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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

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12
13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

16
17 MICHAEL SZTROM, DAVID
SZTROM, AND SZTROM WEALTH
18 MANAGEMENT, INC.,

19 Defendants.

Case No. '21CV86 H RBB

20
21 **COMPLAINT**

22 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

23 **SUMMARY**

24 1. This action concerns father and son investment advisers who, in
25 violation of their fiduciary duties, deceived their advisory clients by, among other
26 things, concealing that the father was: (1) not associated with any registered
27 investment adviser, (2) prohibited from providing investment advice under the aegis
28 of the clients’ registered investment adviser, and (3) impersonating his son on

1 telephone calls with the registered investment adviser’s clearing broker, leading the
2 clearing broker to terminate its agreement with the registered investment adviser.

3 2. In August 2015, Michael Sztrom (“Michael”), who had been an
4 investment adviser and/or broker for over fifteen years, resigned from his investment
5 advisory firm and planned to form his own investment advisory business. Upon
6 resigning from his investment advisory firm, he learned that he was under a
7 regulatory investigation and that several of the clearing broker-dealers would not
8 allow Michael to use their platform while the investigation was pending, meaning he
9 could no longer execute trades for his clients.

10 3. Michael and his inexperienced son David Sztrom (“David”), who was in
11 his early 20s at the time and had just passed his securities licensing exam, contacted
12 Advanced Practice Advisors, LLC (“APA”), a registered investment adviser in La
13 Quinta, California, and its CEO, Paul C. Spitzer, seeking to associate with APA.
14 Because Michael was under investigation and banned from the clearing broker-
15 dealers, Spitzer did not let Michael associate with APA but agreed that his son David
16 could serve as an investment adviser representative (“IAR”) with the firm.

17 4. David and his company, Sztrom Wealth Management, Inc. (“SWM”), an
18 unregistered investment adviser, provided investment advice to a group of APA
19 clients. This group of clients had been advised by David’s father, Michael, at another
20 firm and followed Michael to APA.

21 5. Despite being told he could not associate with APA and despite being
22 banned from the clearing broker-dealers, Michael continued to serve as an investment
23 adviser to clients and used the services of APA’s broker-dealer Charles Schwab &
24 Co. (“Schwab”) by impersonating David on at least 38 separate telephone calls,
25 sometimes when David was present. When Schwab discovered Michael’s deception,
26 it immediately terminated David’s access to its platform and gave all of the APA
27 clients 90 days to either find an investment adviser other than APA or move their
28 brokerage accounts to another brokerage firm.

1 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
2 securities exchange in connection with the transactions, acts, practices and courses of
3 business alleged in this complaint.

4 11. Venue is proper in this district pursuant to Section 214 of the Advisers
5 Act, 15 U.S.C. § 80b-14, because one or more of the acts or transactions constituting
6 the violations alleged occurred within this district. In addition, venue is proper in this
7 district because Defendants Michael Sztrom, David Sztrom, and Sztrom Wealth
8 Management, Inc. (“Defendants”) reside in this district.

9 **THE DEFENDANTS**

10 12. **Michael Sztrom**, 66, resides in Rancho Santa Fe, California. Since
11 1998, he has been associated with various securities firms and, until late 2015, served
12 as an investment adviser and broker-dealer for a large securities firm (“Securities
13 Firm A”). After leaving Securities Firm A in 2015, he was not associated as an
14 investment adviser representative (“IAR”) with any firm and claimed to work as a
15 certified financial planner at the same time his son, Defendant David Sztrom, was
16 associated with APA, a California limited liability company and an investment
17 adviser registered with the SEC during the relevant time period. From June 2016 to
18 December 2018, he was the sole owner of Sztrom Capital, which was never
19 operational. Since March 2018, Michael has been associated with the same advisory
20 firm with which his son is also currently associated.

21 13. **David Sztrom**, 30, resides in Rancho Santa Fe, California. From
22 November 2015 until March 2018, David was an investment adviser and associated
23 as an IAR with APA. From June 2016 to January 2018, David also was associated
24 with Sztrom Capital Management, LLC (“Sztrom Capital”), described below. Since
25 April 2018, David has been associated with the same SEC-registered advisory firm
26 with which his father is associated.

27 14. **Sztrom Wealth Management, Inc.**, (“SWM”), is a California
28 corporation with its principal place of business in San Diego, California. David

1 Sztrom incorporated SWM on or about August 2015 and was its sole owner until on
2 or about March 2018, when his father Michael became a co-owner. During all
3 relevant times, Michael and David controlled SWM. Michael and David operated
4 under SWM while David was associated with APA. SWM is listed as “Investment
5 Advisor Representative” on APA’s advisory agreements for those clients advised by
6 David Sztrom. SWM was an unregistered investment adviser during the relevant
7 time period.

8 RELATED PARTIES

9 15. **Sztrom Capital Management, LLC**, (“Sztrom Capital”), was a
10 California limited liability company formed by Michael Sztrom on or about June
11 2016. Sztrom Capital was registered in California as an investment adviser to
12 provide financial planning services from August 2016 until January 2019, when it
13 withdrew its registration. Sztrom Capital’s filings state that it was never operational
14 and Michael Sztrom has admitted that Sztrom Capital never had a bank account or
15 any assets, never entered into any client agreements, and, for all intents and purposes,
16 never existed.

