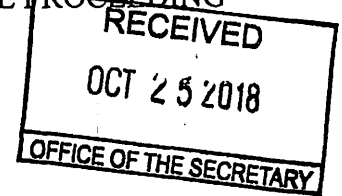


**ORIGINAL**

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-18422



**UNITED STATES OF AMERICA**  
before the  
**SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of**

**JOSHUA D. MOSSHART,**

**Respondent.**

**Administrative Law Judge Cameron  
Elliot**

**DIVISION OF ENFORCEMENT'S  
REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION**

October 24, 2018

Division of Enforcement  
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## **I. INTRODUCTION**

In his opposition brief, respondent Joshua D. Mosshart advances a counter-narrative in which he is without fault; where he played no meaningful role in Enviro Board’s solicitation of 18 different investors – many of whom were his existing advisory clients at LPL – investors that then handed over nearly \$5 million to the company for its unregistered securities; and where the \$553,355 that Enviro Board paid him in just two years did not in fact constitute commission payments. In respondent’s telling, he was only transitioning out of the financial adviser industry to work at Enviro Board in an operational capacity, and when he told “all of my friends and family of my new business ventures,” they later, without any urging from Mosshart, “invested on a non-solicited bases [sic] because they wanted to support a great cause and help support me and Enviro Board bringing affordable housing to the world.” June 11, 2018 Mosshart Response (“Opp.”) at p. 1, § I.

Mosshart’s *ipse dixit* denials are belied by substantial evidence. The testimony of Enviro Board’s principals, Mosshart’s own employment agreement with Enviro Board, contemporaneous written communications between Mosshart and potential investors, and the affidavit of one of Enviro Board’s defrauded investors, Tina Brodie, all put the lie to his conceit that he was just a “fall guy” who “was not hired to raise money.” *See* Opp. at p. 3, § II(B). The record before this Court unambiguously demonstrates that a permanent bar is compelled by the public interest.

## **II. ARGUMENT**

### **A. An Associational Bar is in the Public Interest**

The thrust of Mosshart’s response brief is that he did not raise capital for Enviro Board and was instead hired to engage in sales and marketing, build a board of directors, and work on the company’s public relations. *See* Opp. at p. 3, § II(B). In the course of “promoting the

company,” Mosshart claims that from time-to-time, “people,” “friends,” and “family” would express an interest in investing; when that happened, Mosshart says he “would refer them to Bill [Peiffer] and Glenn Camp.” *Id.* at p. 1, § I; p. 3, § II(B). And thus, according to Mosshart, an associational bar is not warranted because he did not violate the federal securities laws, and in any case, he claims to “never want to be in this industry ever again.” *Id.* at p. 7, § III(C). This version of events is contravened by the proof before this Court.

**1. Mosshart violated the federal securities laws**

First, both Peiffer and Camp testified that Mosshart had been paid commissions to solicit investment in the company. Camp testified that in 2010, he ran into Mosshart at a Westlake Village coffee shop. May 21, 2018 Declaration of Gary Y. Leung In Support of Motion for Summary Disposition (“Leung Decl.”) at ¶ 10, Ex. 8 (Camp Inv. Tr.) at 112:18-24. That sparked several conversations in which Camp told Mosshart about “where we were with the company,” and once brought up to speed, Mosshart eventually told Camp that “I’d like to be a part of what you are doing” and that “I could be helpful raising capital to your company.” *Id.* at 112:25-113:5. And so Enviro Board and Mosshart arrived at an “agent agreement” under which Mosshart would be paid a 10% commission for raising capital. *Id.* at 114:11-116:23. That “initial commission agreement” was later superseded by a formal, “seven-year agreement with the company to raise capital as well and have other duties.” *Id.* at 115:12-24. Once Mosshart procured that formal agreement, Camp testified that Mosshart “stopped performing” and by his account, Mosshart had never performed any duties nor served any other function for Enviro Board besides raising money from investors. *Id.* at 118:5 – 119:19. For his part, Peiffer testified, consistent with Camp’s recollection, that Mosshart had been hired to raise capital and was paid a 10% commission for his efforts. *Id.* at ¶ 11, Ex. 9 (Peiffer Inv. Tr.) at 258:1-23.

Second, that testimonial account is corroborated by the plain language of Mosshart's written Enviro Board employment agreement. Mosshart's contract obligated Enviro Board to pay Mosshart a 10% commission on all "financing ... that is the result of parties introduced by Mosshart who make an investment of debt or equity capital in [Enviro Board.]" Supp. Leung Decl. at ¶ 2, Ex. A.

Third, one of Mosshart's LPL clients who was the object of his Enviro Board fundraising efforts, Tina Brodie, provided a sworn declaration documenting her course of interaction with Mosshart. Brodie's husband passed away unexpectedly in summer 2011. She was later introduced to Mosshart, who became her financial adviser. After telling Mosshart that she had received about \$450,000 in life insurance proceeds following her husband's death, Mosshart made an investment recommendation to Brodie:

Mosshart then told me that he knew of an investment that was stable, safe, and capable of generating annual interest of 10% on those insurance proceeds ... Mosshart directed me to Enviro Board's website and introduced me to defendant Glenn Camp.

