it's  
5 going to be reassigned to. But that's not up to me  
6 anyway, that's up to the chief ALJ.

7 So the short answer to your question is, I  
8 just don't know at this point.

9 MR. STOLTING: Your Honor, one follow-up on  
10 that. Would you expect the January 27 starting date  
11 would stay and it would only be the location that  
12 changes?

13 THE COURT: Yes, that's my expectation.  
14 Again, if it does get reassigned then the new ALJ would  
15 have the authority to change that date, if the parties  
16 are unhappy with that date, and I didn't get the  
17 impression any of you were. But that would be  
18 reconsidered when the case is reassigned.

19 MR. MALONEY: Thank you, your Honor.

20 THE COURT: Let me turn back to the  
21 Division.

22 Mr. Stolting, anything else we need to talk  
23 about?

24 MR. STOLTING: No, your Honor, thank you.

25 THE COURT: Mr. Schechter?

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MR. SCHECHTER: No, your Honor.

THE COURT: Mr. Cavalier.

MR. CAVALIER: No, your Honor.

THE COURT: Counsel, thank you very much.

I'll see you on Tuesday and then the Friday after  
Thanksgiving.

MR. SCHECHTER: Thank you very much, your  
Honor

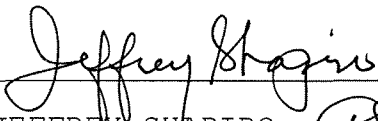

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SCOPIST CERTIFICATE

I, JEFFREY SHAPIRO, hereby certify that the foregoing transcript consisting of 20 pages is a complete, true and accurate transcript of the investigative hearing, held on Thursday, November 21, 2011, at 3 World Financial Center, New York, New York, in the matter of Donald Anthony, Jr., et al.

I further certify that this proceeding was reported by me and that the foregoing transcript has been scoped by me.

  
\_\_\_\_\_  
JEFFREY SHAPIRO 

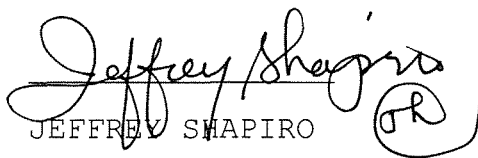

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
REPORTER'S CERTIFICATE

I, Jeffrey Shapiro, reporter,  
hereby certify that the foregoing transcript of 20 pages  
is a complete, true, and accurate transcript of the  
testimony indicated, held on November 11, 2013, at the  
Securities and Exchange Commission, 3 World Financial  
Center, New York, New York, in the matter of: Donald  
Anthony, Jr., et al.

I further certify that this  
proceeding was recorded by me and that the foregoing  
transcript was prepared under my direction.

  
JEFFREY SHAPIRO 

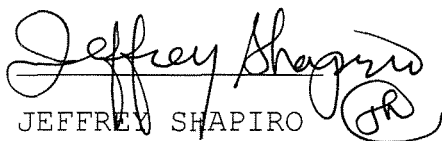

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PROOFREADER'S CERTIFICATE

In the Matter of: Donald Anthony, Jr., et al  
File Number: 3 NY-15514  
Date: November 21, 2013  
Location: 3 World Financial Center  
New York, New York

This is to certify that I,  
JEFFREY SHAPIRO, the undersigned, do hereby swear and  
affirm that the attached proceedings before the United  
States Securities and Exchange Commission were held  
according to the record, and that this is the original,  
complete, true and accurate transcript that has been  
compared to the reporting or recording accomplished at  
the hearing.

  
JEFFREY SHAPIRO 

12-4-13  
Date