17 16. **Advanced Practice Advisors, LLC**, (“APA”) is a California limited
18 liability company with its principal place of business in La Quinta, California. APA
19 was registered with the SEC as an investment adviser from June 2010 until October
20 2018, when it became California-registered.

21 17. **Paul C. Spitzer**, 71, of La Quinta, California, founded APA in 2010 and
22 is currently its CEO.

23 THE ALLEGATIONS

24 **A. APA’s Investment Adviser Platform**

25 18. In June 2010, Spitzer formed APA to provide individual investment
26 advisers with a platform of compliance and back office services.

27 19. APA was structured such that investment advisers brought their own
28 groups of clients to APA, and became associated with APA as investment adviser

1 representatives (“IARs”).

2 20. After associating with APA, the clients of the investment advisers
3 became APA’s clients.

4 21. In or around 2016, APA had approximately six to eleven associated
5 IARs.

6 **B. FINRA’s Investigation of Michael Leads to David’s Association with**
7 **APA**

8 22. In or around November 2015, Michael wanted to associate with APA.

9 23. But he could not in part because in 2015, Michael was the subject of an
10 investigation by the Financial Industry Regulatory Authority (“FINRA”), a private
11 nongovernmental corporation that, among other things, regulates registered brokers in
12 the United States.

13 24. Indeed, when Michael resigned from Securities Firm A in or about
14 August 2015, he was told that FINRA had an open investigation regarding Michael.
15 The investigation pertained to Michael’s conduct while at Securities Firm A.

16 25. In or about August 2015, Michael sought to move his clients from
17 Securities Firm A to Schwab.

18 26. After moving most of his advisory clients from Securities Firm A to
19 Schwab, Schwab subsequently informed Michael that it was prohibiting him from
20 using its brokerage platform due to the ongoing FINRA investigation.

21 27. After leaving Securities Firm A, Michael then contacted another large
22 securities firm to see if he could use its platform, but was informed that he could not
23 do so as long as the FINRA investigation was ongoing.

24 28. In or around November 2015, Michael – in a panic – then contacted
25 Spitzer about David and him potentially associating with APA.

26 29. Spitzer understood that Michael was the subject of a FINRA
27 investigation but nevertheless inquired of Schwab whether Michael could access the
28 Schwab platform if Michael were to associate with APA.

1 30. Schwab rejected Spitzer’s proposal that Michael become associated with
2 APA and have access to the Schwab platform.

3 31. Due to the ongoing investigation and Schwab’s repeated refusal to allow
4 Michael access to its platform, Spitzer decided that APA would only associate with
5 Michael’s son, David, who has only recently passed his licensing exam for
6 investment advisors.

7 32. Accordingly, David joined APA in or about November 2015. At that
8 time, his only prior advisory experience was assisting Michael for five months at
9 Securities Firm A by performing administrative tasks, such as processing forms and
10 taking notes at meetings. Most clients who had been Michael’s clients at Securities
11 Firm A moved from Securities Firm A to APA.

12 33. Because Spitzer told Michael that he could not associate with APA,
13 Michael told Spitzer that he would serve in the limited role of financial planner to the
14 clients who moved to APA.

15 34. There was no formal agreement between Spitzer, Michael and/or David
16 for Michael to serve as a financial planner to the Sztrom clients.

17
18 **C. The APA Agreements With David, SWM, and With Michael’s**
19 **Clients From Prior Firms**

20 35. Upon David’s association with APA, the advisory clients that followed
21 Michael from prior firms to APA and any new clients while David was associated
22 with APA (collectively, the “Sztrom clients”) all signed an agreement in which APA
23 was to serve as their investment adviser and agreed “to engage Sztrom Wealth
24 Management, Inc. as an Investment Advisor Representative with Advanced Practice
25 Advisors, LLC...”. At the time David joined APA, SWM was solely owned and
26 operated by David.

27 36. The agreement provided that SWM “will provide investment
28 management services to clients as an Investment Advisor Representative... .”

1 37. The agreement explained that SWM had “contracted the services of
2 [APA] ... to provide compliance, fee-billing, software, and other services as
3 necessary in the normal course of business”

4 38. Spitzer continued to give investment advice to his own clients, while
5 David and other investment advisers associated with APA gave investment advice to
6 their respective groups of clients that followed them from their prior firms to APA.

7 39. APA collected a percentage of assets under management from the clients
8 and paid the IARs 90% of the fees collected from the clients they advised, while APA
9 retained the remaining 10% of these investment advisory fees for providing
10 compliance services.

11 40. Thus, APA paid SWM 90% of the fees collected from those Sztrom
12 clients for which SWM was listed as the IAR.

13 41. SWM then paid David and Michael from these fees.

14 42. SWM had no other source of revenue, other than the advisory fees it
15 received from APA.

16 43. APA also charged the IARs a separate flat fee for technology services,
17 including e-mail service.

