

David Anthony  
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December 1, 2024

Securities & Exchange Commission  
United States of America  
1961 Stout Street #1700  
Denver, CO 80294

**RE: Answer to Order Instituting Administrative Proceedings File 3-22308**

Dear Sirs,

Pursuant to the notice I received on 11/11/2024 from the SEC regarding the opening of public administrative proceedings relating to my 9/24/24 application as an Investment Advisor, I am offering the following answers to the allegations contained in that notice.

There are four allegations that are referenced in Section II of the letter received on 11/11/24 that were made by the CO Enforcement Division in a Complaint filed 3/1/22 regarding the actions of David Anthony:

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 advisors”
3. “Commingled money in vested in his various offerings and used proceedings from some funds to pay off investors in other funds”
4. “Failed to provide full and fair disclosure of material facts to investors, including that he received commissions ranging from 21%-44% and about \$2.3 of investor money went directly to him, and that investors had not received returns from the majority of the investments.”

Section III of the 11/11/24 Notice Letter from the SEC States:

**OS Received 12/02/2024**

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

- A. Whether the allegations set forth in Section II hereof are true
- B. Whether the pending application of Epic Capital for registration as an investment advisor should be denied.

**My Response:**

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.

Additionally, in preparation for this case, I was provided access to the files in this case that the CO Enforcement Division sent over and these are not all of the files in the case. The Division conveniently omitted any of my objections or appeals in this case.

I formally call upon the Securities and Exchange Commission of the United States of America to abide by the standards 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.”*

My position is that the allegations are false and the Enforcement Division, the prosecution, the receiver and the Commissioner are lying and purposefully misrepresenting the facts for personal gain. The state illegally seized and confiscated over \$8 million of my personal and business assets and took position of over \$80m worth of investor assets for the “*benefit of investors*” but has not distributed any of the assets. Instead, the receiver mismanaging the funds and purposefully prevented the sale of the assets so he could continue to bill the receivership estate for millions of dollars.

In fact, on 7/23/2024 the receiver, Randall Lewis, filed a request with the Court to abandon \$37 million worth of perfectly good life settlement policies because he claimed they have no value. A request was made by David Anthony to the Court to prevent the abandonment

of the polices as it would cause irretrievable harm the investors. A hearing was scheduled for 10/1/2024 and David Anthony was never notified by the Court or the receiver about the hearing. The Court will send out certified mail Complaints and TRO, and the receiver will communicate regularly with me via email, but when it comes to notify me of a hearing the purposefully do not do so? The Receiver and the Court have my personal and work address and my personal email. Their decision to not notify me of the hearing was on purpose so that they could continue to bill and rape the receivership estate.

Furthermore, in the SEC Procedure Guidelines:

*“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 am calling on the SEC to take immediate and swift action against the receiver in this case and to prevent the abandonment of \$37m 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.”

### **Response to Allegation #1**

“Offered and sold unregistered securities without being licensed as a sales representative and through entities that were not licensed as broker dealers”

The Division produced Exhibit 15 in the hearing held 3/24/2022 and 3/28/2024 as evidence of this allegation that David Anthony and none of the entities mentioned are registered as broker dealers and are therefore selling unregistered securities.

The entities mentioned were all exempt from registration under Regulation D Rule 506 (b) and 506(c) and Rule 504.

Copies of the Form D filings were provided to the Division but they ignored them.

All Private Placement Memorandum subscription agreements were signed by the investor before any monies were received. This allegation is false and the Enforcement Division purposefully misrepresented these facts to the judge.

### **Response to Allegation #2**

“Offered investment advice and accepted commissions through entities that were not licensed as investment advisors”

Anthony Capital, LLC is a fee based registered advisor and does not sell commissionable products as outlined in the Form ADV provided to investors. David Anthony owns several financial affiliated entities, that do accept commissions, and that conflict of interest was disclosed in the Form ADV Part II A Firm Brochure, and in the PPM offering documents. i.e., he owed an insurance agency that sold life and health insurance policies and he made a commission on those transaction and did not have to be licensed as an investment advisor.

