UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16795

In the Matter of
JOSEPH J. FOX,
Respondent.

Respondent Fox's Combined (1) Response to the Divisions Motion to Strike Fox's Reply Brief in Support of his Petition for Review of the Initial Decision, and (2) Motion Under Rule 452 of the Rules of Practice to Admit Highly Relevant Information

I respectfully submit this Combined filing to both DENY the Divisions Motion to Strike my Reply Brief and to ask the Division to allow the submission of any of the evidence I have provided in my Reply Brief that might not have been part of the record of these proceedings. That is not to say that I agree with the Divisions assessment about what has, or hasn't been part of the record.

Remarkably, the Division argues that Commission should strike my entire Reply Brief. Yet, they do not refute a single one of my arguments related to their faulty citation of cases. Specifically, the fact that **Abraham and Sons Capital is in fact NOT relevant case law.** Nor do they state one example of what evidence I included that is not true.

The closest they come is to say that my Reply Brief "***goes far beyond the matters addressed in the opposition brief to discuss matters that have little or no bearing on the issue presented in this case***". The problem with this statement is that it is simply not true.

Let's take a look at what they call "***just two of several examples***" that they chose to mention. Obviously, these represent their strongest argument:

*a. **the Reply Brief contains a long, irrelevant discourse regarding Fox's personal disputes with shareholders and former co-workers***

The Division once again tries hard to minimize the malicious efforts of false [redacted] Paul Simons.

First, I did not have "***personal disputes***" with shareholders. I had 230 shareholders and had a fantastic relationship with nearly all of them prior to Simons malicious efforts to avoid a

termination that was in the works for some time. I referenced three individuals (and the evidence to back up my claims) that have colluded with Simons to achieve his goals. One in particular, Larry Wert, has gone out of his way to send a pair of thugs to my recently widowed 83-year-old mother-in-law's house in an effort to intimidate me not to sue him for defamation (that includes his effort in June of this year to get Crain's Chicago Business to write a devastating article about me that was purposely misleading to the reader).

Second, Paul Simons was not a "***former co-worker***". He was an incompetent subordinate that was being fired for reasons 100% unrelated to any (now proven) lie that he ultimately told the SEC. He was a subordinate that didn't want to lose the significant amount of equity that would disappear with his termination. He was a subordinate that had no problem violating federal perjury laws if that would mean that there was a chance that I would be criminally prosecuted. He was a subordinate that believed that he should be able take over the Company that I built from the ground up. It is completely disingenuous of the Division to infer that this was just a little spat between me and a "***co-worker***".

Lastly, and certainly most important, all of the facts about Paul Simons and his collusion with a handful of shareholders have a significant bearing "***on the issue presented in this case***". One only has to look at the Division's statement that their "***opposition brief was limited to a discussion of how the Steadman factors apply in this case***".

In their section titled "***Fox Failed to make Sincere Assurances against Future Violations and to Recognize the Wrongful Nature of his Conduct***", the Division chose to once again argue that because I rightfully claimed "vindication" from Paul Simons lies, I somehow lack contrition. This is absolutely absurd.

The evidence is overwhelming that the lies Paul Simons told had a major effect on me and the Company for the two years leading up to the conclusion of the SEC's investigation of me and the Company. The evidence is overwhelming that Paul Simons perjured himself over and over again in an effort to damage me and the Company I founded. The evidence is overwhelming that one year after Paul Simons and his confederates destroyed the Company that once had a valuation of over $40 million, I am still dealing with the fall-out he caused.

To say that I did not earn the right to claim vindication from what Paul Simons told the SEC on September 9, 2013, was "well-documented" evidence of "fraud and misappropriation" being perpetrated by me, is beyond the pale. So is saying that this proves I "***Failed to make Sincere Assurances against Future Violations and to Recognize the Wrongful Nature of [my] Conduct***".

b. comparably long, irrelevant groundless complaint about what Fox perceives to be hostility directed at him by the Division

In my Brief in Support, I argued that the violations were not over "***more than four years***" as they Division has repeatedly claimed. The Division then argued (once again) in their Brief in Opposition of my Petition for Review, that "***Fox's violations were not isolated, but rather they were frequent and continued over the course of more than four years***."