18
19 **D. Defendants Deceived the Sztrom Clients in Breach of their Fiduciary**
20 **Duties By Having Michael Continue to Act as Their Investment**
21 **Adviser Without Being Associated with APA**

22 44. From November 2015 until David left APA, Michael continued to advise
23 clients because, without him, Michael believed that many of the clients he had
24 advised at Securities Firm A would not have moved to APA. Michael also believed
25 that new clients wanted someone with experience, and while Michael had over 15
26 years of advisory and/or broker experience and an additional 25 years of other
27 financial services experience, David lacked any real experience.
28

1 45. After David associated with APA, both David and Michael advised the
2 Sztrom clients.

3 46. Michael met in person and via telephone with some of the Sztrom clients
4 and also exchanged text messages and emails with them to provide investment
5 advice.

6 47. Michael regularly researched possible investments using David's access
7 to the research platforms belonging to Schwab (and to another brokerage firm), even
8 though Schwab had specifically prohibited Michael from using its platform.

9 48. Michael regularly made portfolio recommendations directly to the
10 Sztrom clients.

11 49. Michael assisted David in rebalancing the Sztrom clients' securities
12 portfolios, and he even drafted emails for David to send to the Sztrom clients.

13 50. Michael periodically reviewed SWM billing records and verified the
14 draft client billing statements prepared by APA.

15 51. Michael had access to – and accessed – David's computer, files,
16 passwords, and Sztrom client information, as well as SWM account balances and
17 APA client portfolios.

18 52. Michael also regularly corresponded with the Sztrom clients about
19 investment advice, but did not tell them he was not associated with APA nor that he
20 was prohibited from performing trades in client accounts.

21 53. For example, in an email on or about August 3, 2016 to one client who
22 asked Michael to perform some trades, Michael wrote "I don't want to do any trades
23 until your account [moves]."

24 54. Michael also emailed a potential Sztrom client on or about November 8,
25 2016 that SWM could "structure retirement and investment portfolios" for a fee of
26 1% of assets under management.

27 55. When another APA client asked Michael for his advice about two
28 exchange-traded-funds, in or about January 29, 2018, Michael responded that he did

1 not know enough about them to make a recommendation, but failed tell the client he
2 could not make such recommendations because he was not associated as an IAR with
3 APA.

4 56. Michael also provided investment advice to the advisory clients using
5 his personal phone to send them text messages.

6 57. For example, in August 2016, Michael sent a Sztrom client text
7 messages from his personal phone regarding the client's brokerage account number
8 and transfers of funds.

9 58. The advisory client sent a text message in response that said "Good
10 morning Mike. See cash available since you sold [securities]...".

11 59. From January 2016 through April 2016, Michael sent one Sztrom client
12 numerous text messages from his personal phone regarding the pricing of certain
13 securities, CUSIP numbers and trades that Michael had made in the client account.

14 60. In January 2016, Michael texted the advisory client that "Total trades
15 today = \$180k" and "\$95k cash in the account."

16 61. In February 2016, Michael texted this client about another offering and
17 then texted the client, "Order filled."

18 62. In March 2016, the Sztrom client texted Michael that it was "Ok to buy
19 ... 50 bonds...".

20 63. In May 2016, Michael texted the Sztrom client that while some
21 securities were "traded away," he had "[b]ought [another security] successfully."

22 64. In July 2016, Michael texted the Sztrom client that he had filled an order
23 and added that the client had "sufficient funds to cover (just)...".

24 65. In March 2016, another Sztrom client texted Michael and asked Michael
25 if he had done anything about a certain security yet; Michael responded by text that
26 he had not "done anything yet" and said he was "waiting for the markets to settle
27 down before getting back in" and Michael then asked the client how much he would
28 like to invest in the security.

1 66. In January 2017, Michael sent a text message to another Sztrom client
2 that the “[a]ssets have transferred – look at your ... account” and informed the client
3 that “[w]e will sell the mutual funds today...”.

4 67. David was copied on some of Michael’s text messages, and Michael
5 occasionally forwarded Sztrom client emails to David that had been sent only to
6 Michael and which were therefore outside the APA email system.

7 **E. Defendants’ Promotion of Michael’s Role as an IAR to the Advisory**
8 **Clients Confused and Deceived Them**

9 68. Michael and David shared SWM’s office space and two telephone lines.

10 69. Michael and David collaborated on the content set forth in the SWM
11 website, which could be accessed by existing and prospective Sztrom clients.

12 70. During the relevant time period, SWM’s website stated that the SWM
13 team had more than 35 years of experience “guiding affluent clients and their families
14 through periods of market opportunity and stress.”

15 71. At the relevant time, however, David had only recently been licensed
16 when he associated with APA as an IAR.

17 72. David admitted that the description of the “Sztrom Wealth Management
18 team” on the website referred to both David and Michael.

19 73. The description on SWM’s website gave the false and misleading
20 impression to clients that Michael was associated with APA as an IAR.

21 74. Before SWM was incorporated in or about August 2015, David had no
22 clients of his own.

23 75. During the relevant time period, the Sztrom clients that David advised
24 were largely former clients of Michael’s.

25 76. Michael has admitted that his involvement in acting as an investment
26 adviser to the Sztrom clients was essential, because, without him, “a lot of the clients
27 would have left” and “new clients wanted somebody with experience,” which David
28 lacked.

