

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

In the Matter of :
 :
DOUGLAS G. FREDERICK : INITIAL DECISION
 : September 9, 2008
 :
 :

APPEARANCES: Donald W. Searles and Roberto A. Tercero for the Division of Enforcement, Securities and Exchange Commission

Daniel G. Viola and Dennis R. Hirsch for Respondent Douglas G. Frederick

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

BACKGROUND

The U.S. Securities and Exchange Commission (Commission) instituted this proceeding by an Order Instituting Proceedings (OIP) on April 8, 2008. Douglas G. Frederick (Frederick) filed an Answer on May 12, 2008.¹ The OIP alleges that Frederick was permanently enjoined from violations of the antifraud provisions of the securities statutes on March 17, 2008, as the result of an order entered by consent. See SEC v. Tuco Trading, LLC, Civil Action No. 08 CV 00400 DMS (BLM) (S.D. Cal. Mar. 17, 2008).

At a prehearing conference on May 15, 2008, and in an Order issued on May 19, 2008, I permitted the Division of Enforcement (Division) and Frederick to file separate motions for summary disposition pursuant to 17 C.F.R. § 201.250.² The Division filed a Motion for Summary Disposition, a Memorandum of Points and Authorities in Support of its Motion for

¹ I granted a joint motion that extended the time for Frederick to file his Answer.

² Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any and all allegations of the OIP with respect to the respondent. The Division and the respondent had agreed on an exchange of documents. (Prehearing Conference Transcript at 20.)

Summary Disposition, and the Declaration of Roberto A. Tercero in Support with four exhibits (Division's Motion) on July 14, 2008.³ Frederick filed a Memorandum of Law in Opposition to the Division's Motion (Frederick's Opposition) on July 29, 2008. The Division filed its Reply in support of its Motion for Summary Disposition (Division's Reply) on August 8, 2008.

Frederick filed a Motion for Summary Disposition and a Memorandum of Law in Support of Motion for Summary Disposition (Frederick's Motion) on July 14, 2008. The Division filed its Opposition to Respondent's Motion for Summary Disposition (Division's Opposition) on July 30, 2008. On August 8, 2008, Frederick filed a pleading titled, Respondent Douglas G. Frederick's Reply in Opposition to Division of Enforcement's Motion for Summary Disposition (Frederick's Reply) with exhibits one through eight, which I take as Frederick's Reply to the Division's Opposition.^{4 5}

FINDINGS OF FACT AND CONCLUSIONS OF LAW

My findings and conclusions are based on the entire record, which consists of the OIP, all filed pleadings, including Frederick's Answer, motions and attached exhibits and declarations, opposing and reply briefs, orders, and the prehearing conference transcript. I applied preponderance of the evidence as the applicable standard of proof. See Steadman v. SEC, 450

³ Exhibit 1 is the Complaint, filed March 4, 2008, in SEC v. Tuco Trading, LLC, Civil Action No. 08 CV 00400 DMS (BLM); Exhibit 2 is a signed copy of Frederick's Consent in the civil action and an undated unsigned draft of the Judgment as to Defendants Tuco Trading, LLC (Tuco), and Douglas G. Frederick and Orders: "(1) Freezing Tuco's Assets; (2) Appointing a Permanent Receiver over Tuco; and (3) Prohibiting the Destruction of Documents;" Exhibit 3 is the signed Judgment as to Defendants Tuco Trading, LLC, and Douglas G. Frederick and Orders: (1) Freezing Tuco's Assets; (2) Appointing a Permanent Receiver over Tuco; and (3) Prohibiting the Destruction of Documents; Exhibit 4 is an Order in SEC v. Tuco Trading, LLC, D.C. No. 3:08-cv-00400-DMS (9th Cir. June 27, 2008).

