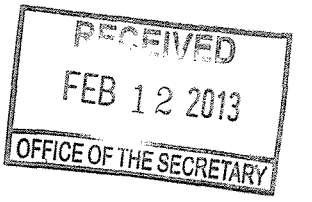
STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSIOM




ADMINISTRATIVE PROCEEDING
File No, 3-14684

In the Matter of

ANTHONY FIELDS, CPA
d/b/a ANTHONY FIELDS &
ASSOCIATES and d/b/a
PLATINUM SECURITIES
BROKERS,

Respondent

JUDGE CAROL FOX FOELAK

BRIEF IN SUPPORT OF PETITION FOR REVIEW OF THE ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION

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STATUTES, RULES AND REGULATIONS

**MISCELLANEOUS**

BACKGROUND

1. On January 4, 2012 the Securities And Exchange Commission instituted an Administrative and cease and Desist proceeding. The name of the proceeding was "In The Matter of Anthony Fields, CPA d/b/a Anthony Fields & Associates and d/b/a Platinum Securities Brokers, File No. 3-14684. Alleging Respondent Willfully Violated Section 17(a) of the Securities Act; Respondent Willfully Violated Section lS(a) of the Exchange Act; Respondent Willfully Violated the Anti-Fraud Provisions of the Advisers Act; Respondent Willfully Violated Sections 206{l) and 206(2) of the Advisers Act.; Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-1 (a)(S) Thereunder [Advertising]; Respondent Willfully Violated the Registration, Disclosure and Recordkeeping Provisions of the Advisers Act; Respondent Willfully Violated Section 203A of the Advisers Act [Ineligible; Respondent Willfully Violated Section 207 of the Advisers Act [False Form ADV]; Respondent Willfully Violated Section 204 of the Advisers Act and Rules 204-2(a)(ll) and 204-2(e)(3)(i) Thereunder [Books and Records] Respondent Willfully Violated Section 204A of the Advisers Act and Rule 204A-l Thereunder [Code of Ethics] Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder [Compliance Policies and Procedures.

2. On or about July 2011 prior to the order instituting proceedings, the Securities And Exchange Commission requested via subpoena the books and records of Anthony Fields & Associates and Platinum Securities Brokers, which included contracts, leases, bank statements email information and anything or everything pertaining to the operations of the organizations.

3. On May 7, 2011 the Division of Enforcement of the Securities And Exchange Commission

issued their Prehearing Brief per the order of the order of the Administrative Law Judge dated March 9, 2012.

4. On May 21, 2012 the plaintiff issued his reply brief to the divisions' prehearing Brief.

5. On May 21, 2012 the trial took place at the Securities and Exchange Commission's hearing room 2, 100 F Street, N.E., Washington D.C. at 10:00 a.m. And the hearing lasted until May 22, 2012 at approximately 4:30 p. m.

6. The hearing and the record was closed May 22, 2012 and pursuant to section 340 of the Securities And Exchange Commissions rules of practice dates for post hearing filings were set as follows: The Division of Enforcement proposed fing of fact and conclusion of law due July 13, 2012; The respondents proposed finding of fact and conclusion of law due July 27, 2012; and the division of Enforcement Reply due August 3, 2012. The Division did not reply on August 3, 2012 as ordered.

7. On December 4, 2012 the Administrative Law Judge for the Securities And Exchange Commission issued an initial order dismissing the code of ethics violation, fining the respondent $150,000 for violating the securities Act, and prohibiting the respondent for becoming a broker or investment adviser permanently. However, the order was vague and failed to address the allegations of selling fraudulent securities or trying to buy and sell fictitious securities on the social media:

8. **PROCEDURAL ORDER**

9. IT IS ORDERED that Fields' Motion to Strike Expert Witness' Oral and Written Testimony from the Court's Record and Pursue Charges of Perjury for Providing False Testimony Under Oath IS DENIED.

10. **\VII. ORDER**

11. IT IS ORDERED that, pursuant to Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act, Anthony Fields, CPA d/b/a Anthony Fields & Associates and d/b/a Platinum Securities Brokers CEASE AND DESIST from committing or causing any violations or future violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 15(a) of the Exchange Act, and Sections 203A, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder.

