Epic Capital Wealth Advisors, LLC

c/o David Anthony

345 W. 600 S. #115

Heber City, UT 84032

Administrative Proceeding

File No. 3-22307

Judge Carol Fox Foelak

August 30, 2025

Securities & Exchange Commission

United States of America

1961 Stout Street #1700

Denver, CO 80294

RE: RESPONSE TO 8/15/2025 DIVISION OF ENFORCEMENT'S PETITION FOR REVIEW OF THE INITIAL DECISION & 8/29/25 DIVISION OF ENFORCEMENT'S BRIEF IN SUPPORT OF PETITION FOR REVIEW OF THE INITIAL DECISION

The Respondent, Epic Capital Wealth Advisors, LLC and David Anthony, submits this Opening Brief to Oppose the Division of Enforcement's Petition for Review dated 8/15/2025 and their Brief in Support of Petition For Review of the Initial Decision dated 8/29/2025, and supports the Initial Decision dated 8/8/2025 whereby Administrative Law Judge Carol Fox Foelak dismissed the proceeding to deny the application of Epic Capital Wealth Advisor, LLC for registration as an Investment Advisor and granted their application. David Anthony & Epic Capital respectfully request that the Commission uphold the Initial Decision and finalize Epic as an Investment advisor as it is in the public interest to allow Epic's registration.

The Initial Decision rendered on 8/8/2025 was clear and is based on public record. Judge Foelak stated *"All arguments and proposed findings and conclusions that are inconsistent with the Initial Decision were considered and rejected.*" Judge Foelak correctly pointed out that the Division did not address any of the items outlined in the Order Instituting Proceedings filed 11/13/2024 which was the purpose of the four-day hearing that was held in June 2025 before the commission "for the purpose of taking evidence on the questions set forth in Section III (of the OIP)" These specific questions were:

1. "Whether the allegations set forth in Section II (of the OIP) are true, and in connection therewith, to afford Respondent an opportunity to establish and defenses to such allegations"
    a. Offered and sold unregistered securities without being licensed as a sales representative and through entities that were not licensed as broker dealers.
    b. Offered investment advice and accepted commissions through entities that were not licensed as investment advisers.
    c. Commingled money invested in his various offerings and used proceeds from some funds to pay off investors in other funds.
    d. Failed to provide full and fair disclosure of material facts to investors, including that he received commissions ranging from 21 to 44 percent and about $2.3 million in investor money went directly to him.

2. “Whether the pending application of Epic Capital as an investment adviser should be denied pursuant to Section 203(c) (2)(B) of the Advisers Act.”

David Anthony clearly stated in his 12/1/2024 Answer to Order Instituting Administrative Proceedings that: *“All four of the allegations are not only not true, but they are blatantly false and represent a well-coordinated and purposefully designed effort by the Enforcement Division of CO to conceal the facts of this case, suppress the evidence that would exonerate David Anthony from any wrongdoing, and are gross misrepresentations of what happened. This goes beyond a misunderstanding with the Division, they knowingly submitted false evidence to the Court, committed perjury by lying in the Complaint “under penalty of law” and testified under oath about these allegations that simply did not happen.*

During a four-day hearing in June 2025 Anthony provided hours of testimony and documentation that proved that the allegations were false and he called three witnesses to testify of the fraud that the State of Colorado had enacted- ultimately causing investors to lose $80 million. The Division did not attempt to prove any of the four allegations in the OIP ore refute any of the evidence that Anthony submitted at the hearing but instead focused on as what Judge Foelak stated, “matters not charged in the OIP” namely:

1. Anthony’s presumed violation of the Colorado receivership order
2. His recording of the bogus mediation settlement whereby the CO Commissioner promised him that if he signed the settlement agreement, he would be able to continue working and operating as an investment advisor outside of Colorado
3. Supposed misleading statement on his ADV application
4. Wildly subjective instances of presumed less than complete disclosure to investors.

Judge Foelak correctly stated that these matters had nothing to do with the allegations and were unrelated to the alleged actions that occurred in Colorado. Furthermore, Judge Foelak ruled that the arguments “against Epic Capital’s registration are also insufficient on their own to deny the registration, as they are not part of a Steadman public-interest analysis predicated on the underlying violations alleged in the Colorado Action.”

In a bizarre line of questioning at the hearing, the Division spent substantial time focusing on the plight of fictional investors that didn't even exist that may be negatively impacted in the future if for some reason Epic Capital was unable to secure the required $100 million assets under management threshold within 120 days. James McDonald, the main division attorney who asked the questions and spoke at the hearing, was concerned about these pretend investors having to change firms instead of focusing on the real life existing investors who had lost real money ($80 million dollars) because of the fraudulent actions and false testimony as presented in Colorado by the Commissioner and the Receiver Randall Lewis and Ted Hartle. Thankfully Judge Foelak noted that "The Division has failed to meet the burden of proof, and the proceeding must be dismissed. As the alleged grounds for denying the registration are unproven."

David Anthony wholeheartedly agrees with Judge Foelak's decision—the allegations were unproven, and it is in the best interest of the public, especially the hundreds of investors who had $80 million stolen from them by the state of Colorado, to approve the registration of Epic Capital as an Advisor.

Inexplicably, the Division's 8/15/2025 Petion For Review of the Initial Decision and the 8/29/2025 Brief in Support of the Initial Decision contain no additional information nor do they address any of the original four allegations that were requested in the OIP that Judge Foelak based her decision on. The Division simply rehashed their baseless assertions that Epic should not be allowed registration as an advisor because of perceived misconduct that occurred after Epic applied as an Advisory firm.

The Divisions omission and complete lack of any attempt whatsoever to address the allegations from Colorado that led to the placing of the assets in receivership and their ultimate liquidation and abandonment by the receiver, Randall Lewis and Ted Hartle, is telling- and should serve as a powerful motivator for investors who lost $80 million to move forward with criminal and civil charges against the Colorado Division of Securities, the Receiver, and all of the individuals who provided false witness to the Judge in Colorado in this case.