Leung Decl., Ex. 14 (Brodie Decl.) at ¶¶ 3-4. Even though Brodie had emphasized, in her conversations with Mosshart, her financial situation – at the time, she was a recent widow, with two dependents at home, who had been out of the workforce – Mosshart pushed her to invest the entire amount of her husband's life insurance proceeds with Enviro Board. *Id.* at ¶ 5. Even though Brodie eventually sustained a significant loss on the investment he had recommended to her, Mosshart now blames the victim. Opp. at pp. 6-7, § III(A)(2)(a) ("Tina Brodie was very aggressive with her spending habits ... She was spending close to \$50k per moth [sic] on her life style ... She was very aggressive about wanting to take more risk because she didn't want to go back to work."). Mosshart admits that he never told Brodie that Enviro Board was paying him a commission on her \$400,000 investment. *Id.* at p. 7, § III(A)(2)(a).

Fourth, email correspondence between Mosshart, Camp, and potential investors in 2011 and 2012 make plain that Mosshart's role in soliciting investment was nowhere near as cabined as he makes it out to be. For example, in June 2011, Mosshart's written correspondence with a possible investor evinces, in Mosshart's own words, that: (i) he was "excited" to share an investment opportunity which he had previously introduced to Anthony Kiedis of the Red Hot Chili Peppers; (ii) he had enclosed offering materials that he was involved in preparing; and (iii) he was ready and available to make an in-person investment presentation to the potential investor along with Camp at any time and at any place. Leung Decl. at ¶ 17, Group Ex. 15, at EBC 0761303.

These exact kinds of activities – solicitation of investors to purchase securities; involving himself in negotiations between Enviro Board and potential investors; making an evaluation or giving advice as to the merits of the investment; and receiving transaction-based compensation – are hallmark indications that a person is a broker within the meaning of the Exchange Act. *See SEC v. Earthly Mineral Solutions, Inc.*, 2011 WL 1103349, \*3 (D. Nev. Mar. 23, 2011); *SEC v. Hansen*, 1984 WL 2413, \*10 (S.D.N.Y. Apr. 6, 1984). Mosshart engaged in the offer and sale of unregistered securities and nothing in his opposition brief detracts from that factual conclusion.

## **2. The Steadman factors compel an associational bar**

That Mosshart's conduct was egregious is not subject to serious dispute. He raised nearly \$5 million for Enviro Board; Mosshart's cut – 10% – poured several hundreds of thousands of dollars into his own pocket. Despite paying lip service to the contrary, Mosshart's opposition brief evinces little sympathy for those Enviro Board investors, whose assets financed his commission payments, and who were eventually defrauded by the company. Case in point, Mosshart pushed a recent widow, living on a fixed income, with two young dependents, to invest the entire balance of the insurance proceeds she had received after her spouse's unexpected

death. Although Mosshart was not charged with securities fraud in the Commission's civil injunctive action, his conduct in violating the registration provisions caused investors lasting harm.

Nor does Mosshart contest that his conduct in "referring" 18 investors to Enviro Board was not isolated, and was instead recurrent. Next, Mosshart's expressions of remorse are more rooted in regret over the events that have transpired in his own life, rather than any sympathy for his former clients who he brought to Enviro Board. With respect to Brodie, Mosshart faults her for her purported "aggressive" spending habits and high risk tolerance, claiming that even though he was her client at LPL, and even though he was paid a \$40,000 commission on her investment, he was simply passing along unverified investment representations from Enviro Board that Brodie needed to diligence on her own, by seeking out the assistance of "a tax advisor and other professionals." Opp. at p. 7, § III(A)(2)(a). Under the circumstances, Mosshart's "expressions of remorse, assurances against future violations, and recognition of wrongful conduct are of little value." See *In the Matter of Emrich, et al.*, SEC Rel. No. 456, Admin. Proc. File No. 3-14509, 2012 WL 8702989, \*5 (Apr. 4, 2012) (initial decision).

And last, Mosshart was directly asked by the Court during the October 23 Prehearing Conference whether he had any intention of returning to the securities business. Mosshart's lengthy response offered no such assurance. Because Mosshart is a young man in the prime of his career, and because "[t]he securities business is 'a field where opportunities for dishonesty recur constantly,'" *In the Matter of Evelyn Litwok*, Advisers Act Release No. 3838, 2011 WL 3345861, \*5 (quoting *Ahmed Mohamed Soliman*, 52 S.E.C. 227, 231 (1995)), a permanent associational bar is warranted on this additional ground.

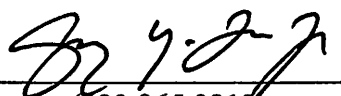
**III. CONCLUSION**

For all the reasons stated, the Division respectfully requests that its motion for summary disposition be granted, and that Mosshart be permanently barred pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.

Dated: October 24, 2018

Respectfully submitted,

DIVISION OF ENFORCEMENT



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**IN THE MATTER OF JOSHUA D. MOSSHART**

**Administrative Proceeding File No. 3-18422  
Service List**

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

**DIVISION OF ENFORCEMENT'S  
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was filed with the Office of the Secretary of the Commission and served by electronic mail and UPS Overnight Mail on October 24, 2018, upon the following parties as follows:

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Securities and Exchange Commission  
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(by facsimile to (703) 813-9793  
and United Parcel Service)  
  
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Honorable Cameron Elliot  
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Dated: October 24, 2018

  
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