⁴ Exhibit 1 is Frederick's Declaration dated August 7, 2008, in Support of his Motion to Vacate the judgment in SEC v. Tuco Trading, LLC, Civil Action No. 08 CV 00400 DMS (BLM); Exhibit 2 is Frederick's Memorandum of Law, dated August 8, 2008, in support of his Motion to Vacate the judgment in SEC v. Tuco Trading, LLC, Civil Action No. 08 CV 00400 DMS (BLM); Exhibit 3 is a Report on Outside Business Activities Questionnaire; Exhibit 4 is material on Outside Business Activities; Exhibit 5 is a letter, dated March 17, 2008, from the Commission's Los Angeles Regional Office; Exhibit 6 consists of transcript pages from Frederick's deposition; Exhibit 7 is a Tuco Trading, LLC, Trader Agreement; Exhibit 8 is the Operating Agreement of Tuco Trading, LLC.

⁵ I will use the following citation format: Division's Motion (Division's Motion __.); Frederick's Opposition (Frederick's Opposition __.); Division's Reply (Division's Reply __.); Frederick's Motion (Frederick's Motion __.); Division's Opposition (Division's Opposition __.); and Frederick's Reply (Frederick's Reply __.).

U.S. 91, 102 (1981). I have considered and rejected all factual contentions and arguments raised by the parties that are inconsistent with this Initial Decision.

Frederick is a resident of San Diego, California. (Answer at 1.) Since 1993, he has been associated with thirteen registered broker-dealers, and he was a registered representative of GLB Trading, Inc. (GLB), from August 2006 until March 2008. (Answer at 1-2; Division's Motion 2.) Frederick formed Tuco and began doing business in August 2006. (Answer at 1; Division's Motion 2.) Tuco is a Nevada limited liability company based in La Jolla, California, and describes itself as a trading firm that allowed its members to day-trade securities through its brokerage or master accounts by creating a sub-account for each customer, member, or trader.⁶ (Division's Motion 2; Ex. 1 at 1.) Frederick is the sole managing member of Tuco. (Answer at 1.) Tuco was not registered as a broker or dealer with the Commission subsequent to its formation. (Answer at 1.)

Tuco has three brokerage accounts at GLB, and Frederick is the registered representative on these accounts. (Division's Motion Ex. 1 at 4.) GLB cleared Tuco's trades through Penson Financial Services, Inc. (Answer at 3.) Tuco also maintained two commodity futures accounts that its customers could use to trade commodity futures and two banks accounts. (Division's Motion Ex. 1 at 4.) Frederick controlled all of these accounts, which included drawing funds from Tuco's bank accounts for customer withdrawals and for payment of Tuco's expenses. (Division's Motion Ex. 1 at 4.)

As of January 31, 2008, Tuco had 261 traders with 335 sub-accounts of which 198 traders had accounts with positive equity balances totaling \$11.4 million. (Division's Motion Ex. 1 at 4.) Of those traders with positive equity balances, 159, or eighty percent, had equity balances below \$25,000. (Division's Motion 4.) NASD rule 2520 requires that pattern day traders have a minimum equity balance of \$25,000. (Division's Motion 4.)

Tuco maintained a website that advertised Tuco's services and solicited traders. (Division's Motion Ex. 1 at 3.) Tuco's customers contributed funds to Tuco, signed Tuco's Operating Agreement, and signed Trader Agreements and Confidentiality Agreements with Tuco. (Division's Motion Ex. 1 at 3.) Tuco maintained its own back office system to create sub-accounts for each of its traders and provided trading software that allowed the traders to place trades through Tuco's master accounts. (Division's Motion Ex. 1 at 4.) Traders could conduct trading at Tuco's six offices located nationally, two foreign offices, and at a remote location selected by the customer. (Division's Motion Ex. 1 at 4.) Tuco's traders traded hundreds of millions of shares each month worth millions of dollars. (Division's Motion Ex. 1 at 5.)