Furthermore, monies made by David Anthony under the multiple Private Placement offerings life settlement funds, ACAI, ACAII 1 Fund, ACAII 2, ACAII 3, ACAII 4, and ACAII 5 funds

under Regulation D are allowed via the Issuer's Exemption. David Anthony was paid a sellers concession by the institutions who sold these policies, not by the investors as the Division wrongfully alleged.

In the Complaint, the Division specifically said that David Anthony was offering investments from Bayou Serpent LLC, an entity that creates conservation easements and was paid commission from them. In the deposition with the State held on 12/9/2022, this error was pointed out and the prosecution purposefully ignored it.

Investment Advice was only offered under Anthony Capital LLC, an Registered Investment Advisor Firm. Commissions were only received via Side by Side Quotes.com, a licensed insurance agency, and compensation for private placement offerings were only paid via the Issuer's Exemption, no investor funds were used to pay commissions.

### **Response to Allegation #3**

“Commingled money invested in his various offerings and used proceedings from some funds to pay off investors in other funds”

Complete and utter lies by the Division. The Division produced an Exhibit at the March hearing, claiming that Anthony was co-mingling funds. The produced a crude flow chart with false banking information that was purposefully mislabeled to convince the judge. For example, they claimed that investor funds were being collected into a business account the named Anthony Capital Alternative Investments, account# [REDACTED] and that the monies were then sent to Senior Settlements for the purchase of the life settlement policies which in turn paid compensation back to David Anthony to the account named Anthony Capital Alternative Investments. This simply was not true.

The investor monies were received into the Anthony Capital Alternative Investments Income 5 Fund, LLC, but the full name of the account did not fit on the Zion's bank statement so it was abbreviated to “Anthony Cap Alt inv.” The Department lied to the judge, telling them that it was the same entity which it was not.

This discrepancy was pointed out multiple times to the prosecution in this case, Janna Fisher and Robert Finke and they ignored the clear bank statements, EIN registration numbers, and bank opening account statements that proved them wrong.

Conveniently, the CO Department DID NOT SEND that Exhibit to the SEC as part of the document transfer as they allege that they did. Numerous other examples exist of flat out lies, fraud, and concealing of the truth from the court.

## Response to Allegation #4

“Failed to provide full and fair disclosure of material facts to investors, including that he received commissions ranging from 21%-44% and about \$2.3 of investor money went directly to him, and that investors had not received returns from the majority of the investments.”

This allegation is blatantly and egregiously false and was used by the prosecution to portray David Anthony as some greedy individual that was preying on innocent investors.

Every Private Placement Memorandum that was signed by investors regarding life settlement purchases contained the disclosure that compensation was being paid to David Anthony by the seller of the life settlement policies and that a conflict of interest existed. This was disclosed in David Anthony’s Form ADV Part II brochure, in the PPM offering documents, and throughout the sales process.

The prosecution asserted that the fact that David Anthony was getting paid 20% plus for being the fund manager via the issuer’s exemption was not providing full and fair disclosure.

It is unfortunate that this point was never to be argued in court, as Anthony never misled anyone that he was being compensated, his compensation is typical for fund managers of life settlement funds, and the compensation paid did not reduce the investor’s stated expected rate of return. Furthermore, the fact that compensation was received from the seller of the policies was an integral part of the investment as the private placement offerings were being used as a Roth IRA conversion tool to allow investors to receive a discount to fair market value when they did Roth IRA conversions, thereby saving them hundreds of thousands of dollars in taxes. This discount to fair market value could not have been validated without the compensation component. These life settlement policies were being purchased at a retail price for retail investors. The Commissioner somehow thought that the dollar amount of compensation that was being paid was somehow immoral and unethical and repeatedly tried to embellish the facts.