The Divisions claim that my violations were over four years and therefore egregious, goes to the heart of one of the Steadman factor related to scienter. Therefore, my argument that the OIP was factually incorrect needs to be a part of the record.[1] The detail related to how the incorrect information came to be was necessary to prove that 90+% of the violations were in fact over a much shorter period of time (10 months). A time when the Company had both in-house and outside counsel.

In my Reply Brief, I discuss in detail why the OIP was in fact signed under duress. While these proceedings might not be the venue to discuss this serious issue, to claim that I "***simply spring[]***" this fact on the "***Division for the first time in his Reply Brief***" is simply not true.

My discussion of the Division misleading me and Ditto about settling the Company's investigation on its own while I still negotiate the facts, begins on page 19 of my Brief in Support. More specifically, it was in response to the ALJ's Initial Decision where he claimed that the fact that I informed the Ditto Holdings shareholders that I chose ***"to not drag out [my] negotiations for the betterment of [Ditto Holdings]"***, was an ***"attempt to downplay and excuse [my] misconduct."*** The facts are unambiguous. The Division made it clear that they would not process with the Company's agreed-upon settlement, until I agreed to my own settlement.

The fact that the ALJ accused me of ***"attempt[ing] to downplay and excuse [my] misconduct"***, once again shows that my discussion about signing the OIP under duress goes to the heart of the Steadman factors.

To be clear, all of my arguments in my Reply Brief are absolutely relevant to the sole issue presented in this case, "***whether it is in the public interest to bar Fox from participating in the securities industry***".

Exhibits in the Reply Brief

The Division argues that I had submitted 20 new exhibits and that they were not part of the record in this proceedings. They also argue that "***None of the materials appear to have been recently created or discovered; and there is no other readily apparent reason why Fox was***

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[1] The other reference to a factual error in the OIP had to do with the number of individuals that previously identified themselves to Ditto Holdings as non-accredited investors. This once again goes to egregiousness and scienter as it pertains to the Steadman factors.

unable to offer the exhibits until this late stage in the proceedings. Moreover, Fox has provided no showing of why any of the new exhibits are material to this proceeding."

The Division claims that "***None of the materials appear to have been recently created or discovered***". However, exhibits 18, 19, 20, 21, 22, 23, 24, 26 and 27 are newly created (and include relevant emails from 2016). Exhibit 14 and 15 are relevant to the libelous email from Ilene and Robert Mann to Jed Forkner that was recently discovered in the 350,000 pages of investigation files provided by the Division. Exhibit 5, 6, 7, 7A, 8 and 9 are relevant to the false claim that the sale to non-accredited investors was over a four-year period. Exhibits 10 and 11 are relevant to the false claim that "*At least two of the purchasers had previously identified themselves to Ditto Holdings as non-accredited investors.*"

I would like to briefly discuss exhibits 26 and 27:

Exhibit 26 – Motion for Sanctions: Contrary to the Divisions claims, this Exhibit WAS newly created. This Motion goes directly to the Divisions "righteous indignation" of my (valid) claim that I was vindicated against Paul Simons lies (and perjured statements). One would think that the Division would be more concerned that they were lied to by a false [redacted] then the fact that I include this as an Exhibit. After all, this Exhibit clearly evidences the perjured statement Simons made on his Form [redacted] under oath.

Exhibit 27 – Yosef Fox - Poker Tournament Results - Poker Player: Contrary to the Divisions claims, this Exhibit WAS newly created. The Division attempted to prejudice me to the Commission in their Brief in Opposition to my Petition for Review, by bringing up my efforts to generate some much need income for my family through the legitimate act of playing poker in the annual World Series of Poker Main Even tournament. Not to mention, the Divisions highly prejudicial comment that "***[he] apparently was able to find money to pay the $10,000 entry fee***". Falsely intimating that if I could find $10,000, I should certainly be able to find 20 TIMES that amount ($205,000). The reference to playing poker, I might add, was clearly provided to the Division by either Larry Wert or Paul Simons.