Tuco received compensation from its customers primarily in the form of commissions from the trading of securities. (Division's Motion Ex. 1 at 5.) Tuco's customers paid commissions in varying amounts that ranged from \$.20 to \$8.00 per one thousand shares traded. (Division's Motion Ex. 1 at 5-6.) Penson Financial collected the commissions and Penson

⁶ The Division's Complaint in the civil action uses both the terms trader and customer in reference to Class B members of Tuco. (Division's Motion Ex. 1.) Frederick's Reply disputes that the term customer is appropriate. (Frederick's Reply 6.)

Financial and GLB deducted various expenses and fees and GLB's share of the commissions and paid the net commissions to Frederick. (Division's Motion Ex. 1 at 6.) Tuco paid its expenses from its customer commissions. Tuco's expenses included software costs, salaries, consulting fees, interest charges, travel, website maintenance, and office expenses, etc. (Division's Motion Ex. 1 at 6.) In November 2007, Tuco received commissions of \$2.14 million; however, net commissions received for the prior ten months were \$1.12 million. (Division's Motion Ex. 1 at 6.)

Tuco's Operating Agreement represents that profits and losses from each customer sub-account will be allocated to the customer based on an agreed upon payout. (Division's Motion Ex. 1 at 7.) In practice, the payout amount was always one hundred percent. (Division's Motion Ex. 1 at 7.) The Operating Agreement made various representations as to the accounting for customer funds including that Tuco and Frederick will maintain true and correct records and that the only deductions made to a customer's account will be for trading losses and distributions. (Division's Motion Ex. 1 at 7.) Customers could log onto Tuco's back office system and see account activity and account equity attributable to their account. (Division's Motion Ex. 1 at 7.)

In late 2007 and in 2008, Tuco's books and records, back office system, and associated software did not accurately reflect the traders' net equity balances or the actual amount of money in the account available to the trader. (Division's Motion Ex. 1 at 8.) Tuco and Frederick used customer funds to pay operating expenses and cover other customer losses. (Division's Motion Ex. 1 at 8.) As a result of the misuse of customer funds, on December 31, 2007, Tuco's books showed that there was positive equity in customers' accounts of \$10.2 million when there was, in fact, only \$6.59 million in net assets in all of Tuco's accounts. (Division's Motion Ex. 1 at 8.) One month later, on January 31, 2008, Tuco's books showed that there was positive net equity in customers' accounts of \$11.4 million when there was, in fact, only \$10.05 million in net assets in all of Tuco's accounts. (Division's Motion Ex. 1 at 8.) Tuco's and Frederick's use of customer funds was improper and contrary to the representations made in the operating agreement. (Division's Motion Ex. 1 at 8.) The misuse of the customer funds was neither authorized nor disclosed. (Division's Motion Ex. 1 at 8-9.) Frederick knew, or was reckless in not knowing, that the representations in the Operating Agreement as to the use of customer funds, as well as statements made with respect to customer account balances, were false and misleading. (Division's Motion Ex. 1 at 8.)

MOTION FOR SUMMARY DISPOSITION

Rule 250(b) of the Commission's Rules of Practice provides that the hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.

Division's Motion

The Division contends that its Motion should be granted because: (1) Frederick aided and abetted Tuco's broker-dealer registration violations and defrauded Tuco's customers, and (2) Frederick consented to accepting a permanent injunction prohibiting future broker-dealer

registration and antifraud violations. (Division's Motion 1.) In support of the latter, the Division contends:

1. On March 4, 2008, the Division filed a complaint against Frederick and Tuco in the U.S. District Court for the Southern District of California, alleging that Tuco violated Section 15(a) of the Securities Exchange Act of 1934 (Exchange Act) for failure to register as a broker or dealer, that Frederick aided and abetted Tuco's violation of Section 15(a) of the Exchange Act, and that Tuco and Frederick violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5. (Division's Motion Ex. 1 at 9-10.)

