



UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

ADMINISTRATIVE PROCEEDING  
File No. 3-17184

**In the Matter of**

**CHRISTOPHER M. GIBSON,**

**Respondent**

RESPONDENT CHRISTOPHER M. GIBSON'S SUPPLEMENTAL  
PETITION FOR REVIEW OF INITIAL DECISION

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Dated: May 25, 2018

**Introduction.** Pursuant to Rule 410(b), Christopher M. Gibson (“Respondent”) submits this Supplemental Petition for Review of Initial Decision. The Initial Decision (“Decision”) entered by the Administrative Law Judge (“ALJ”) contained findings and conclusions that Respondent violated provisions of the securities laws and imposed sanctions. Respondent filed a Petition for Review, which the Commission granted on March 6, 2017. On November 30, 2017, the Commission entered an order remanding this matter to the ALJ.<sup>1</sup> On May 11, 2018, the ALJ entered an Order Ratifying Prior Actions (the “Order”), which ratified the findings, conclusions and orders contained in the Decision.

In addition to seeking review of findings and conclusions that Respondent violated the securities laws and orders imposing sanctions contained in the Decision,<sup>2</sup> Respondent seeks review under Rule 411(b)(2)(ii) of the Order’s ratification of the ALJ’s prior actions in this proceeding. Respondent also takes exception to the ALJ’s erroneous determinations regarding constitutional issues raised by Respondent, failure to make findings based upon admitted evidence and failure to apply applicable law to the entirety of the record.

**Errors.** The Order erroneously dismisses Respondent’s constitutional challenges without addressing the merits. The Order merely discusses provisions of the Administrative Procedure Act which are irrelevant to the constitutional issues, erroneously states that the Commission appointed the ALJ to serve at the Commission and cites a decision that is inapposite. The brief filed with the Supreme Court on behalf of the Commission in *Lucia v. SEC*, No. 17-130

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<sup>1</sup> *In re: Pending Administrative Proceedings*, Securities Act Release No. 10440 (November 30, 2017).

<sup>2</sup> The Decision contained findings and conclusions that Respondent violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder and Sections 206(1), (2), and (4) of the Investment Advisers Act and Rule 206(4)-8 thereunder and entered orders that barred Respondent from associating with, among others, an investment adviser; imposed a cease-and-desist order; imposed disgorgement and prejudgment interest; and imposed a monetary penalty.

conceded that the Commission's ALJs are inferior officers, and had not been appointed in accordance with Article II of the Constitution prior to the commencement of this proceeding. Thus, Supreme Court precedent requires the dismissal of this proceeding.<sup>3</sup> With respect to Respondent's constitutional argument premised upon the impermissible levels of protection against presidential removal, the Order improperly relies upon a Commission opinion that was entered prior to the filing of the Commission's brief in *Lucia*. As the brief concedes that the Commission's ALJs are officers and are protected by multiple levels of removal protection, the ALJ may not rely upon a Commission opinion that is based upon the position that ALJs are not officers or is otherwise flawed.

The ALJ's ratification of her findings and conclusions that Respondent acted as an investment adviser to the Fund is not supported by the admitted evidence nor the applicable law. The ALJ merely repeats the assertions in the Decision that Respondent performed certain tasks and received compensation from an entity other than the Fund. Although the Order mentions the Fund's Operating Agreement, the ALJ fails to address the fact that the Operating Agreement vested discretion to make investments on behalf of the Fund with Geier Capital and provided for the payment of fees to Geier Capital.<sup>4</sup> The ALJ does not cite any authority which would permit her to disregard the binding provisions of the Operating Agreement and does not cite any authority supporting a conclusion that Respondent acted as an investment adviser to the Fund.

The Order erroneously ratifies the Decision's findings and conclusions that provisions in the Fund's Offering Memorandum and Operating Agreement did not permit the transactions at

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<sup>3</sup> *Ryder v. United States*, 515 U. S. 177 (1995).

<sup>4</sup> The ALJ even acknowledged that Respondent did not control Geier Capital, the Fund's investment adviser, as the Order states, "I accept Gibson's point that Hull, through his financial position, controlled the Fund, Geier Capital, and Geier Group and also exercised economic control over Gibson." (Order at 17).

issue in this proceeding. The ALJ committed error by disregarding the Commission's pronouncement that "the federal fiduciary duty . . . follows the contours of the relationship between an adviser and its client, and the adviser and the client may shape that relationship through contract . . ." Investment Advisers Act Release No. IA-4889 at 7. As the Fund's Operating Agreement permitted the transactions at issue in this proceeding, the ALJ's findings and conclusions that the transactions violated the securities laws is erroneous.

The Order also erroneously ratifies findings and conclusions that Respondent engaged in front running, favored a Fund investor over the Fund and violated Section 206(4) and Rule 206(4)-8. Evidence admitted in this matter establishes that Respondent did not engage in violative conduct as the decisions to sell the Fund's TRX securities in September<sup>5</sup> and November<sup>6</sup> 2011 were made after Respondent's sales of TRX securities and his purchases of and recommendations regarding put contracts and as Mr. Hull controlled the Fund and the Fund's adviser at the time he sold TRX securities held in his personal account to the Fund.

Respectfully submitted,



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<sup>5</sup> In his Affidavit, Mr. Hull stated "Christopher Gibson could not have known on September 26, 2011, that the Geier Fund was going to sell 3.7 million shares of TRX stock on September 27, 2011, because that was not a decision that he alone had the authority to make." ( Resp. Ex.178 at Paragraph 12).

<sup>6</sup> In his Affidavit, Mr. Hull stated " we did not make the final decision to liquidate the TRX position until late in the evening of November 9, 2011" (Resp. Ex. 178 at Paragraph 15).

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May, 2018:

- (i) an original and three copies of the foregoing Respondent's Supplemental Petition for Review of Initial Decision dated May 25, 2018 were filed by hand-delivery to the following address:

Office of the Secretary  
Securities and Exchange Commission  
100 F Street, N.E.,  
Washington, D.C. 20549

- (ii) a copy was sent via email to Gregory R. Bockin, at [bocking@sec.gov](mailto:bocking@sec.gov)
- (iii) a copy was delivered by hand to Gregory R. Bockin, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549; and
- (iv) a copy was sent via email to Brenda P. Murray, Chief Administrative Law Judge, at [ALJ@sec.gov](mailto:ALJ@sec.gov).



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