Length of My Reply Brief

The Division complains about the length of my Reply Brief. However, in ALJ Elliot's Order dated May 9, 2016, he referenced the fact that my Motion to Correct Manifest Errors was 23 pages and contained 10,000 words. He ruled that "***Due to his pro se status, I will nonetheless accept the motion as proper and consider it in its entirety.***"

ALJ Elliot also stated in his May 9, 2016 Order that, "***Attached to Respondent's motion are several exhibits containing evidence not previously introduced in this proceeding.... And***

while the Rules of Practice permit the Commission to allow the submission of additional evidence, such a request must "show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." 17 C.F.R. § 201.452. Respondent provides no explanation for his failure to submit the evidence attached to his motion prior to the issuance of the initial decision. Although Respondent's new evidence is not properly part of the record, in view of his pro se status, I will consider it in determining whether there were any manifest errors in the initial decision."

ALJ Elliot understood the difficulties of my pro se status, and certainly did not Order me to limit my future filings to 15 pages.

Unfortunately, as an impecunious *pro se* litigant I have been unable to hire counsel that could have helped me during this entire process to determine if there should be any non-monetary sanctions. As well, I myself am not a seasoned lawyer that can tell the same thing in one sentence that might take me a full paragraph (or two).

But I do need to bring to the Commissions attention that while it is true that my Reply Brief is 27 pages long and single spaced, the Division **never** once complained that the last 3 filings I have made to defend myself in this Matter had been nearly as long and all included new exhibits.

Motion to Correct a Manifest Error – 23 pages (single spaced)
Petition for Review of the Initial Decision – 20 pages (single spaced)
Brief in Support of My Petition for Review of the Initial Decision – 23 pages (single spaced)

In the Matter of the Application of Laurie Bebo and John Buono, CPA

In an effort to convince the Commission that they should strike my Reply Brief, the Division cites "In the Matter of the Application of Laurie Bebo and John Buono, CPA", and make the claim that "***The Commission recently granted the Division's motion to strike a similarly-overlong brief in another pending Administrative Proceeding in which the respondent ignored the length limitations contained within Rule 450(c).***"

The Divisions efforts here to mislead the Commission is glaring. Let's take this one sentence in parts.

The Division says, "***a similarly-overlong brief***". However, there is nothing similar about the length (or any other way) between my Brief and that of Laurie Bebo.

a) Laurie Bebo had no less than two lawyers counseling her in her matter, as determined by the two signatories on the Brief in question. Since these two lawyers work for a firm

boasting over 200 lawyers[2], I am quite sure they also had all of the research support they could ever want.

b) Laurie Bebo's Brief was 66 pages long and included **43,251** words. In contrast, my Reply Brief was only **11,595** words long. This disparity could be why the Division made the following statement in their Motion to Strike:

> ***"The Division has not performed a word count on the brief, but it is obviously far in excess of the permitted limits."***

The Division says, ***"in which the respondent ignored the length limitations"***.

a) Laurie Bebo, to quote the Commission, was clearly ***"attempt[ing] to evade the word limits contained in our briefing order"***. In contrast, I did not attempt to evade anything. Nor was there ever a Briefing Order similar to what the ALJ Ordered Laurie Bebo.

b) As clearly stated in the first two paragraphs of the Commission's Order to Strike her Brief[3], Laurie Bebo was ORDERED to limit the length of her *"Opening Brief"* to 21,000 words. While she complied by limiting the words in her *"Opening Brief"*, she tried to "game the system" by filing a *"Offer of Proof"* the next day that was 43,251 words long and had the nerve to ask the Commission to ***"accept th[e] offer of proof as her opening brief."***

The Division's attempt to lump me in with Laurie Bebo disingenuous acts is insulting. It is indicative of their attempt to besmirch my reputation and impugn my integrity at every turn. This is not too dissimilar to their knowingly false and highly prejudicial claim to the ALJ of ***"Given his lengthy career in the penny stock world"***.