2. On March 14, 2008, Frederick filed a signed Consent in which he agreed to the entry of the judgment of the court. (Division's Motion Ex. 2)

3. On March 17, 2008, the court issued its judgment that permanently restrained and enjoined Frederick from further violation of Section 15(a) of the Exchange Act, as well as further violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5. (Division's Motion 1-2; Division's Motion Ex. 3 at 2-3.); see SEC v. Tuco Trading, LLC, Civil Action No. 08 CV 00400 DMS (BLM) (S.D. Cal. Mar. 17, 2008). In addition, the district court's judgment, among other things, prohibited Frederick and others from disposing of Tuco's assets in any manner; imposed a freeze on all Tuco's monies and assets; appointed a Receiver for Tuco; and required Frederick and other defendants to give the Receiver control and access over all Tuco assets. (Division's Motion Ex. 3.)

Frederick's Opposition

Frederick admits that a judgment of permanent injunction was entered by consent, but he argues that the doctrine of collateral estoppel is limited to factual findings and conclusions, not to relevant legal challenges. (Answer at 2; Frederick's Opposition 5.) Frederick maintains that this is a "unique" situation since, he claims, the facts alleged in the Tercero Declaration and the complaint in the district court are wrong because, according to Frederick, the Class B members of Tuco were not customers of Tuco, but customers of GLB. (Frederick's Opposition 6.)

Frederick argues that the Division's Motion should not be granted because, "as a matter of law none of his alleged actions violate [Exchange Act] Section 10(b) or Rule 10b-5, nor was Tuco . . . a broker-dealer requiring registration under [Exchange Act] Section 15." (Frederick's Opposition 1.)

Frederick's Motion

Frederick maintains that he is entitled to summary disposition because the legal theories behind the OIP and the complaint in the district court are incorrect. (Frederick's Motion 7.)

Frederick argues that even taking the facts alleged in the complaint in the district court as true, he did not violate Sections 10(b) of the Exchange Act or Exchange Act Rule 10b-5 as a matter of law because his actions were not done in connection with the sale or purchase of a security. (Frederick's Motion 2, 8-9.) He asserts that, as a matter of law, the Class B

membership interests purchased by Tuco's customers were not a security as defined in SEC v. W.J. Howey Co., 328 U.S. 293 (1946), and other cases, and that the Class B members were not customers. (Frederick's Motion 2, 8-11; Frederick's Reply 4-8.) Citing portions of the Operating Agreement, Frederick argues that Tuco's Class B members were not misled and they understood the risk of loss, he argues that none of his actions involved extreme recklessness, and he contends the Division did not identify specific securities that were bought or sold. (Frederick's Motion 8-11.)

Frederick also argues that he did not violate Section 15(a) of the Exchange Act because all trades occurred in Tuco's account at GLB. Frederick argues that there is a specific exception in Rule 15(a) from the duty to register for persons associated with a broker-dealer and the Commission has recognized this exception for years. (Frederick's Motion 2-3.) Frederick maintains that Tuco was an unregistered entity but it could "rely on an exemption from broker-dealer registration since Frederick was a Series 7 licensed and registered broker operating through GLB and Penson." (Frederick's Reply 5.)

Division's Opposition

The Division's Opposition argues that the existence of the outstanding injunction provides a sufficient basis to impose a permanent bar under Exchange Act Section 15(b)(6), and that the doctrine of collateral estoppel prevents Frederick from relitigating in this proceeding the factual finding and legal conclusions of the district court in the underlying action. (Division's Opposition 2-3.)

The Division notes that the issue of whether the Class B membership interests are securities is not relevant as the securities in question are those that were involved in Tuco's customers' day-trading activity. (Division's Opposition 4-5.) The complaint alleges that millions of shares were being traded by Tuco customers. (Division's Motion Ex. 1 at 5.) The undisputed allegations in the complaint also establish that Frederick made material false and misleading statements and representations and that Frederick knew, or was reckless in not knowing, that his statements were false and misleading. (Division's Motion Ex. 1 at 8.) The Division notes that the allegations "clearly establish that Frederick's false representations were in connection with the purchase and sale of securities by Tuco's day-traders." (Division's Opposition 5.)

