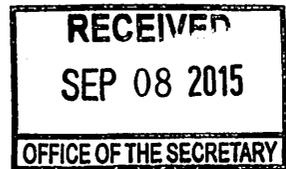


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15974

In the Matter of

JAMES E. COHEN and
JOSEPH A. CORAZZI,

Respondents.

OPPOSITION TO MOTION TO CORRECT
MANIFEST ERRORS OF FACT

INTRODUCTION

The Division of Enforcement (the “Division”) hereby opposes Respondent James Cohen’s motion to correct manifest errors of fact. Below, the Division addresses each of the points (labeled Points 1 through 8) regarding the purportedly manifest errors of fact in the Initial Decision. In sum, the factual findings highlighted by Cohen’s motion are not erroneous in the least; rather, they are fully supported by the evidentiary record from the February 2015 hearing. While Cohen himself may not have found certain witnesses’ testimony credible, and may disagree with the judge’s decision to rely on various exhibits introduced at the hearing by the Division, there is nothing manifestly erroneous about any of the aspects of Judge Foelak’s factual findings, all of which reflect a careful examination of the testimonial and documentary evidence adduced at the hearing. Accordingly, Cohen’s motion should be denied.

ARGUMENT

(Point 1)

Respondent Cohen first objects to the Court's description of the formation of the private company, Natural Blue Nevada, a predecessor entity to Natural Blue Resources. *See* Initial Decision ("Init. Dec.") at 6. In his motion, Cohen alleges that the Court improperly found that "Corazzi and Cohen had formed a private company focusing on green energy projects ... which would soon become public through a reverse merger with a public company, Datameg." *See id.* Cohen argues that it was really Natural Blue CEO *Toney Anaya* who initiated the founding of Natural Blue Nevada – not Corazzi and Cohen, as multiple witnesses (including Anaya) testified.¹ *See* Motion to Correct Manifest Errors of Fact ("Cohen Motion") at 1.

The Court's finding of fact on Point 1 is not manifestly erroneous and is amply supported by the testimony adduced at the hearing from multiple witnesses. The Division's first witness, James Murphy, testified that he spoke by phone with Cohen about a potential business transaction between the public company Datameg (of which Murphy was CEO) and Natural Blue Nevada. Tr. 40-42. Anaya was not a participant in those discussions. Cohen and Murphy then met at the Florida offices of the public company Blue Earth Solutions ("Blue Earth"). Tr. 40-42. During this meeting, Cohen got Corazzi on the line so that Corazzi could "explain" to Murphy the details of a project relating to extraction of water in New Mexico by the private company Natural Blue Nevada. Tr. 42-43. At that time, Cohen and Corazzi "proposed a type of merger" between Datameg and Natural Blue Nevada, which eventually resulted in Natural Blue becoming a public company. Tr. 43-44. Anaya did not participate in any of those discussions.

As Anaya testified, he first learned of Natural Blue through a phone call from Corazzi.

¹ Anaya testified over the course of three days in the Division's case-in-chief, including multiple days of cross-examination by Cohen, and the Initial Decision illustrates that the Court found his testimony credible. Cohen and Corazzi were not called by the Division, and elected not to testify in the defense case. *See* Init. Dec. at 2.

See Tr. 797. During the call, Corazzi praised his long-time business associate Cohen, and described in detail the company that would become Natural Blue. *See* Tr. 798. Among other things, Corazzi told Anaya that the company would be “investing in green companies and bringing them under the umbrella of Natural Blue” and that Cohen was “one of the best he had met in terms of being able to develop businesses.” Tr. 798-799. While Anaya testified about his long-standing interest in environmental issues, there was no evidence presented at the hearing suggesting that Natural Blue Nevada was founded at his initiative. *See also* Division of Enforcement Post-Hearing Brief (“Div. Post-Hearing Br.”) at 5-11 (summary of evidence presented about formation of Natural Blue and Cohen and Corazzi’s involvement). Accordingly, Point 1 of Respondent’s Motion raises no valid issues as to the findings of fact.

(Points 2 and 3)

The Initial Decision was not manifestly erroneous in finding that Cohen was involved in the drafting of the reverse merger term sheet with Datameg by the date of March 6, 2009. While the Respondent attempts to finely parse the distinction between the Datameg/Natural Blue transaction and the American Marketing/Blue Earth transaction, and Cohen’s involvement in the same, the evidence at the hearing – including the testimony of Paul Vuksich and James Murphy, as well as Vuksich’s detailed legal bills -- demonstrated that Cohen was deeply involved in negotiating both of those related transactions, on behalf of Natural Blue and Blue Earth. *See, inter alia*, Div. Ex. 69 at 24-25; Tr. 286 (Vuksich testimony that Murphy and Cohen were negotiating in late February and early March 2009). The Court’s findings of fact accurately reflect the interconnected nature of these transactions. To wit: “Cohen proposed that Natural Blue Nevada reverse merge with Datameg, which would result in Natural Blue becoming a public company, and for Blue Earth to acquire [American Marketing and Sales, a Datameg subsidiary]. ... Cohen hoped that Natural Blue would eventually acquire Blue Earth.” Init. Dec.

at 6-7 (internal citations omitted).

