

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE No. 3-21243

In the Matter of

The Registration Statement of
American CryptoFed DAO LLC,
Respondent.

DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S
MOTION TO CORRECT MANIFEST ERRORS

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May 30, 2023

The Division of Enforcement (“Division”) respectfully submits this Opposition to Respondent’s Motion to Correct Manifest Errors.

Following a hearing, the Administrative Law Judge issued an Initial Decision in this matter on May 17, 2023. Respondent has filed a document styled “American CryptoFed DAO LLC’s Motion to Correct Manifest Errors of Fact in the Initial Decision.” In truth, the document is not a motion to correct manifest errors. Rather, it seeks to re-write the Initial Decision by giving different weight to admitted evidence, drawing different inferences from the evidence than the Administrative Law Judge chose to draw, and casting disputed facts in the light most favorable to Respondent. Respondent was entitled to (and did) present evidence and argument in this matter, including during a multi-day hearing and in multiple written submissions. It is not entitled to re-write the Initial Decision in a manner of its choosing, as Commission Administrative Law Judges have found on multiple prior occasions:

A motion to correct a manifest error of fact in an initial decision is correctly made “only if the basis for the motion is a patent misstatement of fact in the initial decision.” 17 C.F.R. § 201.111(h). To support changing a factual finding in an Initial Decision, McNeeley must show that the patent misstatement of fact is “readily visible or intelligible: obvious,” (*v Finance Investments, Inc.*, 94 SEC Docket 12605 (Dec. 11, 2008) (citing Merriam-Webster’s Collegiate Dictionary, 849 (10th ed. 2001))), or “an error that is plain and indisputable, and that amounts to a complete disregard of . . . the credible evidence in the record.” (*MarketXT, Inc.*, 87 SEC Docket 193 (Jan. 5, 2006) (quoting Black’s Law Dictionary 563 (7th ed. 1999))). McNeeley has not made this showing.

All of the facts stated in the Subsequent Review Testing (see Initial Decision at 11) were cited to witness testimony and/or exhibits admitted into evidence that I credited. McNeeley had ample notice and time throughout the hearing to cross-examine witnesses, including the Division’s expert, on McNeeley’s subsequent review testing, and chose not to do so. Thus, McNeeley’s arguments go to the weight of the evidence and the inferences drawn from the facts as a whole; they do not constitute a patent misstatement of fact. The Motion contains arguments more appropriate to be raised in a petition for review of the Initial Decision filed pursuant to Rule 360 of the Commission’s Rules of Practice.

Gerard A.M. Oprins, CPA, AP Rulings Rel. No. 663, 2011 SEC LEXIS 248, *5-6 (Jan. 21, 2011).

Rule of Practice 111(h) permits a party to file a “motion to correct a manifest error of fact in the initial decision.” 17 C.F.R. § 201.111(h). “A motion to correct is properly filed under this Rule only if the basis for the motion is a patent misstatement of fact in the initial decision.” 1 Id. A manifest error is “[a]n error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.” Black’s Law Dictionary (2009).

David Wulf, AP Rulings Rel. No. 2979, 2015 SEC LEXIS 3059, *1-2 (July 28, 2015).

Respondent’s meritless Motion to Correct Manifest Errors should be summarily denied.

Dated: May 30, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on May 30, 2023, in the manner indicated below:

By Email:

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