In response to Frederick's argument concerning registration as a broker-dealer, the Division notes that the complaint alleges that Tuco, not Frederick, failed to register as a broker-dealer and that Frederick aided and abetted Tuco's violation of Section 15(a) of the Exchange Act. (Division's Opposition 7.) Finally, the Division argues that, as a matter of law, Frederick's conduct violated the antifraud provisions of the Exchange Act, as well as Exchange Act Section 15(a). (Division's Opposition 4-11.)

Ruling

The OIP alleges that Frederick is subject to an injunction. (OIP at 2.) There are no genuine issues of material fact as to that allegation. There is nothing in the record that supports Frederick's claim that his "prior counsel did not have an opportunity to challenge the

Commission's factual allegations or legal theories." (Frederick's Motion 7.) It is too late for Frederick, through new counsel, to advance in this proceeding what he contends are new, persuasive legal arguments to show he did not commit the violations that were the subject of the district court proceeding and, in effect, withdraw his Consent which was the basis of the district court's judgment. (Division's Motion Ex. 3.)

I reject Frederick's contention that the doctrine of collateral estoppel goes only to the facts and permits him to advance in this administrative proceeding legal theories that he did not present in the district court. (Frederick's Motion 1-2.) I reach this conclusion for several reasons. These are not new or different legal arguments to the ones Frederick advanced in the district court. Frederick did not advance any legal theories in the district court. Rather, he "voluntarily" and without any "threats, offers, promises, or inducements of any kind" entered a Consent, which he now is attempting, in effect, to withdraw. (Division's Motion Ex. 2 at 2.) "The central inquiry in determining the preclusive effect of a consent judgment is the intention of the parties as manifested in the evidence in the judgment or other evidence." Halpern v. First Georgia Bank, 810 F.2d 1061, 1064 (11th Cir. 1987). In his Consent, Frederick specifically agreed that "in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) [Frederick] will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint." (Division's Motion Ex. 2 at 2.) This administrative proceeding, brought pursuant to Section 15(b) of the Exchange Act, is the type of proceeding covered by this language.

Finally, the case law that Frederick cites, Marshall E. Melton, 56 S.E.C. 695 (2003), is not determinative that his position is accurate. (Frederick's Motion 7.) Melton asserts that the doctrine of collateral estoppel prevented an attack on the factual assertions of the injunctive complaint because that is all that was at issue in the case. The Commission has long recognized that the mere existence of an injunction provides a statutory basis for further administrative proceedings against an associated person of a broker-dealer under Exchange Act Section 15(b)(6). See Kaye, Real & Co., Inc., 36 S.E.C. 373, 375 (1955) ("Under Section 15(b) of the [Exchange] Act, the mere issuance of the injunctions, the validity of which has not been attacked, furnishes a statutory basis for revocation if we find such action to be in the public interest."); Elliott v. SEC; 36 F.3d 86, 87 (11th Cir. 1994) ("The fact that Elliott consented to the injunction without admitting guilt does not prevent the use of the injunction as support for the bar."); Martin R. Kaiden, 70 SEC Docket 439, 452-453, (July 20, 1999) ("Under Exchange Act Section 15(b)(6), we may institute administrative proceedings against an associated person of a broker-dealer based on an injunction from engaging in or continuing any conduct or practice in connection with acting as a broker-dealer."); Melton, 56 S.E.C. at 710 ("[The] Exchange Act draw[s] no distinction between injunctions entered after litigation or by consent. We do not believe that the statutes require the Enforcement Division to prove the allegations of an injunctive complaint in a follow-on administrative proceeding before any disciplinary action can be taken."); William Mathis, 47 SEC Docket 420, 424 (Aug. 3, 1990) ("Respondent is wrong that there is no case law to support imposition of a sanction based on a consent injunction where neither the court nor the Commission found that the defendant violated the securities statutes.")