Additionally, perhaps the most blatant lie of all is the statement:

*“about \$2.3 million of investor monies went directly to him”*

This is demonstrably false. Third party professional forensic accounting firms stated to the prosecution that they had analyzed all of the bank records and found no evidence of David Anthony taking investor funds for personal use. Yet, in the complaint, the prosecution testified “under penalty of law” that David Anthony had directly taken investor funds and used them to purchase million-dollar properties in Utah. This lie told by the investigator was the smoking gun that convinced the Judge in this case to sign off on the receivership request.

## Response to the Injunction against Anthony entered 4-17-2023

1. The language of the Order of Permanent Injunction dated 4/17/2023 is incorrect and does not follow the agreed upon Memorandum of Settlement Terms signed on January 5, 2023. (Figure A-Settlement Terms)
2. No “Permanent Injunction” was ever agreed upon per the 1/5/2023 settlement. The language of the Settlement Agreement was very specific, “*The parties have agreed to a stipulated injunction for 10 years*” not a permanent injunction.
3. Section 203(e) states that the “Commission..shall..revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such..revocation..is in the public interest and that such investment advisor..whether prior to or subsequent to becoming so associated–(4) *is permanently or temporarily enjoined by order, judgment, or decree* of any court of competent jurisdiction..from acting as an investment advisor.”
4. The “Stipulated injunction” signed on 1/5/2023 was an *agreement* between the investment advisor representative David Anthony and the State of Colorado *not a permanent order, judgment or decree*. The language was specific as to allow David Anthony to continue working as an investment advisor in any other state outside of Colorado per the terms of the settlement as presented by the State of Colorado in mediation.
5. The mediation discussions explicitly confirmed that all parties understood the proposed terms as having no negative impact whatsoever on David Anthony’s ability to continue as an Investment Advisor outside of Colorado. The state of Colorado explicitly stated that there was nothing that would prevent David Anthony from selling securities and work as an investment advisor outside of Colorado. (See Figure B-Motion to set aside Mediator Settlement). This is why I signed the settlement agreement, because it was presented to me by the Colorado Commissioner that I could continue working as an Advisor outside of Colorado.
6. The language of “stipulated injunction” does not classify as “temporarily enjoined.” A stipulated injunction is an agreement, and follows the stipulation for consent order entered into on 12/7/2022 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. The District Court case never went to trial, and was settled per the aforementioned Settlement agreement.(Figure C-Stipulation for Consent)

7. The language of the Permanent Injunction dated 4/17/23 is therefore incorrect and should not apply as a reason to deny the investment advisor application of David Anthony and Epic Capital.
8. I have tried to appeal the settlement agreement and resume with a trial date, but the state of Colorado has denied my appeal. They stated that they did not state that I could continue operating as an investment advisor outside of Colorado, but the recorded audio transcript of the mediation is quite clear, that is exactly what they stated, and that was the key reason as to why I agreed to the settlement terms.

Furthermore, it should be noted that the allegations brought against David Anthony in the District Court case are false. Since the case was settled before the trial date, David Anthony never had the opportunity to present the actual facts of the case and prove that the commissioner of Colorado was incorrect in their allegations

## **Conclusion**

I implore the SEC Commissioners to make the right decision in this case and allow the facts to be held. Sometimes people in positions of power lie, cheat, and steal, and this is exactly what happened in this case by the Colorado Commissioner. I call upon the SEC to follow their own directive to act in the benefit and best interest of investors by:

- a. Immediately stopping the abandonment of perfectly good life settlement policies by the Receiver worth \$36m
- b. Impose the harshest fines and jail time per the SEC Procedural Guidelines against the State of Colorado and the Receiver for lying and providing false information.
- c. Approval of Epic Capital's application as an investment advisor as the allegations of misconduct are false.

I have been in the financial services for 25+ years, obtained the highest professional certifications available (Certified Financial Planner since 2004), and had done so all without any customer complaints. I love working in finance and helping people solve their financial problems. I love my clients and seek justice and compensation for them and for the SEC to act and retrieve their monies that have been squandered and lost by the State of Colorado.

Finally, per the notice received, "it is ordered that a prehearing conference pursuant to Rule 221 be held within 14 days of the Answer" be expedited if possible, for the benefit of investors.

Sincerely, David M Anthony

