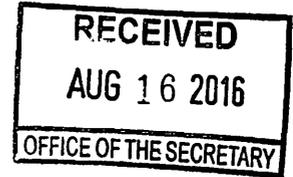


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549



ADMINISTRATIVE PROCEEDING
File No. 3-17184

In the Matter of

CHRISTOPHER M. GIBSON,

Respondent

**OPPOSITION OF RESPONDENT GIBSON TO DIVISION OF ENFORCEMENT'S
MOTION IN LIMINE REQUESTING THAT RESPONDENT BE PROHIBITED FROM
ARGUING RELIANCE ON COUNSEL OR OFFERING EVIDENCE OF
COMMUNICATIONS WITH COUNSEL**

Respondent Gibson submits this Opposition to the Division of Enforcement's motion *in limine* ("Motion"). The Motion requests that the Hearing Officer issue an order prohibiting Respondent from (i) arguing during the hearing in this matter that he relied on the advice of counsel in connection with the conduct at issue; or (ii) offering evidence regarding the substance of any communication with counsel. The Division of Enforcement's request for an order limiting the arguments that Respondent may make and limiting the evidence he may introduce should be denied because the Division of Enforcement has failed to provide a basis for the order it is requesting. In particular, the Division of Enforcement acknowledges that Respondent has not asserted reliance on counsel and has taken no action indicating the intent to assert reliance on counsel. Specifically, the Division of Enforcement states that "the Answer filed by Gibson in this proceeding on April 20, 2016, does not argue reliance on counsel or refer to communications with counsel." Also, the Division of Enforcement's references to assertions of attorney-client privilege during the investigation that it conducted are irrelevant to this administrative proceeding. As the Division of

Enforcement has failed to provide a basis for the order it has requested, its motion should be denied.

PROCEDURAL BACKGROUND

To date, the Securities and Exchange Commission (“SEC”) has entered an Order Instituting Administrative and Cease-and-Desist Proceedings (the “OIP”), which contains factual allegations and alleges violations of certain provisions of the Securities Exchange Act and the Investment Advisers Act and rules thereunder. Respondent has filed an Answer and Affirmative Defenses. Finally, the Division of Enforcement and Respondent have exchanged lists of potential witnesses, exhibits and objections to exhibits.

Notwithstanding the procedural posture of this matter, the Division of Enforcement has asserted as fact mere allegations contained in the OIP. For example, at the outset of its motion, the Division of Enforcement states, “This matter involves fraudulent conduct and violations of fiduciary duties by an investment adviser.” While the OIP contains allegations that assert fraudulent conduct and violations of fiduciary duties, findings of violations or findings of breaches of fiduciary duty have not been entered. Similarly, while the OIP alleges that Respondent acted as an investment adviser and that he owed fiduciary duties to the Geier International Strategies Fund, LLC (“the Fund”), findings have not been entered that Respondent acted as an investment adviser or that he owed fiduciary duties to a client under Section 206 of the Investment Advisers Act.

More troubling is the fact that the Division of Enforcement has misstated the allegations contained in the OIP. In the section of the Motion that purports to describe Gibson’s violations (again without the benefit of the entry of findings), the Division of Enforcement has inserted the heading “Unfair Trade Allocation/ Favoritism in October 2011”. The term “unfair trade allocation” generally refers to the allocation of securities (the availability of which are limited) to certain advisory accounts to the detriment of other advisory accounts. However, the OIP does not allege such conduct; moreover, the term “unfair trade allocation” does not appear in the OIP.

In its Motion, the Division of Enforcement also purports to set forth the positions of the parties. While the Division may have articulated its position in this matter, it has failed to accurately set forth Respondent's positions in this matter.

In support of its Motion, the Division of Enforcement recites Respondent's assertions of attorney-client privilege during the course of the investigation that preceded the entry of the OIP. The Division of Enforcement describes in great detail the Respondent's invocation of the attorney-client privilege in response to questions during testimony, stating that Respondent asserted the attorney-client privilege in response to 85 questions. While the Respondent did assert the attorney-client privilege in response to certain of the Staff's questions, the number of times any witness may assert a privilege is largely a function of the questions posed. In this case, many of the Staff's questions were repetitive and unnecessary. Similarly, the number of times documents are withheld under a claim of privilege is a function of the nature and breath of the requests. For example, the Staff requested, among other things, documents relating to the preparation or interpretation of offering memoranda, subscription agreements and operating agreements. In light of the activities that were the subject of the Division of Enforcement's inquiry, it is hardly remarkable that documents responsive to the Staff's requests would be protected from disclosure by the attorney-client privilege.