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[2] http://www.reinhartlaw.com/about-us/#overview

[3] ***"On November 13, 2015, Laurie A. Bebo ("Respondent") filed an application for review of an administrative law judge's initial decision. Respondent requested permission to file an opening brief of 45,000 words. We granted the request in part, and allowed her to file an opening brief of no more than 21,000 words. This represented an increase of 7,000 words over the standard 14,000-word limit for opening briefs in Rule of Practice 450(c). On January 28, 2016, Respondent filed her opening brief. The following day, she filed a 43,251-word "offer of proof." On February 1, 2016 the Division of Enforcement filed a motion to strike the offer of proof. For the reasons stated below, we strike Respondent's filing and grant the Division's motion.***

The "offer of proof" attempts to evade the word limits contained in our briefing order. Indeed, it is nothing more than a lengthier and more detailed version of her opening brief, and Respondent urges us to "accept th[e] offer of proof as her opening brief." Our order was clear that the Respondent could only file a 21,000 word opening brief, and she has now filed both an opening brief of 21,000 words and a second 43,251 word opening brief styled as an "offer of proof." Because the "offer of proof" is inconsistent with our Order, it is stricken."

Motion to Allow Material Additional Evidence Under Rule 452

To be sure that all of my material additional evidence is include on the record in this Matter, I make this Motion under Rule 452 to Allow Material Evidence. Rule 452 states the following:

> "***A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously.***"

a) As of the date of this filing, there has not been a "***decision by the Commission***".

b) I believe that this filing along with my Reply Brief successfully argues "***that such additional evidence is material***".

c) My status as an impecunious *pro se* litigant who has been dealing with this matter by himself for over one year, as well as all other factors incorporated in this filing and my Reply Brief, I believe successfully argues that I had "***reasonable grounds for failure to adduce such evidence***".

CONCLUSION

It is beyond a shadow of a doubt that it is not in the publics best interest to impose a five-year collateral bar on me.

I have cooperated fully since the beginning of this Matter three years ago and I continue to take responsibility for any all inadvertent violations of section 5.

The Division has had ample opportunity to prove that I acted with scienter, yet they have failed to so. The ALJ's interpretation of Abraham and Son Capital is extremely faulty.

The Divisions effort to falsely equate my Reply Brief with the Laurie Bebo and John Buono Matter, is yet another example of personal hostility toward me on the part of the Division. The Division is asking for "***an opportunity to respond, the Division will address, and refute, all of Fox's arguments.***" It should now be very clear that it would not be fair to allow the Division, with its unlimited resources, to have another opportunity to impugn my integrity.

So much so, that if the Commission chooses to allow my Reply Brief, but to also allow the Division to file an "Additional Response Brief" (as they requested), I respectfully ask the Commission to strike my Reply Brief and rely solely on my Brief in Support of my Petition for Review.

I beg the Commission to stop the Divisions "win at all cost" effort against me. Prior to the efforts of false and malicious "whistle-blower" Paul Simons, I had a more than 20-year reputation of going out of my way to always try and do the right thing.

What should be shocking to the Commission is that my impeccable record with FINRA and the SEC was never even a moment's thought for the Division.

In very stark contrast, the Divisions righteous indignation is nowhere to be seen after they have been provided with clear evidence that their [redacted]" Paul Simons committed perjury and fabricated evidence in his sworn December 9, 2013 Form [redacted] and that he has lied to them at every turn. On the contrary, the Division scoffs at my declaration from September 2015 of being vindicated[4] from Simons horrendous claims of **fraud and misappropriation** against me.

The Division does not care that in an effort to "walk-back" the lies that he told them to initiate the investigation against me, Simons perjured himself repeatedly in his testimony under oath in the Federal lawsuit between us.

The Division has certainly not successfully argued that the Commission should strike my entire Reply Brief. Nor has the Division successfully argued that the Commission should not reverse the ALJ's Initial Decision.

For the foregoing reasons, I respectfully request that the Divisions Motion to Strike my Reply Brief in Support of my Petition for Review, be DENIED in its ENTIRETY.

Dated: October 2, 2016

Respectfully submitted,

Joseph Fox

Joseph J. Fox

[4] As a reminder, the email to shareholders and public press release were both approved by in-house counsel and outside counsel.