March 4, 2015

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2376/March3, 2015

RE: In the matter of Kenneth C. Meissner, James Doug Scott and Mark S. "Mike" Tomich Admin. Proc. No. 3-16175

ORDER ON MOTION FOR SUMMARY DISPOSITION AN TO SHOW CAUSE

I will be [redacted] years old as of September 5th of this year. I have made a concentrated effort over the years to always avoid any investment products that would be designated a security since I am not security licensed.

I have specialized in Fixed Income Products for my existing clients that are in the 55 to 90-age bracket. My clients are mostly retired or reaching retirement. I am always searching for Fixed Rate Investments that are low risk and competitive in today's low interest rate environment.

I have been presenting Guaranteed:
Life Insurance
Annuities
In-Force Structured Annuities

I stay abreast of the financial markets and other associates in Financial Services for the most recent competitive products to safely increase income for my clients.

Bill Sparkman recruited and informed me about Arete LLC. and their platform of Ginnie Mae Investments. He told me to contact Doug Scott who was employed with Summit Trust as an Investment Trust Consultant. Summit Trust offices are located at 8861 West Saraha Ave. Suite 215, Las Vegas, NV 89117. Summit Trust was the Trustee and Custodian of the Summit Managed Account (SMA) offering Asset Management Services responsible for the Arete LLC. Ginnie Mae Investments for investors. I felt that Summit Trust involvement added credibility to the Arete Program.

The Ginnie Mae offering simulated the Insurance Companies Annuity Contracts at the time, which allowed me to offer additional diversification to the low risk Fixed Income products I presented.

Over the next several months I had numerous conference calls with Doug Scott, Gary Snisky, Richard Greeott concerning the Ginnie Mae Investments. We reviewed the platform screen involving Ginnie Mae Investments. I visited the ARETE LLC. Offices at 710 Tenacity Drive, Longmont, CO 80504 for a full two-day information-gathering seminar.

I did additional due diligence concerning the REG D Offering and whether the offering was a Security. I asked Gary Snisky on many occasions whether it was a Security because I did not have a security license. ARETE LLC and Gary Snisky assured me that it was not a Security, because the Reg D Registration was accepted by the Securities and Exchange Commission of Denver, Colorado. I firmly believe that my conduct described did not willfully violate Section 15(a) of the Exchange Act.

In my due diligence I did everything feasibly possible to gather information on the ARETE Ginnie Mae offering as well as Ginnie Mae's, REG D offerings and the Security Act of 1953 also, publications 504, 505, and 506. I did a background check on Gary Snisky and Doug Scott. I reviewed accredited Investors under the Securities Act of 1933. I only sold a total of four (4) Ginnie Mae Investments to Accredited Investors.

I did not advertize nor did I

(1) Directly and regularly solicit current and prospective insurance clients for investments in Arete and Snisky PIV's.

I did not willfully set out to financially harm my clients, which I have known both as clients and friends for over 20 years. This has devastated my credibility and caused my clients and myself much stress and pain.

I am a trusting person to a fault. I believed Gary Snisky, and did not fathom him destroying himself, his wife and daughters for financial gain.

I firmly believe I acted responsibly under current investment procedures.

I pray that this can be resolved for all parties involved.

Sincerely,

Kenneth C. Meissner

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2376/March 3, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16175

In the Matter of

KENNETH C. MEISSNER,
JAMES DOUG SCOTT, and
MARK S. "MIKE" TOMICH

ORDER ON MOTION FOR SUMMARY DISPOSITION AND TO SHOW CAUSE

The Securities and Exchange Commission (Commission) commenced this proceeding on September 25, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act) and Section 9(b) of the Investment Company Act of 1940. The OIP alleges, in summary, that between 2011 and 2013, Respondents Kenneth C. Meissner (Meissner) and James Doug Scott (Scott) directly and indirectly sold membership interests in Arete, LLC, among other investments, and willfully acted as unregistered brokers in violation of Section 15(a) of the Exchange Act.[1] OIP at 1-2.

Procedural Background

Meissner filed his Answer on November 13, 2014, in the form of the first four pages of a larger filing. *See Kenneth C. Meissner*, Admin. Proc. Rulings Release No. 2041, 2014 SEC LEXIS 4434, at *2 (Nov. 21, 2014). Scott filed his Answer on November 19, 2014. At a prehearing conference held on November 3, 2014, the Division of Enforcement (Division) confirmed that it had made the investigative file available to Respondents. *See* Prehearing Conference Tr. at 5.

On January 30, 2015, the Division filed a Motion for Summary Disposition (Motion) against Meissner and Scott, to which were attached the Kerry Matticks Declaration and fifty-two exhibits. Meissner and Scott did not timely file oppositions to the Motion. The Division filed a Reply and Supplement to the Motion on March 2, 2015, to which was attached one exhibit.

[1] The proceeding has ended as to Respondent Mark S. "Mike" Tomich. *Kenneth C. Meissner*, Exchange Act Release No. 73925, 2014 SEC LEXIS 5044 (Dec. 23, 2014).