Factual Background

On March 1, 2022, based on false information and testimony, the Colorado Securities Commissioner, through the Colorado Attorney General's Office Philip J Weiser and Counsel Robert Finke and Janna Fischer, filed a complaint against David Anthony and the Anthony Entities (Anthony Capital Alternative Investments, LLC, Anthony Capital Bond Fund 1, LLC, Anthony Capital Alternative Investments Income One Fund, LLC, Anthony Capital Alternative Investments Income Two Fund, LLC, Anthony Capital Alternative Investments Income Three Fund, LLC, Anthony Capital Alternative Investments Income Four Fund, LLC, Anthony Capital Alternative Investments income Five Fund, LLC, Anthony Capital, LLC, SidebySideQuotes.com, LLC.) The Complaint is full of false accusations that were never addressed as Anthony was not able to present the facts in a trial or before a judge. Anthony included an "Edited Complaint version" with line by line answers to the false allegations as part of his Additional Support Forms filed with his 12/2/2024 Answer to Administrative Action. It reveals the false assumptions that were made by the prosecution and the false testimony and perjury that was committed by the professional bureaucrats that Colorado paid to support their false claims.

The Complaint falsely alleged, inter alia, that Anthony, while associated with an investment adviser, Anthony Capital, through a series of companies he owned and controlled, acquired $26.5 million of investor money and (1) offered and sold unregistered securities without being licensed as a sales representative and through entities that were not licensed as broker-dealers; (2) offered investment advice and accepted commissions through entities that were not licensed as investment advisers; (3) commingled money invested in his various offerings and used proceeds from some Funds to pay off investors in other Funds; and (4) failed to provide full and fair disclosure of material facts to investors, including that he received commissions ranging from 21 to 44 percent and about $2.3 million in investor money went directly to him.

Each one of the allegations can be refuted by factual documents that clearly prove that no unlicensed or unregistered securities were sold, no commissions were accepted via unlicensed

advisors, No commingling occurred nor were investor funds used to pay off investors in other funds, and full and fair disclosure as required by law was made regarding commissions. The allegation that $2.3 million of investor monies went directly to Anthony was based on the false testimony of the prosecution who purposefully represented a personal Doing Business As Account that Anthony was using for personal use as an investor account.

On March 2, 2022, the State Court, based on false testimony provided, entered an ex parte temporary restraining order freezing Anthony's assets and enjoining him and various affiliated entities from, inter alia, offering or selling securities to any person in or from Colorado, acting as a securities investment adviser, or engaging in securities fraud. See Edited TRO, Chan v. Anthony, 22CV30574 (D. Ct. Denver Cty. Mar. 2, 2022) (hereinafter, the "TRO")

This freeze order was entered into illegally and without warning as Colorado prosecutors froze assets without serving notice to Anthony beforehand. Multiple attempts by David Anthony to contact the prosecutor in this case were ignored for over five days

Following the entry of the TRO, the State Court held a two-day preliminary- injunction hearing. See Transcripts, Chan v. Anthony, 22CV30574 (D. Ct. Denver Cty. Mar. 24 and 28, 2022) Anthony was represented by counsel at the hearing, at which four witnesses testified and 31 exhibits were accepted into evidence. Anthony had hired his representation sight unseen, one week previous, over the phone as he was on the start of a six week international trip with his family when the TRO order was entered.

Anthony's assets were frozen via the TRO while he was on day two of a six-week international vacation with his family, and he hired counsel over the phone that he did not know and who were not familiar with the case to represent him at the hearing. Although he flew back to be at the hearing, his counsel recommended that he not attend, which proved to be devastating because his counsel was unable to adequately respond to the lies that the four witnesses told and the misrepresentations presented in the exhibits to the Judge.

Joe Burtness, a 17 year professional bureaucrat and Colorado Investigator, falsely testified that Anthony used investor monies to purchase personal property in his own name. See Edited

TRO/Complaint. Anthony subpoenaed documents from Joe Burtness and the Receiver and the State of Colorado but the quashed the request.

Tammie Martinez, a 15 year professional bureaucrat and Colorado Accountant, falsely testified and presented information of Anthony using investor monies for personal use. See Edited TRO/Complaint

David Cheval, a 5 yr professional bureaucrat and Deputy Commissioner, falsely testified that the offerings were insolvent, and purposefully misled the court into believing that the offering documents were fraudulent by misstating and concealing relevant disclosures regarding performance. See Edited TRO/Complaint

Dorothy Najera, is a client of mine and a good friend, who was bullied into testifying by the prosecution who misrepresented her investment as being one that she could not lose any principal by investing in a unsecured promissory note. See Edited TRO/Complaint

The Prosecution falsely alleged that Anthony used investor monies to buy cryptocurrency, sold unregistered securities, and misled investors by not disclosing commissions, all of which are blatantly false. See Edited TRO/Complaint

David Anthony was not in attendance at the hearing and was therefore unaware of any of the dialogue that had taken place.

Based on the false information presented at the hearing, and his Counsel's inability to adequately provide instant answers because of their unfamiliarity with the case, the State Court ordered that the TRO be converted into a preliminary injunction until a trial could be held. The Court also requested that the Defendant's Counsel provide their answer by April 22, 2022 as to if receivership should be granted, claiming that it was in the "interest of the public."

The State Court, based on false testimony provided by the witnesses, claimed that it was material that the private placement memoranda for Funds Anthony was raising did not disclose the performance of his prior Funds: "If you've had previous funds and you are offering subsequent funds, then the performance of those funds, especially if they have failed, is something that is -- would be material to a reasonable investor to know when making an investment." Id. at 108:19-

23. I would agree with the Judge on this point, but the previous funds had not failed. They were all active, current, and working properly, a fact that was omitted by the prosecution. There were no performance metrics for the funds because only three of the life settlement policies had matured and paid out! None of the funds had completed their full cycle. Of those policies that had been paid to investors, they represented returns of 20% plus for those investors.