The Staff suggests that its motion in limine has been filed because Respondent's List of Potential Witnesses includes a lawyer. Respondent's List of Potential Witnesses includes Wayne Grovenstein, an individual who was employed by Hull Storey Gibson Companies during the time that Respondent was an employee of that entity. Also, Mr. Grovenstein was an investor in Geier International Strategies Fund, LLC ("the Fund"). Most importantly, Respondent's List of Potential Witnesses clearly indicates the subjects about which Mr. Grovenstein is expected to testify. Specifically, Mr. Grovenstein is expected to testify regarding Respondent's education, training and experience; Respondent's employment with Hull Storey Gibson Companies; Mr. Grovenstein's

discussions with Respondent concerning investments; Mr. Grovenstein's receipt and review of the Fund's Confidential Private Offering Memorandum, Subscription Agreement and Operating Agreement; Mr. Grovenstein's investment in the Fund; and Mr. Grovenstein's discussions with Mr. Gibson concerning the investment strategy and management of the Fund.

ARGUMENT

The Division Of Enforcement Has Failed To Demonstrate A Basis For The Requested Order

In its motion, the Division of Enforcement states that the purpose of an *in limine* motion is to aid the trial process by *enabling the court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial*, without lengthy argument at, or interruption of, the trial, citing Palmieri v. Defaria, 88 F.3d 136, 141 n.4 (1984). The Division of Enforcement's motion does not, however, point to any forecasted evidence regarding issues that are definitely set for trial that would be addressed through the order that it has requested pursuant to its motion *in limine*. Rather, the Division of Enforcement acknowledges that Respondent did not "suggest that, if a proceeding were initiated against him, he would offer evidence regarding communications with counsel." Motion at p. 11. The Division of Enforcement further acknowledges that "the Answer filed by Gibson in this proceeding on April 20, 2016, does not argue reliance on counsel or refer to communications with counsel." Motion at p. 11.

In support of its motion, the Division of Enforcement points to assertions of attorney-client privilege during the course of the investigation that it conducted prior to the entry of the OIP. However, the Division of Enforcement has offered no authority for the proposition that an assertion of attorney-client privilege during the course of an investigation precludes a respondent from asserting reliance on counsel during a proceeding. The authority cited by the Division of Enforcement, In the Matter of Edgar R. Page, No. 3-16037, Rel. No. 2262 (January 27, 2015), appears to address a respondent's representation regarding evidence it intended to introduce at the hearing. As noted above, the Division of Enforcement has not pointed to any intent on the part of

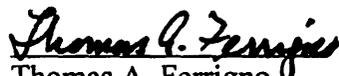
Respondent to argue reliance on counsel or offer evidence regarding the substance of any communication with counsel.

CONCLUSION

Wherefore, having failed to provide a basis for the requested order, the Division of Enforcement's motion for an order prohibiting respondent from arguing during the hearing in this matter that he relied on the advice of counsel in connection with the conduct at issue, or offering evidence regarding the substance of any communication with counsel should be denied.

Dated: August 15, 2016

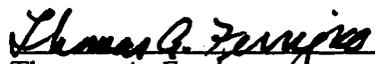
Respectfully submitted,


Thomas A. Ferrigno
Brown Rudnick LLP
601 13th Street, N.W.
Suite 600
Washington, DC 20005

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August 2016:

- (i) an original and three copies of the foregoing *Opposition Of Respondent Gibson To Division Of Enforcement's Motion In Limine Requesting That Respondent Be Prohibited From Arguing Reliance On Counsel Or Offering Evidence Of Communications With Counsel* were filed with the Office of the Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-9303;
- (ii) a copy of the foregoing Opposition was sent via email to H. Michael Semler, Assistant Chief Litigation Counsel at SemlerM@SEC.gov; and delivered by hand to H. Michael Semler, Division of Enforcement, Securities and Exchange Commission, Mail Stop 5977, 100 F Street, N.W, Washington, D.C. 20549; and
- (iii) a copy of the foregoing Opposition was sent via email to Brenda P. Murray, Chief Administrative Law Judge, at ALJ@sec.gov.


Thomas A. Ferrigno