1 77. Many of the Sztrom clients believed that Michael was their IAR with
2 APA and was permitted to use APA systems to make trades at Schwab.

3 78. While David was associated with APA, several of the Sztrom clients
4 emailed David and Michael and asked to speak with Michael, not David, even though
5 David was the IAR associated with APA.

6 79. While David was associated with APA, many clients addressed
7 communications concerning their accounts specifically to Michael rather than to
8 David.

9 80. While David was associated with APA, the Sztrom clients regularly
10 asked Michael – rather than David – for investment advice and to make trades for
11 them.

12 81. Spitzer spoke with both David and Michael and told them that they
13 could not have the advisory clients thinking that Michael was their IAR, when in fact
14 David was.

15 82. During these conversations, Michael acknowledged to Spitzer that the
16 Sztrom clients were confused about who their IAR was, because many had been
17 Michael's clients for 20 years.

18 83. Although Spitzer explicitly told David and Michael to explain their
19 respective roles to the Sztrom clients, David and Michael did not do so in writing, but
20 David now admits it would have been prudent to have done so. Michael and David
21 claim they informed some clients verbally, however the Sztrom clients continued to
22 be confused.

23 84. By creating the impression that Michael was associated with APA even
24 though he was not, and by failing to correct the Sztrom clients' confusion as to
25 Michael's association with APA, Defendants deceived the clients and breached their
26 fiduciary duties owed to those clients.

27 **F. Michael's Role as Financial Planner Was a Sham**

28 85. After Michael learned that he could not associate with APA, Michael

1 claimed he would act as a financial planner, but this was a ruse.

2 86. The advisory clients did not pay any fees, or enter into any written
3 agreements, for financial planning services.

4 87. Michael has admitted that he did not prepare any formal documentation
5 for financial planning.

6 88. Since its inception, SWM's only source of revenue was the investment
7 advisory fees it received from clients.

8 89. SWM paid Michael and David solely from fees generated for investment
9 advisory work – and not financial planning – because SWM did not collect any fees
10 for financial planning services.

11 90. From January 2016 forward, SWM paid Michael approximately twice as
12 much as David's compensation, even though David was SWM's sole owner at the
13 time, the only IAR associated with APA, and, thus, the only investment adviser
14 permitted to advise clients under APA's aegis. Michael admitted that he was paid
15 twice as much as David because many of the Sztrom clients would not have
16 transferred to APA without Michael.

17 91. Approximately seven months after David associated with APA, in or
18 about June 2016, Michael formed Sztrom Capital and registered it with the state of
19 California to perform financial planning work, but not asset management services.

20 92. Michael formed Sztrom Capital after Spitzer requested that he create an
21 entity for his financial planning business.

22 93. Sztrom Capital, however, was never active, had no revenue and no
23 clients, and did not have a bank account or any assets.

24 94. On June 25, 2019, Michael filed a Notice of Withdrawal From
25 Registration as an Investment Adviser for Sztrom Capital Management, LLC, and
26 stated that the reason for the withdrawal was that the "business was never
27 operational." Michael also stated on the form that there were "no books and records
28 as the business was never operational."

1 **G. Michael Provided Investment Advice to the Sztrom Clients Without**
2 **Compliance Oversight**

3 95. Because Michael was not associated as an IAR with APA, the
4 investment advice he provided to the advisory clients was not subject to supervision
5 by APA or any other entity.

6 96. There was thus no way to ensure that Michael was compliant with
7 federal securities laws and APA's policies and procedures for IARs.

8 97. And there was no way to ensure that Michael's communications with
9 clients could be preserved and reviewed by APA, which federal securities laws and
10 APA required.

11 98. Despite this, while David was associated with APA and Michael had no
12 association with APA, Michael continued to communicate with the Sztrom clients via
13 text message and his e-mail, both of which were outside the APA system.

14 99. Some of these communications regarded investment advice and placing
15 orders for securities transactions.

16 100. Defendants did not disclose to the Sztrom clients that Michael (1) was
17 not associated with APA; (2) was providing those clients investment advice without
18 compliance oversight; and (3) was communicating with them contrary to federal
19 securities laws and APA's requirements for IARs.

20 101. By failing to disclose this material information, Defendants deceived the
21 Sztrom clients and breached their fiduciary duties owed to them.

22 **H. Michael Impersonated David on 38 Phone Calls with Schwab**

23 102. From on or about November 2015 to on or about May 2016, Michael
24 impersonated David and purported to be associated with APA on approximately 38
25 telephone calls with Schwab.

26 103. On these calls, Michael would identify himself as "David Sztrom", and
27 often refer to himself as a representative of APA.

28 104. On several of these calls, Michael, acting as David, discussed block

1 trading, warrants trade allocation, and rebalancing Sztrom client accounts after he had
2 executed trades.

3 105. On several of these calls, Michael, acting as David, sometimes
4 referenced Sztrom client account numbers.

5 106. On at least eight separate occasions – December 2, 2015, December 7,
6 2015, three times on December 28, 2015, December 30, 2015, February 18, 2016, and
7 February 25, 2016 – Michael, acting as David, provided Schwab with the master
8 account number for APA.