This assertion was based on the false testimony of David Cheval, who falsely testified that Fund 5 did not disclose the failures of Funds 1-4 to investors, which is false. Funds 1-5 were life settlement funds that purchased policies with a 5-7 yr life expectancy, and therefore none of the funds had completed their fund's expected investment tenure. David Cheval falsely testified that they were insolvent without understanding how life settlement policies work and the reserve accounts that had been established to pay premiums.

David Anthony underwent a 5-hour deposition (12/9/2022) with the prosecution and a 9 hour deposition with the Receiver (8/8/2022) whereby the workings of the life settlement funds were explained and the reserve accounts were verified which the prosecution completely ignored.

The prosecution purposely misled the Court that certain Funds established by Anthony purchased life settlement policies from an entity owned by an individual who had been sued by the Commission and ordered to pay more than $4 million, that: that "[t]he information about Senior Settlements and Mr. Schantz, again, would it have been important for investors to know about the issues with the SEC Mr. Schantz had and that Senior Settlements was the entity from which these premiums were -- or these insurance policies were being purchased, I think that perhaps that would've been important, that would've -- that perhaps could have been material to many of these investors." Id. at 108:24- 109:6.

The fact that the life settlement policies were purchased from Senior Settlements has no bearing on the actual return performance of the policies. The life insurance policies are issued by Prudential, Mass Mutual, John Hancock, and other A rated carriers, not Senior Settlements. This fact was cleverly concealed by the prosecution, and they made the allusion that because Senior Settlements had a prior issue with the SEC that the viability of the underlying life insurance

policies was somehow tainted. This is simply factually incorrect.

Anthony knew nothing about this fine that Senior Settlements paid to the SEC when he set up and offered the funds, and when he inquired about it Mr. Schantz told his side of the story which paints a completely different picture that the false narrative that the prosecution presented to the Judge.

> *"The SEC settlement was reached seven years ago and involved the failure to register with the SEC a short-term note offering that occurred more than ten years ago; there are no SEC prohibitions on me from moving forward with a Regulation D offering of equity interests in a life settlement fund." See Sherman SEC Response*
>
> *"There has never been an investor complaint or lawsuit. This was an extremely small and limited offering used as a pilot for other potential private offerings we were contemplating.*
>
> *While the SEC has never disclosed the reason for the investigation, I believe one of the sales agents made the mistake of soliciting the notes in a general manner, which is prohibited by the SEC. Unfortunately, my companies were brought into the investigation. During the four-year investigation I shared over 63,000 pages of documents. The SEC reviewed in excess of 30,000 emails, both business and personal, along with my personal bank accounts and brokerage accounts. They reviewed all business accounts on all companies I owned. They reviewed all personal tax returns and also my business tax returns…..They took testimony from me, which lasted over 10 hours. At that testimony there were nine SEC agents present. They also took testimony from my Managing Director and our Accountant's. Their biggest argument all along was that I made too much money. Their other comment that resonated was "We don't understand your business" ….. I spent more than $1,000,000 in legal expenses and the damage they had on my business operations and on my personal life is impossible to measure. …. There was never any disruption to my primary business entities, there was no emergency relief sought, there were no lawsuits or complaints, there were no wells notice issued, there were no intent based claims or claims of fraud and there are essentially no fines or penalties." See SEC Settlement Explanation*

If the false information that the prosecution presented to the Judge in my case influenced his opinion "[t]he information about Senior Settlements and Mr. Schantz, again, would it have been important for investors to know about the issues with the SEC, would've been important, that would've -- that perhaps could have been material to many of these investors." Id. at 108:24-109:6--- If that was important enough for the Judge to rule that it was a material omission, then don't you think that the true history of what happened to Senior Settlements that was concealed by the prosecution is also a material omission?

Not only did the prosecution provide false and misleading information to the Judge that influenced his decision, (The value of the life settlement policies is in no way determined by Senior Settlements) they purposefully withheld the facts and truth of what happened.

Furthermore, the prosecution conveniently omitted the fact that Senior Settlements was one of multiple life settlement providers that I purchased policies from in the funds, and that they didn't even comprise more than 50% of the total policies.

Following the entry of the preliminary injunction, the State Court also requested that Anthony's defense counsel provide an answer as to why receivership should not be appointed by 4/22/2022. Anthony met with his Counsel shortly after the hearing after he had more time to interview other defense attorneys who had more experience in Regulation D, Rule 506 © offerings, and decided that it would be more appropriate to let them handle this case as they were familiar with the false tactics employed by the prosecution. Namely, the false accusations of not being licensed as a broker dealer, selling unregistered securities, and operating a Ponzi scheme. These techniques are the hallmarks of the two main corrupt prosecutors, Janna Fisher, and Robert Finke, who my new attorney was familiar with as they include these same allegations in almost every fraud claim, and employed the same "expert witness" bureaucrats, (Tammie Martinez, and David Cheval) to testify on their behalf.

Unfortunately, Anthony was unaware of what had transpired in the actual hearing in March 2022, as the Judge did not allow any recording of the two day process, and he did not receive the actual transcript until after receivership was in place. His new attorney, Otto Hilbert provided an inadequate response to the Judge as to why receivership should not be granted as he was not at the hearing and was unfamiliar with what had transpired. Once receivership was granted, this

case took a completely different turn as the Receiver began to mercilessly seize all Anthony's personal and business assets without restraint, including:

a. My 13 yr old daughter's baby sitting bank account

b. My 17 yr old High School senior's graduation bank account whereby she deposited monies received by friends and family upon graduation

c. My kids Sno Cone business account that they operated each Summer

d. My 11 yr old sons lawn mowing account

e. My 9 yr old sons personal account

f. My 15 yr old daughters personal account

g. My daughters college savings account

h. All personal and joint accounts in my name

i. Our personal residence in Colorado where we had raised our kids and was now a rental property that we had owned since 2011—liquidated and sold

j. Our residence in Utah purchased in 2017, before any life settlement funds were issued—Liquated and sold

k. Personal property held in my name, land, etc.—Liquated and sold

l. All together, the Receiver seized and close to $8 million of personal funds and property from me under the guise that it was to be used for the benefit of investors.