Moreover, while the Natural Blue board minutes on March 17, 2009 reflect that there was a vote approving the Datameg transaction, the reverse merger was indeed a *fait accompli* long before the board voted. *Compare* Div. Ex. 10 (March 17, 2009 board minutes) *with* Tr. 814 (Anaya testimony). Accordingly, the Initial Decision is not erroneous in stating that Anaya “did not voice any opinion regarding the reverse merger with Datameg” – since Anaya credibly testified that notwithstanding his title of CEO, he believed that the Datameg transaction was “an accomplished fact, and [he] accepted it as such.” Tr. 814.

(Point 4)

The Court did not err in finding that Cohen and Corazzi selected the board, and that Anaya’s role in the selection process was entirely passive. As to the board, Cohen specifically proposed Samir Burshan and Daryl Kim as board members for Natural Blue. *See* Tr. 822-823; *see also* Tr. 490 (Pelosi met Kim through Cohen). Burshan was already a board member at Blue Earth (a company controlled by Cohen) before he joined the board of Natural Blue. *See* Tr. 490. Moreover, the Court found that Corazzi later recruited Eric Ross to serve as an advisor to the Natural Blue Board after negotiating a transaction with Atlantic Dismantling (*see* Init. Dec. at 20) and that Cohen and Corazzi were responsible for installing Erik Perry as CEO (and a member of the board) once Anaya stepped down as CEO of Natural Blue. *See id.*

Cohen, in essence, misses the forest for the trees in Point 4. Not only did Cohen control the board and the selection process, but as this Court found, he functioned as a *de facto* officer and controlled numerous aspects of Natural Blue’s operations. As the Court explicated:

[]Cohen and Corazzi made clear to Natural Blue’s officers, directors, and negotiating counterparts that they were the founders of Natural Blue and that the company was their “baby.” Investors, however, were kept in the dark as to Respondents’ true roles at Natural Blue. Cohen and Corazzi unquestionably made policy-making decisions. Cohen and Corazzi selected Natural Blue’s officers and directors – selections that were merely

ratified by the Board or shareholders. ... [T]he fact that Respondents may have made sensible recommendations that officers and directors ratified is similarly not inconsistent with the conclusion that Respondents operated as de facto officers.

Init. Dec. at 28. While Cohen may disagree with this holding, the Court's conclusion that Cohen controlled the selection of Natural Blue's board is not manifestly erroneous in the least, and is fully supported by the evidence adduced at the administrative hearing before the Court.

(Point 5)

Cohen's arguments about the findings of fact as to Natural Blue's bookkeeping function are particularly cynical and lacking in merit. First, Cohen claims that Anaya's plan to hire his daughter Kristina Bibb "met with opposition due ... to concerns about nepotism, conflicts of interest, and her qualifications, and later as a result of [her documented and serious legal issues]." Mot. at 3. Cohen then cites to a stipulation by the parties, which says nothing whatsoever about any such "opposition" to Ms. Bibb – nor is there any such evidence in the record. Cohen elected not to call Ms. Bibb as a witness, and none of the officers or directors of Natural Blue testified about their purported opposition to Ms. Bibb. Second, Respondent describes Anaya's testimony about access to the bookkeeping records as "conclusory" – but then relies on other portions of his testimony as "establish[ing]" that Anaya directed the recordkeeping for Natural Blue. It is the factfinder's prerogative to accept certain aspects of a witness's testimony and reject others; it is quite another thing for the Respondent to cherry-pick the portions of testimony that arguably support his defense, and propose that the Court rely on those (and only those). The Court should reject Cohen's baseless claim about this so-called error of fact.

Furthermore, as a fundamental matter, the record was replete with evidence that Anaya was unable to maintain control over the Natural Blue corporate books and records, because of Cohen and Corazzi's machinations. The Natural Blue office was located in the same Florida offices as Blue Earth, where Cohen worked, and the corporate books and records were

maintained there, while the CEO and President were located in the western United States. Anaya tried in vain early on to move the bookkeeping to New Mexico. *See* Tr. 831; *see also* Div. Ex. 55 (12/11/09 e-mail from Anaya to the board noting that he “wanted to have this bookkeeping handled here in Santa Fe from the outset: but, Jim [Cohen, Paul [Pelosi], and Joe [Corazzi] didn’t respond favorably to my proposal to hire someone here.”) Instead, from the time Natural Blue became public, the records were maintained “in Florida, under the supervision of [Cruikshank] ... in the same building, the same offices as Blue Earth Solutions[.]” Tr. 931. Despite repeated requests, Anaya was never able to obtain accounting records for Natural Blue. Tr. 934, 948, 1034, 1035; *see also* Div. Ex. 112 (9/16/10 e-mail from Anaya to Cohen requesting assistance in obtaining accounting records), Div. Ex. 125 (10/3/10 e-mail from Anaya to Cohen asking what records Cohen “can send electronically as well as what physical accounting records are available that can be provided[.]”) Again, Point 5 raises no legitimate concerns about the factual findings.

