INITIAL DECISION RELEASE NO. 936
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16354

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

In the Matter of	:	
	:	
DAVID B. HAVANICH, JR.,	:	INITIAL DECISION
CARMINE A. DELLASALA, MATTHEW D. WELCH,	:	AS TO JOSE F. CARRIO,
RICHARD HAMPTON SCURLOCK, III,	:	DENNIS K. KARASIK, and
RTAG INC. d/b/a RETIREMENT TAX ADVISORY GROUP,	:	CARRIO, KARASIK &
JOSE F. CARRIO, DENNIS K. KARASIK,	:	ASSOCIATES, LLP
CARRIO, KARASIK & ASSOCIATES, LLP, and	:	January 4, 2016
MICHAEL J. SALOVAY	:	

APPEARANCES: Andrew O. Schiff for the Division of Enforcement, Securities and Exchange Commission

Cornelius J. Carmody for Jose F. Carrio, Dennis K. Karasik, and Carrio, Karasik & Associates, LLP

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision (ID) orders Jose F. Carrio, Dennis K. Karasik, and Carrio, Karasik & Associates, LLP (CKA) (collectively, Respondents) each to disgorge $11,300 plus prejudgment interest and each to pay a civil penalty of $3,500.

I. PROCEDURAL BACKGROUND

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings on January 23, 2015, pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), and Sections 203(e) and (f) of the Investment Advisers Act of 1940.[1] On July 28, 2015, the

[1] The proceeding has ended as to David B. Havanich, Jr., Carmine A. DellaSala, and Matthew D. Welch. *See David B. Havanich, Jr.*, Securities Act Release Nos. 9791, 9792, 9793; 2015 SEC LEXIS 2144, 2146, 2147 (May 26, 2015) (Havanich, DellaSala, and Welch Settlement Orders).

Commission issued orders that, pursuant to Respondents' offers of settlement, resolved all issues in this proceeding as to them except for the determination of the amount of disgorgement each should be ordered to pay and whether each should be ordered to pay a civil penalty, and, if so, the amount. *David B. Havanich, Jr.*, Exchange Act Release Nos. 75537, 75538, 75539; 2015 SEC LEXIS 3112, 3113, 3114 (July 28, 2015) (Settlement Orders). The Settlement Orders concluded that Respondents willfully violated Section 15(a) of the Exchange Act[2] and imposed cease-and-desist orders and industry bars on Respondents. Settlement Orders at ¶¶ III.I, V. The Commission stated that the outstanding issues may be determined on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence. *Id*. at ¶ IV.(d).

As permitted by the Settlement Orders, the determinations concerning disgorgement and penalties are being made by means of summary disposition, pursuant to 17 C.F.R. § 201.250. Settlement Orders at ¶ IV.(d).[3] Respondents' filing includes Forms D-A (17 C.F.R. § 209.1). Accordingly, this ID is based on: (1) the Division of Enforcement's Motion for Partial Summary Disposition Against Respondents Jose F. Carrio, Dennis K. Karasik, and Carrio, Karasik & Associates, LLP, submitted on June 15, 2015;[4] and (2) Respondents' Response, submitted on June 24, 2015. The Response was submitted under seal and will be subject to a protective order pursuant to 17 C.F.R. § 201.322.[5]

II. FINDINGS AND CONCLUSIONS

Respondents collectively received approximately $434,974 in transaction-based compensation related to the violative conduct found in the Settlement Orders. Settlement Orders at ¶ III.F.2.d. Section 21C(e) of the Exchange Act authorizes disgorgement of ill-gotten gains from Respondents, who "agree[d] that disgorgement is appropriate." Settlement Orders at ¶ IV. Disgorgement of ill-gotten gains is "an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *Montford & Co. v. SEC*, 793 F.3d 76, 84 (D.C. Cir. 2015) (quoting *SEC v. First City Fin. Corp*., 890 F.2d 1215, 1230 (D.C. Cir. 1989)). "Thus, 'disgorgement need only be a reasonable approximation of profits causally connected to the violation.'" *Id*.; *see SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir.

[2] Exchange Act Section 15(a) makes it unlawful for any broker or dealer to effect any transactions in, or to induce or attempt to induce, the purchase or sale of any security, unless such broker or dealer is registered or associated with a registered broker-dealer.

[3] Familiarity with the findings of fact and conclusions of law in the Settlement Orders is assumed for the purpose of this ID.

[4] The filings were made in anticipation of the Settlement Orders.

[5] Although the record in a public hearing is presumed to be public, the harm resulting from disclosure of an individual's financial situation outweighs the benefits. *See* 17 C.F.R. § 201.322(b). Disclosure of financial information concerning an individual is presumed harmful. It is specifically limited in various statutes, for example, Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and the Privacy Act, 5 U.S.C. § 552a. There is no benefit from disclosure in this case.

1998) (holding disgorgement amount only needs to be a reasonable approximation of ill-gotten gains); *accord First City Fin. Corp.*, 890 F.2d at 1231-32; *Laurie Jones Canady*, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, at *38 (Apr. 5, 1999) (quoting *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996)), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000).