This was all done with the state denying me any access to any of my personal funds to pay for any of my legal expenses. Based on the false lies as told by the Receiver, convinced that I was laundering money with the Columbian drug cartel because I learned Spanish on my Mormon mission and that he just "need more time" to find the hidden money. See Edited 8-8-22 Receiver report.

To Date—not one investor has received one cent from the Receiver as he continues to bill the Receiver estate for millions of dollars.

The State Court set the case for an eight-day trial to commence on February 21, 2023. Notice of Trial and Case Management Conference, Chan v. Anthony, No. 22CV30574 (D. Ct. Denver Cty. May. 13, 2022)

Before the trial, on 12/7/2022, the Colorado Commissioner filed a stipulation for consent order to revoke the investment advisor license of David Anthony, but an agreement was made whereby David Anthony "neither admit or deny the Staff's allegations" and agreed to a summary suspension, and did not waive any defense" until after the final judgment in the District Court Litigation.

On January 5, 2023, the parties participated in a mediation, at which Anthony was presented with a settlement offer by the state of Colorado whereby if he settled and did not go to trial then he could continue operating as an investment advisor outside of Colorado. Although not ideal, 90% of Anthony's clients were outside of Colorado, and not being able to work the previous year had cost Anthony close to $5 million in lost revenue.

At the conclusion of the mediation, Anthony signed a preliminary Memorandum of Settlement Terms which was completely different from the final settlement terms as reported by the state. The language was supposed to follow the 12/7/22, stipulation for consent order whereby Anthony neither admitted or denied the Staff's allegations, and was not able to operate as an investment advisor solely in the state of Colorado for ten years. The language was specific as to not be a revocation, that would allow him, he was assured by the Commissioner, to be able provide for his family and operate as an advisor outside of Colorado.

Within one hour of signing the settlement, Anthony began to question the advice that he had been given and the promises made by the Commissioner. He immediately contacted his attorney and said that he wanted to void the settlement agreement because he did not think that it would allow him to operate as an advisor and it provided no recourse for investors to receive any of

their money back. The next day Anthony contacted the Utah Securities Commissioner and they confirmed that he would not be able to be licensed as an advisor in Utah.

On January 10, 2023, the prosecution falsely informed the State Court that they had reached settlements in principle, completely ignoring Anthony's request to void the settlement based on false promises made by the Commissioner. There was never any agreement to proceed with the settlement. Anthony then fired his attorney, Otto Hilbert, and secured new counsel, from Paul Vorndran, who had been a previous prosecutor working for the Colorado Securities commissioner and was intimately familiar with the false tactics being used by the current prosecution and agreed that I had a valid case and that he could successfully represent me in trial but that we needed to get the false settlement agreement overturned.

On 2/8/23 a Status conference was held with the Judge and Anthonys counsel offered to provide the Court with a copy of a transcript of the conversations with the mediator to demonstrate the statements made by the mediator on which Defendants claim they relied.

The Court declined to review the confidential mediation communications.

The parties filed cross-motions related to the enforcement of the settlement agreement with the Commissioner completely denying that any such promise had been made to Anthony during the settlement.

On 2/28/24 The Judge issued an Order Regarding the Settlement agreement whereby she stated that "recission is appropriate (of the agreement) whether or not the party who made the representations knew them to be false. Lathrop U. Maddux, 144 P. 870, 873 (Colo. 1914). {An agreement should be voided when a party has relied on a false representation in formatting an agreement, see Smith v. Kalavitg, 515 P.2d 473, 475—77 (Colo. App. 1973)}. However, inexplicably , she stated that "the Court finds no evidence to support such an allegation. "The Judge admitted that she did not read the transcript of the mediation hearing providing the evidence of the false representation made by the Commissioner yet claimed that the defendant had not provided any evidence.

A Motion to reconsider was filed by the Anthony's counsel to reconsider the ruling which was denied on 4/17/2023.

Following the issuance of the April 17, 2023, orders, the 49-day time limit for filing a notice of appeal began to run.

Mr. Vorndran and his law firm were retained by Mr. Anthony and the Anthony Entities to file an appeal on their behalf, but they failed to file the notice of appeal prior to the June 5, 2023, deadline, instead filing it on June 20, 2023.

Thereafter, on July 14, 2023, the Commissioner moved to dismiss the appeal as untimely, and that motion was granted by the Colorado Court of Appeals.

The Receiver in this case, Randall Lewis has billed the receiver estate for millions of dollars in fraudulent fees and expenses. The tax returns that the Division claims I fraudulently submitted? The Receiver conveniently charged over $500k in accounting fees to supposedly file the returns. The Receiver has lined his own pockets with investor monies, abandoned over $40m worth of life settlement polices that he claims are worthless all without providing any evidence of proof to the claim. Life Settlement policies pay out when the insured individual passes away, and typically that is based on the life expectancy of the insured individuals. The Receiver simply stated to the investors that the policies were worthless, and said that he was abandoning the policies and specifically prevented Anthony from being able to take possession of the policies essentially rendering the investors investment worthless.

No medical reports were provided to investors to validate this claim, not life expectancy reports were generated by the Receiver to prove that they were in fact worthless—the Receiver had run out of funds to bill the receiver estate so he therefore abandoned the policies and investors were left holding the bag.

Argument

The SEC Commission has a duty and obligation to protect investors from fraud

The fraud that has occurred is that $80 million of investor assets were unlawfully seized from

investors by the state of Colorado based on blatantly false and misleading information provided by paid professional bureaucrats who purposefully misled and lied to the Court in this case with the goal of granting receivership in place where the receiver could bill the receiver estate for millions of dollars.

