

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 63456 / December 7, 2010

Admin. Proc. File No. 3-13655

In the Matter of  
THEODORE W. URBAN

ORDER DENYING  
MOTION FOR  
SUMMARY AFFIRMANCE

**I.**

On September 8, 2010, an administrative law judge issued an initial decision dismissing administrative proceedings against Theodore W. Urban, formerly general counsel, executive vice president, and member of the Board of Directors of Ferris Baker Watts, Inc. ("FBW" or the "Firm"), a registered broker-dealer and investment adviser.<sup>1</sup> In her decision, the law judge concluded that Urban should not be sanctioned, under Sections 15(b)(4)(E) and 15(b)(6) of the Securities Exchange Act of 1934<sup>2</sup> and Section 203(f) of the Investment Advisers Act of 1940,<sup>3</sup> for supervisory failure.<sup>4</sup> The law judge therefore dismissed the proceedings. Urban now moves

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<sup>1</sup> FBW was acquired by the Royal Bank of Canada in 2008 and now operates under the name RBC Wealth Management.

<sup>2</sup> 15 U.S.C. §§ 78o(b)(4)(E), (b)(6).

<sup>3</sup> 15 U.S.C. § 80b-3(f).

<sup>4</sup> These provisions authorize the Commission to impose sanctions on associated persons of brokers and dealers or investment advisers when the person "has failed reasonably to supervise, with a view to preventing violations" of the federal securities laws "another person who commits such a violation, if such other person is subject to his supervision."

that we summarily affirm the law judge's decision.<sup>5</sup> For the reasons discussed below, we decline to do so.

## II.

This case involves allegations that Urban failed to supervise Stephen Glantz, a top-producing FBW salesperson. The law judge found that Glantz violated the antifraud provisions of the securities laws based on various misconduct and that Urban supervised him; however, the law judge declined to hold Urban liable for supervisory failure because she concluded that Urban, who had sought to have Glantz terminated, acted reasonably under the circumstances. In particular, the law judge found that Urban reasonably relied on the Firm's director of retail sales, Louis Akers, to exercise heightened supervision over Glantz once indications of Glantz's misconduct were made known. Moreover, even if reliance on Akers to supervise Glantz was unreasonable, Urban could not be faulted, the law judge found, for failing to raise concerns about Glantz with the Firm's Chief Executive Officer or its Board of Directors because Urban reasonably believed that they would simply defer to Akers, who had opposed Urban's recommendation that Glantz be terminated.

Urban urges us to summarily affirm the law judge's decision because, after having "lived under a cloud for four years" and having "invested thousands of hours in an extended hearing," he believes "the evidence, the law, and common decency require that the Commission say that enough is enough." In support of his motion, Urban argues, among other things, that Commission review of the matter would be essentially redundant because a determination of whether a supervisor acted reasonably under Exchange Act Section 15(b) is "so fact intensive [that] the Commission must necessarily defer to the findings of an administrative law judge who hears the facts firsthand," "especially . . . where, as here, an assessment of the credibility of the witnesses is key to the factual outcome." Urban also argues that the law judge committed no error in finding that Urban was reasonable in deciding not to elevate to the CEO or the Firm's Board of Directors the issue of Glantz's recommended termination and subsequent special supervision arrangement. Instead, he argues, the law judge's recognition of a "futility defense" is consistent with current legal requirements, analogous standards of professional conduct, and Commission case law noting that attorneys have not been sanctioned "in litigated enforcement proceedings based on alleged negligent acts or omissions they may have committed in providing non-public legal advice to clients."<sup>6</sup>

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<sup>5</sup> The Division filed a petition for review of the law judge's decision. In response, Urban filed a motion asking the Commission to deny the Division's petition or, alternatively, to grant his own cross-petition for review of the law judge's decision. Both petitions for review were granted on October 22, 2010, and a schedule for briefing was established.

<sup>6</sup> Citing *Scott G. Monson*, Investment Company Act Rel. No. 28323 (June 30, 2008), 93 SEC Docket 7517, 7524.