Respondents argue that, based on the assumption that approximately one-half of the investors in the investment vehicle whose securities Respondents sold lost their investments, the maximum amount of unjust enrichment must be cut in half. They also state that they have agreed to cooperate without pay with a law firm that is attempting to recover funds that the investors have lost. Respondents do not, however, maintain that they paid the amount that investors recouped or that they will pay the investors in the future. Respondents also propound a mathematical formula by which they compare the disgorgement and penalties ordered, pursuant to offers of settlement, against David B. Havanich, Jr., Carmine A. DellaSala, and Matthew D. Welch,[6] who founded the investment vehicle and used fraudulent means to raise $17.4 million from investors, and urge that a proportionate penalty against each Respondent would be $3,500 and proportionate disgorgement by each would be $11,300. Thus, they urge that each be ordered to disgorge $11,300 and to pay a civil penalty of $3,500. While Respondents' mathematical calculation is not without logic, it goes without saying that a settlement is not precedent.[7]

Accordingly, $434,974 of ill-gotten gains is subject to disgorgement. Since Carrio and Karasik each own 50% of CKA, joint and several liability for disgorging this amount plus prejudgment interest is appropriate, before taking into consideration ability to pay. However, the financial information Respondents submitted shows that they are not able to pay the full amount in

[6] *See* Havanich, DellaSala, and Welch Settlement Orders. Havanich, DellaSala, and Welch were each found to have violated the antifraud provisions and Securities Act Sections 5(a) and 5(c), and DellaSala to have caused violations by sales agents of Exchange Act Section 15(a). *Id*. Havanich, DellaSala, and Welch were ordered to disgorge $603,000, $603,000, and $276,000 plus prejudgment interest, respectively; each was ordered to pay a civil money penalty of $150,000. *Id*.

[7] The Commission has stressed many times that settlements are not precedent. *See Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987, at *10-11 (Oct. 22, 1996) (citing *David A. Gingras*, Exchange Act Release No. 31206, 1992 SEC LEXIS 2537, at *20 (Sept. 21, 1992), and cases cited therein); *Robert F. Lynch*, Exchange Act Release No. 11737, 1975 SEC LEXIS 599, at *12 n.17 (Oct. 15, 1975) (citing *Samuel H. Sloan*, Exchange Act Release No. 1376, 1975 SEC LEXIS 942, at *12 n.24 (Apr. 28, 1975); *Haight & Co., Inc.*, Exchange Act Release No. 9082, 1971 SEC LEXIS 436, at *67-69 (Feb. 19, 1971), *aff'd without opinion*, (D.C. Cir. 1971); *Security Planners Assocs., Inc.*, Exchange Act Release No. 9421, 1971 SEC LEXIS 1035, at *13-14 (Dec. 17, 1971)); *see also Mich. Dep't of Nat. Res. v. FERC*, 96 F.3d 1482, 1490 (D.C. Cir. 1996), and cases cited therein (settlements are not precedent). Like all Commission settlement orders, the Havanich, DellaSala, and Welch Settlement Orders contain a disclaimer to this effect: "The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding." Havanich, DellaSala, and Welch Settlement Orders at n.2.

addition to penalties. *See* Section 21B(d) of the Exchange Act;[8] 17 C.F.R. § 201.630(a).[9] Nonetheless, since they have argued that each of the three should disgorge $11,300 and each should pay a civil penalty of $3,500, it is concluded that each is able to pay these amounts.

III. ORDER

IT IS ORDERED that, pursuant to Section 21C(e) of the Exchange Act, JOSE F. CARRIO, DENNIS K. KARASIK, AND CARRIO, KARASIK & ASSOCIATES, LLP, shall each DISGORGE $11,300 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from April 1, 2012, through the last day of the month preceding the month in which payment is made.

IT IS FURTHER ORDERED that, pursuant to Section 21B of the Exchange Act, JOSE F. CARRIO, DENNIS K. KARASIK, AND CARRIO, KARASIK & ASSOCIATES, LLP, shall each PAY A CIVIL MONEY PENALTY OF $3,500.

Payment of disgorgement, prejudgment interest, and civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) 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.

Any payment by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order shall include a cover letter identifying the Respondent[s] and Administrative Proceeding No. 3-16354, and shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld.,

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[8] Exchange Act Section 21B authorizes the Commission to impose a civil penalty in a proceeding, such as this one, instituted pursuant to Exchange Act Section 15(b). Section 21B(d) provides:

> In any proceeding in which the Commission . . . may impose a penalty under this section, a respondent may present evidence of [his] ability to pay such penalty. The Commission . . . may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

[9] "The [Administrative Law Judge] may, in . . . her discretion, consider evidence concerning ability to pay in determining whether disgorgement . . . or a penalty is in the public interest." 17 C.F.R. § 201.630(a).

Oklahoma City, Oklahoma 73169. 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.

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 a 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.

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Carol Fox Foelak
Administrative Law Judge