The fraud that occurred was not done by an investment advisor, but by the state of Colorado, the prosecutors, the Commissioner, the Attorney General, and the Reciever and it is costing investors $80 million. Already, the ability of Anthony to request documents from the State of Colorado that he did not have access to before because of this case have opened up avenues for investors to initiate criminal actions against the State of Colorado for seizing and fraudulently liquidating and abandoning their retirement monies.

The Receiver has not distributed one cent of receivership assets to investors!

$8 million dollars of my personal and business property was seized by the receiver for "the benefit of investors" yet not once penny has been distributed to investors. Furthermore, the receiver is publishing false content on their quarterly reports regarding their excuses as to the true value of the life settlement policies. The receiver is preventing investors from taking possession of their life settlement policies for themselves whereby they could manage their own policies.

How is this not fraudulent? The investors purchase investments in good faith that are properly registered by licensed individuals. The investment is functioning properly, exactly as it should, and suddenly false accusations of fraud is made by professional bureaucrats who purposefully lies under oath to deceive the Judge into granting receivership claiming fraud, Ponzi scheme, and the use of investor assets to purchase personal property. The investor's assets are seized by the court, without a trial, squandered, and abandoned as worthless. The investor is left with millions of losses while the receiver enriches himself with millions of dollars' worth of fees billed to the estate.

The "Injunction" filed against Anthony was based on false and misleading information provided by the State as terms to induce Anthony to sign the settlement agreement to avoid going to trial.

A recission of the agreement is appropriate when it is based on false information. The injunction

is preventing the settlement from being overturned, which is preventing this case from going to trial, which is preventing the investors from getting their $80m returned to them.

The record supports a determination that approving Epic Capital's application as an advisor and imposing penalties against the state of Colorado for the fraud committed on investors would be in the public interest.

15 U.S.C.§ 80b-3(e). In determining whether remedial action is in the public interest, the Commission can consider various factors, including: "the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of its conduct, and the likelihood that the respondent's occupation will present opportunities for future violations." Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). The Commission's public interest inquiry is flexible, with no single factor being dispositive. In re. Anton & Chia, LLP, SEC Release No. 1407, 2021 WL 517421, at *88 (Feb. 8, 2021).

Anthony was previously licensed as a Certified Financial Planner, had a 20+ year successful career in financial services with zero customer complaints. The Commission should look at the egregiousness of the false actions taken by the State of Colorado and the fraud and lies and damages incurred on investors.

Undisputed evidence exists in the bank statements, the offering documents, and the facts of this case that Colorado simply got their allegations wrong and based their decisions on the false testimony provided by paid professional bureaucrats who are paid by the state to offer one sided testimony which was proven false in the March 2022 hearing.

The Division knows this and did not try to address any of the original four allegations from the OIP, instead they focused they time on perceived wrongdoings after Epic's application. Indisputed evidence was presented at the four day hearing in June proving the innocence of David Anthony and Judge Foelak correctly ruled on her decision.

All of the life settlement funds were still active, functional, and operational! None had failed.

The life settlement policies INCREASE in value every year as life expectancy decreases, they don't decrease in value. The premature abandonment of the policies by the Receiver is fraudulent and harms investors- it is not in their best interest.

The comments made by David Cheval are his opinion only, and are completely unsubstantiated by the offering documents themselves and the facts of the existing life settlement policies in each fund. Several of which had already paid out and paid investors with a 20% + return!

The allegations against Senior Settlements have zero impact on if a life settlement policy is a good investment or not for the investors. What Senior Settlements did or didn't do before acting as a broker to sell life settlement polices to Anthony's funds is completely irrelevant to the performance of the policies themselves. Furthermore, statements by Shantz prove that it was not a "Ponzi-like scheme", no investors lost any money, and he was never convicted of anything. Admittedly, Anthony did not know of these allegations against Schantz, but his statements of what actually occurred tell a vastly different story. It is easier for the prosecution to throw out words like "Ponzi scheme" and make the Judge believe that one should be guilty on the accusation alone. See Shantz supporting documents.

Furthermore, more than 50% of the policies purchased were from entities outside of Senior Settlements.

On the basis of the foregoing, David Anthony respectfully submits that the undisputed facts on the record before the Commission demonstrate that it would be in the public interest to approve Epic Capital's application for registration as an investment adviser and to impose the harshest of penalties on the fraud and deception enacted on investors by the State of Colorado.

The Division has misrepresented the facts and withheld evidence in their Statements

Instead of focusing on the four allegations stated in the OIP, the Division tried to manufacture negative information about Anthony and his application as an Advisor.

Inexplicably, James McDonald tries to assert that I repeatedly violated the court receiver order by diverting $100k of monies payable to the receiver estate without context or background. The $100k pmt in question was owed to David Anthony from Epus Energy, an entity that Anthony Capital, LLC had referred clients to for money management and the payment owed comprised the 1% annual asset management fee that Anthony Capital is allowed to charge as a Registered

Investment Advisor firm, it had nothing to do with any private funds. Money that was sent to close a transaction was my own personal money that was sent, not any investor funds. Amazingly he accuses me of filing tax returns on behalf of the entities, after the receiver ranted and raved about the fact that tax returns had not been filed. I filed them and the receiver claims I have broken the receivership agreement and consequently charges the receivership $500k+ to file tax returns for entities that had not even had any income distributions. Unbelievable.

The Division wrongfully tries to asset that Anthony is not credible because he is upset

Listen to the recording of the hearing. James McDonald is repeatedly asking leading questions to Anthony trying to trap him into saying something and being sneaky about it. After repeated attempts at the same question, Anthony appealed to Judge Foelak who agreed with Anthony and could not see the point in the questions. McDonald tries to assert that Anthony was trying to commit fraud by applying for an Anthony Capital state registration on 12/5 and an LLC designation on 12/5. It makes no sense.