12. IT IS FURTHER ORDERED that, pursuant to Sections 8A of the Securities Act, 21B of the Exchange Act and 203(i) of the Advisers Act, Fields PAY A CIVIL MONEY PENALTY of $150,000.

13. IT IS FURTHER ORDERED that, pursuant to Section 203(e) of the Advisers Act, the REGISTRATION of Anthony Fields & Associates as an investment adviser IS REVOKED.

14. IT IS FURTHER ORDERED that the allegations that Fields violated Sections 204 and 204A of the Advisers Act and Rules 204-2(a)(11), 204-2(e)(3)(i), and 204A-1 thereunder ARE DISMISSED.

- Payment of penalties shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order,

bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying Respondents and Administrative Proceeding No. 3-14684, shall be delivered to: Office of Financial Management, Accounts Receivable, 100 F Street N.E., Washington, DC 20549-6042. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

15. 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(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). 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 a 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 a motion to correct a 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.

SUMMARY ARGUMENT

16. The initial decision of the Administrative Law Judge did not address the core allegations of the Department of Enforcement which is considered the critical points of the petition for review. The inconsistent statements made by the Department of enforcement warranted consideration in determining the decision made by the judge. More specifically, the allegations that the

respondent:

A. Respondent's "Bank Guarantee" and "Mid-Term Note" Message Postings on Social Media

B. Respondent Offered Fictional "Prime Bank" Securities.

17. The posts made by the respondent on the social media websites were posts in groups that were not retail investors but accredited investors with the background to make sound decisions about investments and who were capable of doing the necessary due diligence to determine the viaboloty of the posts made.

18. The websites of the respondent clearly stated that the market that was the respondent was trying to serve was high net worth and institutional investors only.

19. In the Department of Enforcement's prehearing Brief their position was that Bank Guarantees and Mid term Notes did not exist. After the trial and after the respondent produced clear and convincing evidence that the Bank Guarantees and Mid Term Notes did exist the Department of Enforcement changed their statement in their post hearing brief to state that Bank Guarantees do exist hut for bank clients only.

20. The inconsistent statements provided by the Department of Enforcement impeached the credibility of the department of Enforcements argument as to the non existence of bank Guarantees and Mid Term Notes.

21. Bank Guarantees and Mid Term Notes are considered commercial paper.

22. SEC. 15. (a)(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is

exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

ARGUMENT IN SUPPORT OF PETITION

23. First the Department of Endorsement reviewed the books and records of the plaintiff's organizations and failed to produce any evidence, written or otherwise, in their pre hearing brief, post hearing brief or at trial that the plaintiff was selling securities that would be considered fraudulent under any circumstances that the plaintiff was selling or have sold or offered for sell,

24. Secondly, the Department of Enforcement was not aware of the existence of financial instruments (Bank Guarantees and Mid Term Notes) being sold on the European markets. When they should have inquired or investigated their existence by making a simple telephone call to the European banks to verify the existence of bank Guarantees and Mid Term Notes or sent an email, fax or just simply took a flight to the banks to verify the existence of the financial instruments before publicly accusing the respondent of selling fictitious and fraudulent securities.

25. The Department of Enforcement knew these statements to be false or if they believed them

to be true, lacked reasonable grounds for that belief.

26. The only comment made was that the U.S. Treasury Securities were not owned by the respondent, which the buyer was already aware of the fact the securities were not owned by the respondent and was willing to wait until the respondent acquired the funds to consummate the transaction.

27. The reason why a review is necessary for this issue is that the Division of Enforcement only produced opinion, assumption, hypothetical statements, theoretical arguments , but nothing that would prove that Bank Guarantees and Mid Term Notes do not exist. On the other hand the respondent produced Clear and convincing evidence that Bank Guarantees and Mid term Notes do exist.

28. The respondent produced a screen Shot from Bloomberg, LLC, showing a Deutsche Bank AG, 4.78%,10 year note with a minimum face value of $100,000 and a maximum amount of $10,000,000.00 for sell.

29. In addition, the respondent provided a letter of Guarantee from Credit Suisse in the amount of $100,000,000.00.

30. .Clear and convincing evidence is a higher level of burden of persuasion than a "Preponderance of the Evidence". It is employed intra-adjudicatively in Administrative Court determinations, as well as in civil and certain criminal procedure in the United States. For example, a prisoner seeking *habeas corpus* relief from capital punishment must prove his factual innocence by clear and convincing evidence.

