

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94661 / April 8, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20817

In the Matter of

CHARLES K. TOPPING,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Charles K. Topping (“Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From April 2009 through December 2015, Respondent acted as an unregistered broker by directly soliciting investors to purchase shares of Sanomedics International Holdings Inc. (“Sanomedics”) and Fun Cool Free, Inc. (“FCF”) stock and received commissions, from a telephone sales room located in Miami Lakes, Florida. Sanomedics and FCF were penny stocks. Respondent, 44 years old and a former resident of North Bay Village, Florida, is currently incarcerated in a federal detention facility in Montgomery, Alabama.

B. RESPONDENT'S CRIMINAL CONVICTION

2. On September 22, 2016, Respondent was indicted on two counts of conspiracy to commit mail and wire fraud in violation of Title 18, United States Code, Section 1349, nine counts of mail fraud in violation of Title 18, United States Code, Section 1341, and one count of wire fraud in violation of Title 18, United States Code, Section 1343. On June 22, 2017, after a jury trial, Respondent was convicted of two counts of conspiracy to commit mail and wire fraud in violation of Title 18, United States Code, Section 1349, nine counts of mail fraud in violation of Title 18, United States Code, Section 1341, and one count of wire fraud in violation of Title 18, United States Code, Section 1343 before the United States District Court for the Southern District of Florida, in *United States v. Sizer; et al.*, Case No. 1:16-CR-20715. Respondent was sentenced to a prison term of 113 months followed by three years of supervised release and ordered to make restitution in the amount of \$22,456,000.

3. The counts of the indictment of which Respondent was convicted alleged, among other things, that Respondent knowingly devised and intended to devise a scheme and artifice to defraud others and obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and that he knowingly transmitted and caused to be transmitted mail matter and wire communications in furtherance of the scheme.

4. From April 2009 through August 2015, Respondent acted as an unregistered broker offering and selling securities in Sanomedics to individual investors. Using the alias Charlie Kenn, Respondent made false and fraudulent statements to investors regarding Sanomedics including falsely stating that he was an employee of Sanomedics and that for a limited time only, a "limited number" of shares of Sanomedics stock were available to them at a steep discount; no commissions or fees would be charged to investors; Sanomedics was a "safe investment," "profitable investment," and one where "you won't lose money;" Respondent was an executive at Sanomedics with vast personal wealth; Sanomedics' largest shareholder and board member was the former Chief Executive Officer of Apple Inc. and president of PepsiCo; a television personality known as "the Dog Whisperer" would soon become a spokesperson for Sanomedics' pet thermometer; Sanomedics was developing contracts to sell non-contact thermometers to emergency rooms, telehealth providers, the military, the Transportation Security Administration, and purchasing its own emergency rooms; Sanomedics would be trading on NASDAQ within weeks; and failed to disclose resale restrictions on Sanomedics shares.

5. Additionally, from August 2014 through December 2015, Respondent acted as an unregistered broker offering and selling securities in FCF to individual investors. Using the alias Charlie Kenn, Respondent made false and fraudulent statements to investors regarding FCF including falsely stating that he was an employee of FCF and providing investors a unique opportunity to purchase a "limited number of shares" at a pre-IPO discount; no commissions or fees would be charged to investors; the safety of the investment was guaranteed, or investors would receive their money back; Respondent was an executive at FCF with vast personal wealth who could grant investors access to newly available stock; FCF's largest investor and board member was the former Chief Executive Officer of Apple Inc. and president of PepsiCo; FCF would conduct an Initial Public Offering within a couple of weeks or a month; and failed to disclose

resale restrictions on FCF shares. Respondent received \$1,207,000 in undisclosed commissions for the sale of Sanomedics and FCF stock.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R.

§ 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, www.sec.gov, at <http://www.sec.gov/eFAP>. Respondent also must serve and accept service of documents electronically. All motions, objections, or applications will be decided by the Commission.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related

proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman
Secretary