Anthony is rightfully upset- and so are his investors. His life's work has been ripped away from him because of the actions of corrupt government officials who presented false testimony before a Judge to secure receivership. They point blank lied to the Judge claiming that Anthony had "taken investor monies and purchased property in his name" which is a 100% lie. The claimed that he as selling unregistered securities and was not licensed as a broker dealer and presented false information to the judge when all of the offerings were correctly registered under Rule 506 C and Rule 504 of Regulation D, they were EXEMPT offerings. Evidence was presented showing the Form D filings and it was ignored.

Anthony is upset because his reputation was ruined because of lies. His personal and business assets were seized, his properties were sold from underneath his feet. He was treated as guilty without a trial before a jury of his peers. His kids college accounts were seized and taken, his daughter's baby sitting accounts stolen, and the monies she received for high school graduation, his kids' snow cone business—all seized and liquidated based on lies.

Anthony is most upset because his investors have lost $80 million worth of their investment monies and to what? Bad investment decision? Buying speculative stocks? David and Lana

Pierce, the only investors in ACAII Fund 3, who testified at the hearing, lost $4m million of their IRA retirement monies. These individuals are in their 70's and cannot afford that loss. When they contacted the Receiver, he lied to them and told them that their policies were worthless and abandoned the policies—all without any proof, no doctors statement or updated medical exams were provided, only the receiver's word.

Anthony is upset because the Receiver said he is breaking the receiver agreement by communicating with investors who called Anthony on his cell phone asking what had happened to their retirement monies. They have been conned out of their life savings by the criminal actions of the state of Colorado and no one is doing anything about it.

James McDonald is wrong about Anthony's decision to overturn the settlement

Mcdonald claims that the reason he wanted to rescind the settlement was because his couldn't get registered in states other than Colorado. Anthony sought to rescind the settlement because he recognized that he was lied to by the Commissioner. He recorded the mediation hearing- the Commissioner point blank stated that if he signed, he would be able to go about his business and still be an advisor and provide for his family. That was why Anthony signed—because the Commissioner promised him that he could continue working as an advisor, and that was simply a lie. McDonald makes an issue of Anthony recording the hearing, but makes not mention of the despicable and shameful actions of the CO Commissioner who lied in their settlement offer.

McDonald is fabricating Anthony's intent to become and SEC Advisor and is somehow worried about harming investors that don't even exist

Somehow James McDonald thinks that just because $100m is a large number to achieve for assets under management that it can't be done so the application should be denied. Thankfully that is not part of the regulation. Anthony already outlined that if $100m was not met then he could easily hire employees as IARs and have them be licensed at the state level if necessary. Instead of worrying about real investors that have lost money to the fraudulent actions of Colorado and the Receiver, McDonald is concerned about pretend investors in the future that don't even exist yet.

The Division erroneously claim that Anthony, as the Manager of the life settlement funds, did not disclose conflicts of interest

The Division falsely claim that Anthony did not disclose conflicts of interest, yet the fact that Anthony received a compensation as Manager of the life settlement fund was noted in the private placement disclosure documents that every investor had to sign before investing:

Here's the exact wording from the PPM under Management Fee section:

> *"The Fund shall issue to the General Partner LP Interests equal to 3.0% of the total LP Interests sold in this Offering as compensation to the General Partner for managing the Fund (the "Management Fee"). The General Partner shall also hold 0.1% general partnership interest. The General Partner will not receive any other payment from the Fund for the General Partner's management of the Fund. The General Partner may receive and will retain commissions and fees from the entities from which the Fund acquires insurance policies and interests in policies"*

Here it is under the Sales Commission section:

> "The General Partner, Anthony Capital Alternative Investments, LLC, may receive and will retain commissions and fees from the entities from which the Fund acquires insurance policies and interests in policies. *Commissions will be payable directly to the General Partner* and the General Partner *will retain the commissions*. Commissions will not be paid to or shared with the Fund. *The amount of the commission is included in the amount paid by the Fund for a policy* (or interest in a policy) p.20"

Anthony also included the conflict of interest in his public Form ADV II document:

> "*Anthony Capital, LLC, is a fee-based financial planning firm. The firm does not sell fixed index annuities and other insurance products for a commission. The firm's managing member owns several affiliated businesses that bring value and provide solutions to the client's financial problems and are part of the comprehensive planning process the firm provides Material Relationships Maintained by this Advisory Business and Conflicts of Interest David M. Anthony has four financial affiliated business involving insurance, mortgage, tax preparation and alternative assets. Additionally, Mr. Anthony offers private placements, Life Settlements, Oil/Gas Leases, and Merchant Cash Advances. Many of these offerings are regulated under Rule 506(c) and Rule 504 and provide investments in alternative investments whereby David Anthony could receive a fee and/or commissions where he would have a material financial interest. From time to time, he may offer Clients advice or products from those activities. These practices*

represent a conflict of interest because it gives an incentive to recommend products based on the commission or fees received. This conflict is mitigated by disclosures, procedures, and the firm's fiduciary obligation to place the best interest of the Client first and Clients are not required to purchase any products or services. Clients have the option to purchase these products through another insurance agent or contractor of their choosing. Anthony Capital, LLC advisors are prohibited from using any of the monies that may be derived from a mortgage for any investment or insurance products"

Anthony included a chart on his Form ADV II that states the name of each affiliated business, the description of the business, and if the compensation was received via Fees or commissions. Anthony also disclosed the conflict of interest throughout the sales process.