Sanctions

This proceeding was instituted pursuant to Section 15(b) of the Exchange Act. Section 15(b)(6) of the Exchange Act provides that, if it is in the public interest, the Commission “shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding twelve months, or bar such person from being associated with a broker or dealer” if the person, who was associated with a broker-dealer at the time of the misconduct, has willfully violated the securities statutes or has been enjoined by order of any court of competent jurisdiction from engaging in any or continuing any conduct or practice in connection with any broker dealer activity, or in connection with the purchase or sale of any security.⁷

In making a public interest determination, the Commission considers:

[T]he egregiousness of the [respondent’s] actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the [respondent’s] assurances against future violations; the [respondent’s] recognition of the wrongful nature of his conduct; and the likelihood that the [respondent’s] occupation will present opportunities for future violations.

SEC v. Steadman, 603 F.2d 1126, 1140 (5th Cir. 1979); Orlando Joseph Jett, 82 SEC Docket 1211, 1260-61 (Mar. 5, 2004); KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1183-84 (2001), reh’g denied, 55 S.E.C. 1 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002).

The Division requests that the Commission bar Frederick permanently from association with any broker or dealer. (Division’s Motion 10.) Frederick contends that he should not be sanctioned and argues that, even accepting the facts in the complaint, he did not engage in any fraudulent conduct,⁸ nor did he receive any ill gotten gains,⁹ GLB did not reprimand him, and he has no disciplinary history. (Frederick’s Opposition 7-8.)

⁷ Willful is defined as “intentionally committing the act which constitutes the violation.” One need not be aware that he or she is violating the law. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

⁸ This defense is questionable. It is true that Frederick neither admitted nor denied the allegations in the Complaint, but he also agreed to comply with the Commission’s policy “not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings. 17 C.F.R. § 202.5.” (Division’s Motion Ex. 2 at 1, 3-4.) Frederick agreed “not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis. (Division’s Motion Ex. 2 at 4.)

⁹ This defense is untrue because Frederick was ordered to disgorge ill-gotten gains. (Division’s Motion Ex. 3.)

The factual allegations in the complaint demonstrate conduct that is manipulative and deceptive and thus egregious. The facts detail several misrepresentations to Tuco's traders which gave the traders the false impression that the funds in their accounts would be credited to the traders' accounts and not used to fund the operating expenses of Tuco. (Division's Motion Ex. 1 at 7.) Frederick either knew, or was reckless in not knowing, that Tuco's books and records did not accurately reflect customer account balances and that Tuco's back office system was providing inaccurate account balances to Tuco's traders. (Division's Motion Ex. 1 at 8.) Frederick does not admit to violating the securities laws in any respect. (Frederick's Opposition 7.) Despite being subject to an injunction against violations of the antifraud and registration provisions of the Exchange Act, Frederick acknowledges that, at most, there was a minor rule violation. (Frederick's Opposition 8.) Frederick has provided no assurance, or reason to believe, that he will not refrain from future violations of the securities laws. The Commission has stated that:

In considering the factors, we recognize that conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions under the securities laws.

The fact that a person has been "permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction" from violating the antifraud provisions has especially serious implications for the public interest. Based on our experience enforcing the federal securities laws, we believe that ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to revoke the registration of, or suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions.

Marshall E. Melton, 56 S.E.C. 695, 713 (July 25, 2003).

The evidence and the case law described above show that it is in the public interest to bar Frederick from association with a broker or dealer.

Order

Based on the findings and conclusions stated:

I GRANT the Division's Motion for Summary Disposition because there are no issues of material fact and the Division is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250;

I DENY Douglas G. Frederick's Motion for Summary Disposition because it has not met the standard of Rule 250 of the Commission's Rules of Practice; and

I ORDER that, pursuant to Section 15(b)(6)(A) of the Securities Exchange Act of 1934, Douglas G. Frederick is barred from association with any broker or dealer.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Brenda P. Murray
Chief Administrative Law Judge