9 107. During some of the calls in which Michael impersonated David to
10 Schwab, David was present.

11 108. Impersonating David and purporting to be associated with APA on calls
12 with Schwab enabled Michael to obtain Sztrom client account information that
13 Schwab otherwise would not have provided him.

14 109. For example, on or about February 18, 2016, Michael called Schwab and
15 falsely stated that he was David. Schwab asked Michael to verify APA’s master
16 account number and, after Michael did so, the Schwab representative told Michael
17 that “I see your firm is listed on the account so I’m happy to give you that
18 information” including the client’s account number.

19 110. On or about April 25, 2016, Michael contacted Schwab, identified
20 himself as David, and informed the Schwab representatives that he was trying to
21 place some long trades in a Sztrom client account but the trades were not going
22 through.

23 111. Both Michael and David have admitted under oath that they knew it was
24 wrong for Michael to impersonate David on telephone calls to Schwab.

25 112. On or about May 11, 2016, Schwab contacted Spitzer and informed him
26 that Michael had impersonated David on calls to Schwab.

27 113. As a result of Michael’s impersonation of David to Schwab, on or about
28 June 2016, Schwab terminated its relationship with APA, gave APA 90 days to find a

1 new broker, and immediately stopped honoring David’s access to the Schwab
2 platform.

3 114. Defendants breached their fiduciary duties owed to the Sztrom clients
4 when Michael impersonated David on calls to Schwab, and David allowed him to do
5 so.

6 **I. Defendants Deceived the Sztrom Clients Regarding the Reason For**
7 **SWM/APA Leaving Schwab**

8 115. After Schwab terminated its relationship with APA in June 2016,
9 Defendants did not inform nor provide the Sztrom clients written notice of the true
10 reason for the termination, i.e., Michael’s repeated impersonation of David to
11 Schwab.

12 116. On or about June 2, 2016, Spitzer told Michael that Schwab will be
13 sending a letter to the Sztrom clients that the Schwab “relationship has been
14 terminated” and Spitzer told Michael that he “should probably inform them that
15 neither you nor David can transact business in their behalf.”

16 117. Although David and Michael claimed they told clients the reason for
17 Schwab’s termination, David and Michael failed to fully inform or provide any
18 written notice to the Sztrom clients that Schwab no longer allowed David to access
19 the Schwab platform, including to make trades for clients, due to Michael’s repeated
20 impersonation of David on calls to Schwab.

21 118. Instead, the Sztrom clients first learned that Schwab had terminated its
22 relationship with APA and had immediately prohibited David from utilizing
23 Schwab’s services when Schwab sent a letter on or about June 2, 2016 to all clients at
24 APA (i.e., the Sztrom clients and other APA clients) who were using the Schwab
25 platform.

26 119. The letter informed these clients that it was terminating its relationship
27 with APA “due in part to failure to adhere to Schwab’s process standards.” This
28 letter also informed clients that “[e]ffective immediately, Schwab will no longer

1 honor any authorizations held by David Strom [*sic*] with respect to your Schwab
2 account identified above.”

3 120. According to the letter, clients were required to find a new investment
4 adviser (other than APA) if they wanted Schwab to continue to act as the custodian
5 for their brokerage accounts and, if clients wanted to continue to be advised by APA
6 and SWM, the clients had 90 days to move their funds from Schwab to a new
7 brokerage firm.

8 121. After Schwab sent the letter to the Sztrom clients advising them of the
9 termination, Michael received calls from several Sztrom clients expressing concern
10 and demanding an explanation.

11 122. At least one client emailed only Michael on or about July 20, 2016
12 asking “why I should switch to [another broker] since you use Schwab as well and
13 I’m already set up over there”.

14 123. Michael responded to this client, via email on or about July 21, 2016,
15 stating that the reason for changing brokers was “primarily” that the new clearing
16 broker had “more advanced portfolio management capabilities.”

17 124. Michael’s email response to the client was false and did not provide the
18 real reason for the termination, i.e., Michael’s impersonation of David on calls to
19 Schwab.

20 125. After Schwab terminated its relationship with APA in June 2016, David
21 and Michael verbally informed the Sztrom clients that all Schwab accounts would be
22 moving to a new broker.

23 126. During these conversations, Michael told several clients that Michael
24 had impersonated David on a single call to Schwab.

25 127. Michael failed to disclose that in fact, Michael had impersonated David
26 38 times on calls to Schwab.

27 128. After learning that Schwab had terminated its relationship with APA, at
28 least four Sztrom clients terminated their relationship with Defendants. APA also lost

1 several clients advised by IARs other than Defendants, including Spitzer's largest
2 client.

3 129. By misleading the Sztrom clients as to the real reason for leaving
4 Schwab, Defendants deceived the clients and breached their fiduciary duties owed to
5 those clients.

6 **J. Defendants' Scienter and Failure to Exercise Reasonable Care**

7 130. As investment advisers, Defendants owed clients a fiduciary duty, and
8 were prohibited from making untrue statements of material fact or from omitting to
9 state material facts necessary to make his statements not misleading, employing any
10 device scheme or artifice to defraud, and engaging in any transaction, practice or
11 course of business which operated as a fraud or deceit upon any client.