The Division opposes Urban's motion, stating that summary affirmance has been granted "only a handful of times in the last 30 years," which are "readily distinguishable from this case, which involves a lengthy record, complex issues of law and fact, significant policy and programmatic implications, and a detailed Cross-Petition alleging numerous prejudicial errors." The Division urges that the initial decision should be reviewed because it "is inconsistent with prior Commission precedent," "significantly lower[s] the standards that must be met by supervisors at brokers, dealers, and investment advisers," and "fails to protect the investing public through the imposition of sanctions against Urban." In support of its position, the Division argues that the law judge departed from applicable precedent in finding that Urban's supervision was reasonable because, the Division argues, Urban failed to respond adequately "[d]espite regularly receiving red flags regarding Glantz." The Division also objects to the law judge's finding that "Urban is legally excused from elevating the supervisory breakdown and red flags surrounding Glantz to FBW's chief executive officer . . . and board of directors, because it would have been futile for him to do so." According to the Division, this "creates an entirely new 'futility' defense within the law of supervision cases" and would "eviscerate the protections provided by existing law and permit supervisors at even the most corrupt firms to escape liability."

### III.

Commission Rule of Practice 411(e) governs our review of motions for summary affirmance.<sup>7</sup> In pertinent part, that rule provides that "[t]he Commission may grant summary affirmance if it finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument." The rule further provides that we "will decline to grant summary affirmance upon a reasonable showing that . . . the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review." We have previously noted that "[s]ummary affirmance is rare, given that generally we have an interest in articulating our views on important matters of public interest and the parties have a right to full consideration of those matters."<sup>8</sup> Summary affirmance is appropriate when it is clear that "submission of briefs by the parties will not benefit us in reaching a decision."<sup>9</sup>

Based on our own preliminary review of the record, and given the important matters of public interest this case presents, summary affirmance does not appear appropriate here. As a

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<sup>7</sup> 17 C.F.R. § 201.411(e).

<sup>8</sup> *Salvatore F. Sodano*, Order Denying Motion for Summary Affirmance, Securities Exchange Act Rel. No. 56961 (Dec. 13, 2007), 92 SEC Docket 469, 471, citing *Richard Cannistraro*, 53 S.E.C. 388, 389 n.3 (1998); *see also Terry T. Steen*, 52 S.E.C. 1337, 1338 (1997) (denying summary affirmance and noting that such action is appropriate only where there are "compelling reasons").

<sup>9</sup> *Cannistraro*, 53 S.E.C. at 389 n.3.

general matter, we note that Commission review of the findings and conclusions of an initial decision is conducted *de novo*.<sup>10</sup> We note further that, although the Commission grants "considerable weight and deference" to credibility determinations of the law judges,<sup>11</sup> those determinations are not sacrosanct.<sup>12</sup> Moreover, the proceeding raises important legal and policy issues, including whether Urban acted reasonably in supervising Glantz and responded reasonably to indications of his misconduct, whether securities professionals like Urban are, or should be, legally required to "report up," and whether Urban's professional status as an attorney and the role he played as FBW's general counsel affect his liability for supervisory failure.

Under the circumstances, it appears appropriate to consider the record and the parties' arguments as part of the normal appellate process rather than the abbreviated process involved with a summary affirmance. We will therefore deny Urban's motion, though our denial should not be construed as suggesting any view as to the outcome of this case.

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<sup>10</sup> *Gary M. Kornman*, Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14260 n.44, *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *see also* Rule of Practice 411(a), 17 C.F.R. § 201.411(a) ("The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record.").

To the extent that Urban suggests in support of his motion that an initial decision dismissing administrative proceedings is akin to a trial court dismissing proceedings against a criminal defendant and therefore "findings in favor of a respondent must also be given great weight," we find no support in the law for this deference, and indeed, Urban cites to none. Our rules make no distinction between initial decisions that favor respondents versus Commission staff, and we are aware of no Commission appeal that has been decided in this fashion.

<sup>11</sup> *Leslie A. Arouh*, Exchange Act Rel. No. 50889 (Dec. 20, 2004), 84 SEC Docket 1880, 1893 n.40; *see also Anthony Tricarico*, 51 S.E.C. 457, 460 (1993).

<sup>12</sup> *Kenneth R. Ward*, 56 S.E.C. 236, 260 (2003) ("While we have held that a fact finder's 'explicit credibility' findings are to be accorded 'considerable weight,' we do not accept such findings 'blindly.' Rather, there are circumstances where, in the exercise of our review function, we must disregard explicit determinations of credibility.") (internal citations omitted), *aff'd*, 75 F. App'x. 320 (5th Cir. 2003).

Accordingly, it is ORDERED that the motion for summary affirmance by Theodore W. Urban be, and it hereby is, denied.

By the Commission.

Elizabeth M. Murphy  
Secretary