The Division falsely claims that as Manager he is not able to engage in business loans

McDonald gives an example of a $602k loan from ACAII2 Fund as bad conduct, but fails to mention the fund documents that allow such transactions as outlined in the PPM:

a. Unit 1- **The Program** (ACAII2 fund) anticipates having funds paid to it for the purchase of alternative investments by the Portfolio on the Program's behalf… funds will be used to purchase interests in Products or Portfolios

THE PROGRAM (ACAII 2) WILL INVEST IN ALTERNATIVE INVESTMENTS AFTER THE SPONSOR DETERMINES THAT THE INVESTMENT IS AVAILABLE v (p.26 of 39)

a. By participating in the Program, Subscribers will acquire membership interests in the Program. The *Program acquires membership interest in Products or Portfolios*. Portfolios may acquire direct interests in *various alternative investments*…. Because *the Sponsor does not know which investments will be acquired*, or when cash will be collected on investments that mature in the Portfolios, the actual net income, net profits or cash distributions associated with the interests cannot be presently determined. P. 25 of 39
b.
c. Unit 2: Company Agreement and Subscription p.3

I. Purpose of company is to accomplish business engage in all activities necessary to foregoing:

The Company shall have all powers necessary, suitable or convenient for the accomplishment of the purposes of the Company, including without limitation (a) to make and perform all contracts; *(b) to borrow or lend money* and secure payment thereof; (c) to engage in all activities and transactions

Anthony Did not make misleading statement on Form ADV for Anthony Capital or Epic

Anthony applied for and was granted a new LLC entity in the state of Utah for an entity called Anthony Capital, LLC. Is a UTAH entity, not a Colorado entity, and has a separate EIN from the Colorado entity. When he applied as a state advisor the IARD system automatically matched his application up with the existing Anthony Capital CRD from Colorado. There was not an intent to deceive.

When Anthony learned of the ability to apply as an internet only advisor, he did so, but could not apply as a SEC advisor at the same time that a State application was pending, so he applied under Epic Capital as an SEC internet only advisor. After his application was submitted at the IARD portal, the review team came back and gave him a list of items that needed clarification, one of those what the fact that as an internet only advisor that you were not supposed to have face to face meeting with clients. Anthony was not aware of that requirement and subsequently changed his application to the 120 day rule status.

McDonalds erroneous statement that Anthony did not want the Utah regulators to know about the Anthony Capital case is blatantly false. He disclosed all of the information to the state regulators and they are the ones that requested additional information from Colorado.

There is no risk to the public for registering Epic Capital- McDonald is providing misleading information into what Utah may or may not do

Mcdonald seems to think that he can project what the state of Utah may or may not do in regards to an application. He has no idea and conveniently omitted that fact that an SEC advisor does not file an application with the state of Utah, they file a notice. Those are two different documents. Per the State of Utah https://securities.utah.gov/licenses/utah-licensing-guide/ website:

> "Currently, Utah regulates those Investment Advisers with less than $100 million in assets under management (AUM). However, federal covered advisers must still notice file in Utah if they are either located in the state or have more than five clients in Utah (note: requirements may vary by state). Also, federal covered advisers must still license any IA Rep with a place of business in Utah or more than five clients in Utah.

Here are the instructions for a Notice Filing for an SEC Advisor from the same website:

> "Federal Covered Adviser" is defined, in section 61-1-13(1)(m) of the Utah Uniform Securities Act ("Act"), as "a person who is registered under Section 203 of the Investment Advisers Act of 1940 or is excluded from the definition of 'investment adviser' under Section 202(a)(11) of the Investment Advisers Act of 1940."
> There are two types of investment advisory firms:
> - State Covered Investment Adviser - has assets under management of less than $100 million.
> - Federal Covered Investment Adviser - has assets under management of $100 million or more.

A Federal Covered Adviser must file a Notice Filing with the Utah Division of Securities if the firm meets either one or both of the following criteria:

- Firm has more than 5 clients who are Utah residents
- Firm has a place of business in Utah

Initial Notice Filing

To file a Notice Filing, a Federal Covered Adviser must file with the IARD the following pursuant to Rule 164-4-6 :

1. SEC Form ADV Uniform Application for Investment Adviser Registration, bearing your SEC investment adviser number (assigned upon approval by the SEC), and your audited balance sheet (if required under item 14 of Part II of Form ADV).

2. Filing Fee – $70.00 covers the firm; $30.00 for each investment adviser representative with a place of business in Utah.

Notice Filing Renewal

All filings expire on December 31 of each year. To renew a filing as a Federal Covered Adviser, submit the following \ to the IARD:

1. SEC Form ADV - Most recent amendment.

2. Renewal Fee – 70.00 covers the firm; $30.00 for each investment adviser representative with a place of business in Utah.

McDonald makes a blatantly false statement regarding what Utah May or May not Do

McDonald states that at the https://securities.utah.gov/licenses/utah-licensing-guide it states *"The application for an investment advisor representative is similarly reviewed as it was for the sate covered firm and may result in a denial."*

No such statement exists at that site as McDonald claims. Furthermore, even if it did, the language is clear "may result in a denial" is different from "will result in a denial." McDonald is projecting his views as to what the State of Utah may or may not do.

There is a No Public Interest in According Weight to Multiple State Regulators' Prior Adjudications.

Another false statement by McDonald. Three states have not informed Anthony that he is not able to register as an advisor. Colorado based their inability to register on the false settlement agreement. California never ruled on anything—that application as an IAR was before any of these events even transpired and was conveniently omitted by McDonald. Anthony received no denial letter from California. Utah has already been covered.

Anthony agrees with Judge Foelak that the Division failed to meet the burden of proof and the proceeding must be dismissed.

Epic is not required to file any pre or post hearing briefs. The four allegations presented in the OIP are straightforward and he covered everything on his 12/1/2024 Answer to OIP, 1/3/2025 Answer to Summary Disposition. The Division did not cover any of those issues, instead they focused on their efforts on events after Epic applied for registration.

The public interest factors from Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981), were considered and were validated.