On November 20, 2014, I held a telephonic settlement conference attended by Division counsel and Meissner, which involved an extensive discussion of Meissner's financial status. *See Kenneth C. Meissner*, 2014 SEC LEXIS 4434. Meissner had previously filed a Statement of Financial Condition, executed under oath and notarized on November 6, 2014, to which were attached various account statements. *Id.*

Discussion

A. Summary Disposition Standard

After a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. *See* 17 C.F.R. § 201.250(a). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Commission Rule of Practice (Rule) 323. 17 C.F.R. § 201.250(a).

The facts on summary disposition must be viewed in the light most favorable to the non-moving party. *See Jay T. Comeaux*, Exchange Act Release No. 72896, 2014 WL 4160054, at *2 (Aug. 21, 2014). However, once the moving party has carried its burden of establishing that it is entitled to summary disposition on the factual record, the opposing party may not rely on bare allegations or denials, but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing. *See id.* Thus, summary disposition may be appropriate in non-follow-on proceedings, and indeed, even in proceedings alleging anti-fraud violations. *E.g.*, *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 WL 6850921, at *9 (Dec. 5, 2014); *Gordon Brent Pierce*, Exchange Act Release No. 71664, 2014 WL 896757, at *7-8 (Mar. 7, 2014); *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *16 (Nov. 4, 2013).

B. Findings

Section 15(a)(1) of the Exchange Act makes it illegal for a broker 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 unless such broker is registered with the Commission or associated with a registered entity. 15 U.S.C. § 78*o*(a)(1). Section 3(a)(4) of the Exchange Act defines a broker as any person "engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). Scienter is not required to prove a violation of Section 15(a)(1). *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003), *aff'd*, 94 Fed. App'x 871 (2d Cir. 2004); *SEC v. Nat'l Exec. Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

A careful review of the record evidence that may be considered under Rule 250(a), viewed in the light most favorable to Meissner and Scott, establishes that there is no genuine

issue of material fact as to liability, and both Meissner and Scott violated Exchange Act Section 15(a)(1). Nor is there a genuine issue of material fact as to most issues pertinent to sanctions. In particular, there is no genuine dispute that Meissner acted in deliberate or reckless disregard of a regulatory requirement, and that his conduct merits a second-tier civil penalty.

However, Meissner has explicitly asserted that he is unable to pay any monetary sanction, and has submitted a Statement of Financial Condition in support of his assertion. *See Kenneth C. Meissner*, 2014 SEC LEXIS 4434. Although any settlement offer he may have submitted is not part of the record, his Statement of Financial Condition remains on file. *See* 17 C.F.R. § 201.240(c)(6). I am not persuaded by the Division's argument that Meissner can afford to pay its requested monetary sanction of almost $95,000 – indeed, the record evidence to date demonstrates that he definitely cannot do so. A genuine issue of material fact therefore exists as to Meissner's ability to pay. Scott has not explicitly asserted inability to pay, but he may desire to submit evidence supporting such a claim. If so, additional proceedings will be necessary. Also, I am not persuaded that Scott knew or was reckless in not knowing that the securities he brokered were, in fact, securities, or that Scott and Meissner worked closely enough to warrant joint and several liability.

Thus, there exist genuine disputes over three material facts:

(1) Scott's state of mind, and therefore whether a first-tier or second-tier civil penalty is appropriate as to him;
(2) Whether Scott should be jointly and severally liable for disgorgement of Meissner's ill-gotten gains; and
(3) Whether Meissner or Scott are unable to pay a monetary sanction.

Accordingly, in the absence of any additional evidence, and assuming that I do not find Respondents in default, I am prepared to issue an initial decision that imposes the following sanctions, as to both Respondents: a cease-and-desist order, a full associational bar, and disgorgement and prejudgment interest on an individual basis (subject to a finding that either or both Respondents are unable to pay). Disgorgement and prejudgment interest total $19,268.70 for Meissner and $28,592.06 for Scott. I am also prepared to impose a second-tier civil penalty against Meissner and a first-tier civil penalty against Scott (again, subject to a finding that either or both Respondents are unable to pay).

Respondents, however, did not timely file oppositions to the Motion, and therefore "may be deemed to be in default." 17 C.F.R. § 201.155(a)(2). If either Respondent is found in default, I may grant the sanctions requested by the Division against that Respondent without further proceedings. If a Respondent is not found in default, further proceedings may be necessary to resolve the genuinely disputed material facts.

Order

It is hereby ORDERED that Respondent Kenneth C. Meissner shall SHOW CAUSE by March 13, 2015, why this proceeding should not be determined against him for failing to timely respond to the Division of Enforcement's Motion for Summary Disposition. Failure to timely

respond to this Order may result in issuance of an Initial Decision imposing sanctions against Respondent Kenneth C. Meissner without further proceedings.

It is further ORDERED that Respondent James Doug Scott shall SHOW CAUSE by March 13, 2015, why this proceeding should not be determined against him for failing to timely respond to the Division of Enforcement's Motion for Summary Disposition. Failure to timely respond to this Order may result in issuance of an Initial Decision imposing sanctions against Respondent James Doug Scott without further proceedings.

Cameron Elliot
Administrative Law Judge