31. Clear and convincing proof means that the evidence presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality. In this standard, a greater degree of believability must be met than the common standard of proof in civil actions, "Preponderance of the Evidence", which requires that the facts as a threshold be more likely than not to prove the issue for which they are asserted.

32. At the trial, during cross examination of the expert witness the respondent clearly disproved his argument of the none existence od the financial instruments (Bank Guarantees and Mid Term Notes. Thereby eliminating the allegations of selling fictitious securities.

33. There is no recklessness or fraud or intent to defraud if the respondent purchased the securities for his own benefit. (See Petition For Review Of Initial Order Exhibit-D).

34. As a check against abusive litigation in private securities fraud actions, the Private Securities Litigation Reform Act of 1995 (PSLRA) includes exacting pleading requirements. The Act requires plaintiffs to state with particularity both the facts constituting the alleged violation, and the facts evidencing scienter, *i.e.*, the defendant's intention "to deceive, manipulate, or defraud." *Ernst & Ernst* v. *Hochfelder*, 425 U. S. 185, and n. 12. As set out in §21D(b)(2), plaintiffs must "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U. S. C. §78u-4(b)(2).

35. in determining whether the pleaded facts give rise to a "strong" inference of scienter, the court must take into account plausible opposing inferences. The

Seventh Circuit expressly declined to engage in such a comparative inquiry. But in §21D(b)(2), Congress did not merely require plaintiffs to allege facts from which an inference of scienter rationally *could* be drawn. Instead, Congress required plaintiffs to plead with particularity facts that give rise to a "strong"—*i.e.*, a powerful or cogent—inference. To determine whether the plaintiff has alleged facts giving rise to the requisite "strong inference," a court must consider plausible nonculpable explanations for the defendant's conduct, as well as inferences favoring the plaintiff. The inference that the defendant acted with scienter need not be irrefutable, but it must be more than merely "reasonable" or "permissible"—it must be cogent and compelling, thus strong in light of other explanations.

36. The size of the contracts does *not constitute compelling evidence* against the respondent

37. "The federal securities laws define the term accredited investor in Rule 501 of Regulation D and as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act as:

1. a bank, insurance company, registered investment company, business development company, or small business investment company;
2. an employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of $5 million;
3. a charitable organization, corporation, or partnership with assets exceeding $5 million;
4. a director, executive officer, or general partner of the company selling the securities;
5. a business in which all the equity owners are accredited investors;

6. a natural person who has individual net worth, or joint net worth with the person's spouse, that exceeds $2 million at the time of the purchase, or has assets under management of $1 million or above, excluding the value of their primary residence;
7. a natural person with income exceeding $200,000 in each of the two most recent years or joint income with a spouse exceeding $300,000 for those years and a reasonable expectation of the same income level in the current year; or
8. a with assets in excess of $5 million, not formed to acquire the securities offered, whose purchases a sophisticated person makes.

38. Retail clients in the European Union requesting treatment as 'elective' professional clients (as defined by Markets in Financial Instruments Directive (MiFID)) must satisfy at least two of the following *quantitative* criteria in assessing the client's expertise, experience and knowledge:

- the client has carried out transactions, in significant size (at least EUR 50,000), on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;
- the client works or has worked in the financial sector for at least one year in a professional position which requires knowledge of the transactions or services envisaged

39. A cause of action under § 10(b) and Rule 10b-5 requires scienter. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193, 96 S.Ct. 1375, 1381, 47 L.Ed.2d 668 (1976); Utah State Univ., 549 F.2d at 169. We have held that recklessness satisfies the scienter requirement for a § 10(b), Rule 10b-5 violation. Hackbart v. Holmes, 675 F.2d 1114, 1117 (10th Cir.1982). Therefore, in our test for unsuitability a plaintiff must show the broker purchased the securities with an intent to defraud or with reckless disregard for the investor's interests.

Recklessness is defined as "conduct that is 'an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.' " Id. at 1118 (quoting Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033, 1045, cert. denied, 434 U.S. 875, 98 S.Ct. 225, 54 L.Ed.2d 155 (1977)).