Under Section 203(c)(2)(B), the Commission may deny an application for registration as an investment adviser if it finds (1) that any person associated with the applicant has been enjoined from acting as an investment adviser, or from engaging in any conduct or practice in connection with that activity [as contained in Section 203(e)], and (2) that such action is in the public interest. In assessing the public interest, the Commission considers [the Steadman factors:] the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. This public interest inquiry is flexible, and no single factor is dispositive.

The Division's attempts to prove a denial based on public interest on matters not charged in the OIP is weak and misleading.

1. Anthony was not told that he couldn't record the mediation hearing- and he had his cell phone in open plain view on the table recording the entire event for all to see
    - What is especially troubling is that the Commissioner explicitly denied and lied having made any such promise that Anthony could continue operating as an investment advisor in other states as terms for signing the settlement agreement, which the recording clearly proves that the Commissioner of Colorado was lying. If she lied about that, what else would she lie about in this case?
2. The Division's interpretation of repeated violations of the receivership order
    - That has previously been addressed. The Receiver continually berated Anthony for not having filed tax returns on entities that had no income, so he filed the tax returns to appease the receiver.
    - Anthony has a right to communicate to investors who contacted him requesting information about what happened to their money as the receiver was not providing adequate communication
3. Misleading statement on ADV
    - Already covered
4. Less than complete disclosure to investors
    - Already covered. All actions taken by Anthony were allowed per the language in the PPM disclosure documents. The Division's interpretation of what should or shouldn't have happened is irrelevant to the facts. Conflicts of interest were disclosed multiple times and in multiple places.

Conclusion

The role of the Securities and Exchange Commission of the United States of America is set forth in the SEC Procedure Guidelines, specifically:

"The Commission desires not only to be informed of the findings made by its staff but also, where practicable and appropriate, to have before it the position of persons under investigation at the time it is asked to consider enforcement action."

"The Commission, however, is also conscious of its responsibility to protect the public interest. It cannot place itself in a position where, as a result of the establishment of formal procedural requirements, it would lose its ability to respond to violative activities in a timely fashion."
"*The Commission is often called upon to act under circumstances which require immediate action if the interests of investors or the public interest are to be protected. For example, in one recent case involving the insolvency of a broker-dealer firm, the Commission was successful in obtaining a temporary injunctive decree within 4 hours after the staff had learned of the violative activities. In cases such as that referred to, where prompt action is necessary for the protection of investors, the establishment of fixed time periods, after a case is otherwise ready to be brought, within which proposed defendants or respondents could present their positions would result in delay, contrary to the public interest*.
"The commission cannot delay takin action which it believes is required."

I have presented clear and unmistakable evidence that the state of Colorado presented false information to the judge, presented false evidence, and lied under the penalty of law that has resulted in the loss of $80 million worth of investor assets.

I am calling on the SEC to take immediate and swift action against the receiver in this case and to prevent the abandonment of $80m worth of investor assets and to take immediate action against the Colorado Enforcement Division, the Attorney General, the Commissioner, the prosecution, and the receiver for violations of Section 1001 of Title 18 of the United States Code and impose fines and imprisonment:

"[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry."

Section 1519 of Title 18 of the United States Code stipulates that fines and terms of imprisonment may be imposed upon:

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States..., or in relation to or contemplation of any such matter."

The Initial Decision was correct and the Commission should make that decision final and approve Epic's application.

As a side note, David Anthony is extremely grateful for Ian Kellog from the SEC for hisprofessional manner and conduct in this case. He has been very patient with me in explaining this process and his role in it. He has also been very candid in admitting his narrow role, in that his responsibility is to present a case to the Commission as to why I should not be approved as an investment advisor, and reiterated his narrow focus on that objective. In various phone calls with Ian Kellogg, I have asked him what type of attorney and what type of person he is, and if he was willing and courageous enough to analyze this case in the larger mission of the SEC, namely to protect investors from fraud and not simply stating that Epic Capital's registration should be denied because of a false settlement agreement.

Ian Kellog, to his credit, answered that he would "follow the facts to wherever they lead…even is that is uncomfortable." To that end, I quote John Adams, who said "Fact are stubborn things, and whatever may be our wishes, our inclinations, or the dictates or our passion, they cannot alter the state of facts and evidence."

I implore the Commission to act swiftly and To live up to the Mission Statement of the SEC to "protect investors by vigorously enforcing federal securities laws to ensure truth and fairness. Deter misconduct, hold wrongdoers accountable and provide resources to help investors and protect them from fraud." To hold the state of Colorado accountable for the fraud that has been committed on these investors who by no fault of their own have had their life savings seized and squandered by the state. To use their resources and connections with the Department of Justice to bring swift action against the Colorado Securities Commissioner, the Attorney General of Colorado, the Receiver Randall Lewis and Theodore Hartle, and the corrupt prosecutors Janna Fisher, Robert Finke and the paid bureaucrats who lied under oath to the Judge in Colorado, Joseph Burtness, David Cheval, and Tamara Martinez

If not the SEC Commission, then who? Who will do something to protect these investors?

The application for Epic as an advisor is valid. The law is clear on the regulation, it must be in the public interest to approve the application regardless if there is an injunction or not and Judge Foelak has correctly rendered her decision. The Commission should approve Epic's application and initiate proceedings against the state of Colorado for fraud for the benefit of the investors who lost their money.

Special thanks to Judge Foelak who has taken the time to listen to my case and read through the documents, something that never happened in Colorado, and to all of the investors in the Anthony Entities—I am fighting to get your funds back to you that were stolen by Colorado in every way I know how- as a fiduciary should- and encourage you to take the information from these proceedings and file your own criminal lawsuits against Colorado.

Respectfully submitted this 30th day of August 2025

David Anthony

President

Epic Capital, LLC

Certificate of Service

I certfy that a true copy of the foregoing and any attachments was served on the following on August 30, 2025 in the manner indicated below.

Dave Anthony

James McDonald

Trial Counsel Enforcement Division

President, Epic Capital

SEC

McDonaldJa@sec.gov

OS Received 08/31/2025