(Points 6 and 7)

Points 6 and 7 of Cohen’s Motion plainly do not concern any manifest errors of fact – rather, Cohen is attempting to reassert the advice of counsel defense that this Court has already rejected by re-hashing the testimony by Natural Blue’s former attorneys and packaging it into a so-called “manifest error of fact”. In sum, none of the evidence cited shows that this Court manifestly erred on Points 6 and 7, and the Division has already addressed this argument in its post-hearing briefing. *See also* Division of Enforcement’s Post-Hearing Brief at 12-16.

(Point 8)

As to the EcoWave transaction, the Court’s findings are not manifestly erroneous. At the August 2009 Natural Blue board meeting, Cohen addressed the directors on various issues, including the acquisition of EcoWave, LLC (“EcoWave”). *See* Tr. 65-66. Although Anaya recalled that Cohen “recommended it to the company as ... a good investment opportunity for

the ... company to pursue[,]” the August 1, 2009 board minutes reflect that EcoWave *had already been acquired*. Tr. 849; Div. Ex. 24 (noting that “James Cohen, Sr. advised the board *that the Corporation had acquired EcoWave, LLC* for organizational shares of the Corporation.”) (*emphasis added*). EcoWave was a company tied to Burshan and Kim, who were recommended for the board by Cohen largely because “they were bringing the technology” to Natural Blue. Tr. 850. Burshan “had an ongoing relationship, business and personal, with Mr. Cohen prior to this Board meeting.” Tr. 1120. After the board meeting, Anaya accepted Cohen’s recommendation that his son, James Cohen Jr., lead the EcoWave division for Natural Blue. *See* Tr. 826.

While it may be the case that the Eco Wave acquisition was not technically finalized until mid-August of 2009, as reflected in the company’s 8-K filing (*see* Cohen Ex. 52), Cohen again misses the forest for the trees – since the salient point is that Cohen announced to the board of directors that Natural Blue had already entered into this transaction, and any involvement by the board was merely perfunctory. When in time the ink dried on the eventual deal is irrelevant; the point remains that Cohen led, initiated and concluded this transaction on behalf of Natural Blue. In raising Point 8, Cohen does little more than seek to ignore the Court’s ultimate conclusion of law – that he acted as a *de facto* officer of Natural Blue, and thus violated the securities laws. Accordingly, the Court should reject Point 8, as failing to identify a manifest error of fact.

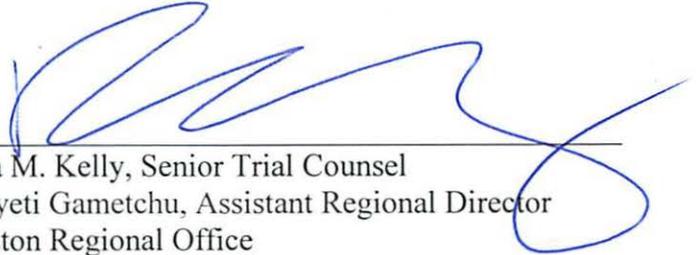
CONCLUSION

For these reasons, as well as the reasoning set forth in the Initial Opinion and the Division's filings, the Court should deny Cohen's motion to correct manifest errors in fact.

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its attorneys,



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Dated: September 4, 2015

Certificate of Service

I certify that on September 4, 2015, in addition to filing the same with the Secretary of the Commission, I caused true and correct copies of the foregoing **Division of Enforcement's Post-Hearing Brief** to be served on the following parties and other persons entitled to notice by electronic delivery to the following addresses:

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September 4, 2015

By Overnight Delivery

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Re: *In the Matter of Natural Blue Resources, Inc., James E. Cohen, and
Joseph Corazzi, Respondents*
Administrative Proceeding File No. 3-15974

Dear Secretary Fields:

Enclosed for filing please find an original and three copies of the Division of Enforcement's Opposition to Motion to Correct Manifest Errors of Fact. If you have any questions, please contact me at (617) 573-8941 or Mayeti Gametchu at (617) 573-8921.

Very truly yours,


Rua M. Kelly
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cc: Honorable Carol Fox Foelak (by electronic mail)
Maranda Fritz (counsel for Respondent Cohen) (by electronic mail)
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