12 131. During all relevant times, Defendants acted with scienter.

13 132. Michael knowingly or recklessly concealed from clients he advised the
14 fact that he was not associated with APA as an IAR and thus, among other things,
15 was not allowed to use its systems and not subject to its oversight; knowingly or
16 recklessly impersonated his son David in order to communicate with Schwab
17 regarding client information; and knowingly or recklessly provided false information
18 to, and omitted material information from, the Sztrom clients regarding the real
19 reason for leaving the Schwab platform, i.e., Michael's repeated impersonation of
20 David.

21 133. David and SWM (through the actions of Michael and David) knowingly
22 or recklessly permitted Michael to engage in this deceptive conduct; knowingly or
23 recklessly concealed from their clients that Michael was not associated with APA as
24 an IAR and thus, among other things, was not allowed to use its systems and not
25 subject to its oversight; knowingly or recklessly permitted Michael to impersonate
26 David in order to communicate with Schwab regarding client information; and
27 knowingly or recklessly provided false information to, and omitted material
28 information from, the Sztrom clients regarding the reason for leaving the Schwab

1 platform.

2 134. Michael and David have admitted under oath that it was wrong for
3 Michael to impersonate David on the 38 calls to Schwab.

4 135. As the sole owner of SWM during the relevant time period, David's
5 conduct, scienter and negligence are properly imputed to SWM.

6 136. During all relevant times, Defendants failed to exercise reasonable care.

7 137. David and Michael knew, or should have known, that the Sztrom clients
8 were confused about Michael's limited role as financial planner and that many clients
9 instead believed that Michael was their investment adviser, was associated with APA,
10 and was permitted to make trades using APA's systems.

11 138. Michael failed to exercise reasonable care by failing to disclose that he
12 was not associated with APA and could no longer serve as the Sztrom clients' IAR
13 and thus, among other things, was not allowed to use APA's systems and not subject
14 to APA's oversight; by impersonating David in order to communicate with Schwab
15 regarding client information; and by providing materially false information – and
16 omitting material information – regarding the real reason for leaving the Schwab
17 platform, *i.e.*, Michael's repeated impersonation.

18 139. David and SWM failed to exercise reasonable care by allowing Michael
19 to commit the foregoing acts, by failing to disclose that Michael was not associated
20 with APA and could no longer serve as the Sztrom clients' IAR and thus, among
21 other things, was not allowed to use its systems and not subject to its oversight; and
22 by providing materially false information – and omitting material information –
23 regarding the real reason for leaving the Schwab platform, *i.e.*, Michael's repeated
24 impersonation.

25 **K. Materiality**

26 140. Defendants' fraudulent acts were material. A reasonable advisory client
27 would have considered it important to know that Michael was providing investment
28 advice even though he was not associated with APA as an IAR and should not have

1 been using APA's platform or clearing broker.

2 141. A reasonable advisory client would have considered it important to
3 know that Michael was providing investment advice without compliance oversight
4 over his conduct.

5 142. A reasonable advisory client would have considered it important to
6 know that Michael was impersonating David on calls to Schwab, and thus
7 jeopardizing the relationship with Schwab.

8 143. A reasonable investor would have considered it important to know that
9 the real reason APA was leaving Schwab was due to Michael's repeated
10 impersonations of David in calls to Schwab.

11 **L. Defendants' Roles as Investment Advisers**

12 144. During all relevant times, Defendants were investment advisers within
13 the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. 80b-2(a)(11)].

14 145. Michael, in exchange for compensation, engaged in the business of
15 advising others, either directly or through publications and writings, as to the value of
16 securities or as to the advisability of investing in, purchasing or selling securities.
17 During the relevant time period, Michael acted as an unregistered investment adviser.

18 146. SWM, in exchange for compensation, engaged in the business of
19 advising others, either directly or through publications and writings, as to the value of
20 securities or as to the advisability of investing in, purchasing or selling securities.
21 During the relevant time period, SWM acted as an unregistered investment adviser.

22 147. David, in exchange for compensation, engaged in the business of
23 advising others, either directly or through publications and writings, as to the value of
24 securities or as to the advisability of investing in, purchasing or selling securities.
25 During the relevant time period, David acted as an investment adviser associated as
26 an IAR with APA.

27 **M. Aiding and Abetting 204(a) of the Advisers Act and Rule 204-2**

28 148. As an SEC-registered investment adviser during the relevant time

1 period, APA was required to make and keep books and records related to its advisory
2 business.

3 149. Under Advisers Act Section 204(a) and Rule 204-2 thereunder, APA
4 was required to retain “[o]riginals of all written communications received and copies
5 of all written communications sent by such investment adviser relating to: (i) Any
6 recommendation made or proposed to be made and any advice given or proposed to
7 be given; (ii) Any receipt, disbursement or delivery of funds or securities; and (iii)
8 The placing or execution of any order to purchase or sell any security.”

9 150. During the relevant period, APA confirmed these obligations by
10 requiring all supervised persons to use its electronic recordkeeping system, and
11 prohibiting them from using personal e-mail accounts to communicate with clients.