40. Since the target market was accredited investors the conduct of the respondent cannot be considered Recklessness as defined as "conduct that is 'an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the act or must have been aware of it. Because the accredited investors were privileged to information that an ordinary investor would not be privileged to obtain.

41. The sale of securities to a relatively small number of select investors as a way of raising capital. Investors involved in private placements are usually large banks, mutual funds, insurance companies and pension funds. Private placement is the opposite of a public issue, in which securities are made available for sale on the open market.

42. Since a private placement is offered to a few, select individuals, the placement does not have to be registered with the Securities and Exchange Commission. In many cases, detailed financial information is not disclosed and a the need for a prospectus is waived. Finally, since the placements are private rather than public, the average investor is only made aware of the placement after it has occurred

43. The sale of a new issue to a few large institutional investors without registering with the

. A private placement is exempt from SEC registration, subject to certain restrictions,

because it is not offered to the general public A broker of a Direct Private Placement need not be licensed.

44. The Bank Guarantees and Mid-Term Notes were Direct Private Placement sells as indicated in the body of the Letter of Intent (LOI).

CONCLUSION

45. Judges play many roles. They interpret the law, assess the evidence presented, and control how hearings and trials unfold in their courtrooms. Most important of all, judges are impartial decision-makers in the pursuit of justice. We have what is known as an adversarial system of justice - legal cases are contests between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts.

46. The judge is the "trier of fact," deciding whether the evidence is credible and which witnesses are telling the truth. Then the judge applies the law to these facts to determine whether a civil claim has been established on a balance of probabilities or whether there is proof beyond a reasonable doubt.

47. Defense attorneys must vigorously defend their clients while not intentionally misleading the court. Prosecutors should aggressively pursue prosecution, while remembering that a guilty verdict is not a victory if justice is not served. Judges hold the ultimate power in the courtroom; unethical actions by a judge undermine the entire common law system of justice.

48. the Division's case lacked a reasonable factual basis. These were not situations where the record contains contradictory evidence, the Division lacked direct evidence and did not offer

any plausible circumstantial evidence to fill the gaps left by the absence of direct evidence. The Division should have known of these factual gaps when it recommended that the Commission authorize the OIP.

49. On or around March 12, 2012 Barclay's Bank Ghana Limited Froze the bank accounts and a transaction for the purchase of Bank Guarantees from HSBC Bank of a foreign airline (See Exhibit D), Royal International Airlines Ghana Limited because of the allegations by the Securities And Exchange Commission, that the CEO of the airlines was selling fraudulent securities. The Purchase of the Bank Guarantees was for the purchase of a fleet of Boeing Aircraft and the building of a new terminal at the Accra International Airport in Ghana. (See EXHIBIT- D in the Petition For Review Of Initial Decision).

50. Barclays Bank Ghana limited will not unfreeze the account or transaction until the decision is reached from the court with SPECIFICITY,, whether the respondent was found guilty or not of selling fraudulent and fictitious securities on the social media as alleged in the OIP .

Wherefore, the Respondent , Anthony Fields, Pro Se, prays that the Commission Reviews the Initial Order of the Administrative Law Judge and reach a determination with specificity, as to whether the respondent was found guilty or not guilty of the material allegations presented by the Department of Enforcement. In Particular:

Respondent Offered Fictional "Prime Bank" Securities

.Respondent Willfully Violated Section 17(a) of the Securities Act

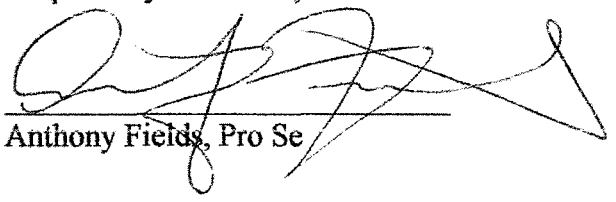
Respondent Willfully Violated Section 15(a) of the Exchange Act.

Respondent Willfully Violated the Anti-Fraud Provisions of the Advisers Act

A. Respondent Willfully Violated Sections 206{l) and 206(2) of the Advisers Act.

B. Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-1 (a)(S) Thereunder [Advertising}

Respectfully Submitted,



Anthony Fields, Pro Se

Anthony Fields, Pro Se
[redacted]
Chicago, Illinois 60640
Fax: [redacted]
Phon[redacted]