12 151. APA’s compliance manual stated that “all communications with clients
13 or prospects must be sent through APA’s approved systems and devices.”

14 152. David was a supervised person at APA during the relevant period of
15 time.

16 153. APA required all IARs, on an annual basis, to acknowledge that they had
17 received and reviewed APA’s compliance manual.

18 154. David was aware of the requirements because he received the annual
19 compliance manual from APA.

20 155. In addition, the APA memorandum of understanding David signed on or
21 around November 2015 when he associated with APA confirmed the Advisers Act
22 obligations.

23 156. While David was associated with APA, APA failed to retain required
24 documents, including client communications, because Michael and David
25 circumvented the APA email system and used their personal cell phones to
26 correspond with clients by text message outside the APA system.

27 157. For example, from on or about June 2016 to July 2016, David sent a
28 Sztrom client numerous text messages regarding the pricing of certain securities and

1 trades that David had made in the client account.

2 158. For example, in June 2016, the client texted a purchase request for a
3 certain security; David responded by text to confirm the security and, receiving a
4 response from the client, completed the request stating that “[t]he order filled at
5 slightly cheaper”

6 159. On several occasions when Michael was not associated with APA and
7 was not permitted to conduct trades or provide investment advice under APA’s aegis,
8 Michael did so via text message on his personal smartphone.

9 160. As described above, Michael sent various of the Sztrom clients text
10 messages from his personal smartphone regarding brokerage account transactions,
11 including purchases and sales of securities, pricing of certain securities, and
12 brokerage account numbers and transfers.

13 161. David was copied on only some of Michael’s text messages sent from
14 Michael’s personal phone to clients, and Michael occasionally forwarded to David
15 emails that Michael had received from Sztrom clients.

16 162. Despite knowing of the requirements for APA to maintain client records,
17 including of its IARs’ communications with clients, David communicated via text
18 message on his personal smartphone with clients regarding: (i) recommendations
19 made or proposed to be made and advice given or proposed to be given; (ii) receipt,
20 disbursement or delivery of funds or securities; and/or (iii) the placing or execution of
21 any order to purchase or sell any security.

22 163. Despite knowing of these requirements, David made these
23 communications and did not retain them on the APA system.

24 164. Despite knowing of these requirements, David permitted Michael to
25 communicate via text message on his personal smartphone with clients regarding: (i)
26 recommendations made or proposed to be made and advice given or proposed to be
27 given; (ii) receipt, disbursement or delivery of funds or securities; and/or (iii) the
28 placing or execution of any order to purchase or sell any security.

1 165. Despite knowing of these requirements, David allowed Michael to make
2 these communications and did not retain them on the APA system.

3 166. By circumventing APA's email system, APA could neither review nor
4 preserve these client communications for compliance purposes.

5 167. During all relevant times, David acted with scienter.

6 168. By being aware of and acknowledging the retention requirements, David
7 knowingly and/or recklessly provided substantial assistance to APA in its violations
8 of Advisers Act Section 204(a) and Rule 204-2 thereunder.

9 **FIRST CLAIM FOR RELIEF**

10 **Fraud by an Investment Adviser (Knowing or Reckless)**

11 **Violations of Section 206(1) of the Advisers Act**

12 **(Against All Defendants)**

13 169. The SEC realleges and incorporates by reference paragraphs 1 through
14 168 above.

15 170. By managing the advisory clients' securities accounts on a discretionary
16 basis in return for compensation and otherwise performing the acts alleged in this
17 complaint, Defendants acted as investment advisers.

18 171. By engaging in the conduct described above, Defendants, directly or
19 indirectly, by use of the mails or means and instrumentalities of interstate commerce,
20 with scienter, employed devices, schemes or artifices to defraud clients or prospective
21 clients.

22 172. Specifically, among other things, Defendant Michael knowingly,
23 recklessly and/or negligently deceived clients by concealing that he, who clients
24 viewed as their IAR, was unable to act as an IAR at APA, impersonating David on
25 telephone calls with Schwab in order to access the platform, and providing false or
26 misleading information to, and/or omitting material information from, clients
27 regarding the reason for leaving the Schwab platform.

28 173. Defendants David and SWM knowingly and/or deceived clients by

1 concealing that Michael, who clients viewed as their IAR, was unable to act as an
2 IAR associated with APA to them, permitting Michael to impersonate David on
3 telephone calls with Schwab in order to access the platform, and providing false or
4 misleading information to, and/or omitting material information from, their clients
5 regarding the real reason Defendants recommended the clients leave the Schwab
6 platform and move to a new brokerage firm.

7 174. By engaging in the conduct described above, Defendants Michael,
8 David, and SWM, and each of them, directly or indirectly, by use of the mails or
9 means and instrumentalities of interstate commerce, knowingly and/or recklessly
10 employed or are employing devices, schemes or artifices to defraud clients or
11 prospective clients.

12 175. By engaging in the conduct described above, Defendants have violated,
13 and unless enjoined, will continue to violate, Section 206(1) of the Advisers Act, 15
14 U.S.C. § 80b-6(1).

15 **SECOND CLAIM FOR RELIEF**

16 **Fraud by an Investment Adviser (Negligence)**

17 **Violations of Section 206(2) of the Advisers Act**

18 **(Against All Defendants)**

19 176. The SEC realleges and incorporates by reference paragraphs 1 through
20 168 above.

21 177. By managing the Sztrom clients' securities accounts on a discretionary
22 basis in return for compensation and otherwise performing the acts alleged in this
23 complaint, Defendants acted as investment advisers.

24 178. By engaging in the conduct described above, Defendants, directly or
25 indirectly, by use of the mails or means and instrumentalities of interstate commerce,
26 engaged in transactions, practices, or courses of business which operated as a fraud or
27 deceit upon clients or prospective clients.

28 179. Specifically, among other things, Defendant Michael knowingly,

1 recklessly and/or negligently deceived clients by concealing that he, who clients
2 viewed as their IAR, was unable to act as an IAR at APA, impersonating David on
3 telephone calls with Schwab in order to access the platform, and providing false or
4 misleading information to, and/or omitting material information from, clients
5 regarding the reason for leaving the Schwab platform.

6 180. Defendants David and SWM knowingly, recklessly and/or negligently
7 deceived clients by concealing that Michael, who clients viewed as their IAR, was
8 unable to act as an IAR associated with APA to them, permitting Michael to
9 impersonate David on telephone calls with Schwab in order to access the platform,
10 and providing false or misleading information to, and/or omitting material
11 information from, their clients regarding the real reason Defendants recommended
12 the clients leave the Schwab platform and move to a new brokerage firm.

13 181. By engaging in the conduct described above, Defendants Michael,
14 David, and SWM, and each of them, directly or indirectly, by use of the mails or
15 means and instrumentalities of interstate commerce, knowingly, recklessly and/or
16 negligently engaged in or are engaging in transactions, practices, or courses of
17 business which operated as a fraud or deceit upon clients or prospective clients.

18 182. By engaging in the conduct described above, Defendants have violated,
19 and unless enjoined, will continue to violate, Section 206(2) of the Advisers Act, 15
20 U.S.C. §§ 80b-6(2).

21
22 **THIRD CLAIM FOR RELIEF**

23 **Aiding and Abetting Fraud by an Investment Adviser**

24 **Violations of Sections 204 of the Advisers Act and Rule 204-2 Thereunder**

25 **(Against Defendant David Sztrom)**

26 183. The SEC realleges and incorporates by reference paragraphs 1 through
27 168 above.

28 184. Through the acts of APA and Defendants alleged above, APA violated

1 Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17
2 C.F.R. § 275.204-2. Specifically, APA, as a registered investment adviser, failed to
3 make and keep certain books and records related to its advisory business, including,
4 but not limited to communications with the Sztrom clients by Defendants David and
5 Michael Sztrom “relating to: (i) Any recommendation made or proposed to be made
6 and any advice given or proposed to be given; (ii) Any receipt, disbursement or
7 delivery of funds or securities; and (iii) The placing or execution of any order to
8 purchase or sell any security.”

9 185. Through the acts of Defendants, Defendant David knowingly provided
10 substantial assistance to APA’s violation of Section 204 of the Advisers Act, 15
11 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2. Specifically,
12 David, while associated with APA, knowingly communicated, and permitted Michael
13 to communicate, via text message on his personal smartphone with the Sztrom clients
14 regarding: (i) recommendations made or proposed to be made and advice given or
15 proposed to be given; (ii) receipt, disbursement or delivery of funds or securities;
16 and/or (iii) the placing or execution of any order to purchase or sell any security, and
17 did not retain these communications.

18 186. By engaging in the conduct described above and pursuant to Section
19 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d), Defendant David aided and abetted
20 APA’s violations, and unless enjoined, will continue to violate, Sections 204 of the
21 Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2.
22

23 **PRAYER FOR RELIEF**

24 WHEREFORE, the SEC respectfully requests that the Court:

25 **I.**

26 Issue findings of fact and conclusions of law that Defendants committed the
27 alleged violations.
28

1 **II.**

2 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
3 Civil Procedure, permanently enjoining Defendants, and their officers, agents,
4 servants, employees and attorneys, and those persons in active concert or
5 participation with any of them, who receive actual notice of the judgment by personal
6 service or otherwise, and each of them, from violating Sections 206(1) and 206(2) of
7 the Advisers Act [15 U.S.C. §§ 80b-6(1), and 80b-6(2)], and permanently enjoining
8 Defendant David Sztrom from aiding and abetting violations of Section 204 of the
9 Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2.

10 **III.**

11 Order Defendants to pay civil penalties under Section 209(e)(1) of the Advisers
12 Act [15 U.S.C. § 80b-9(e)(1)].

13 **IV.**

14 Retain jurisdiction of this action in accordance with the principles of equity and
15 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
16 all orders and decrees that may be entered, or to entertain any suitable application or
17 motion for additional relief within the jurisdiction of this Court.

18 **V.**

19 Grant such other and further relief as this Court may determine to be just and
20 necessary.

21
22 Dated: January 15, 2021

23 */s/ Michael Sew Hoy*

24 _____
Michael Sew Hoy

25 Attorney for Plaintiff

26 Securities and Exchange Commission
27
28