

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76571 / December 7, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16984

In the Matter of

ALLEN E. KAYE

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Allen E. Kaye (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Respondent violated Section 15(a)(1) of the Exchange Act by acting as an unregistered broker-dealer in connection with his representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondent, an immigration attorney, advised his clients to buy securities through an EB-5 Regional Center and helped effect the purchases. In addition to receiving legal fees from his clients, Respondent received a commission from the Regional Center for each investment he facilitated.

Respondent

2. Allen E. Kaye, age 76, is a resident of Hoboken, New Jersey. He is a licensed attorney specializing in immigration. During the relevant time period, he was a principal of a New York, New York law firm.

Background

3. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest \$1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or \$500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

4. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

5. Various EB-5 Investment Offerers paid commissions to anyone who successfully sold limited partnership interests to new investors.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent Received Commissions for His Clients' EB-5 Investments

6. From at least January 2010 through January 2013, Respondent received commissions from one EB-5 Investment Offerer totaling \$90,000.

7. Respondent performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to his clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondent received transaction-based commissions for his services from the EB-5 Investment Offerer. While some of Respondent's activities overlapped with legal services, for which he received fees, Respondent was paid transaction-based compensation for the activities which effectuated the investor's transactions in EB-5 securities.

8. As a result of the conduct described above, Respondent violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

Disgorgement

Respondent has submitted a sworn Statement of Financial Condition as of April 30, 2015 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Allen E. Kaye's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of \$90,000 and prejudgment interest of \$10,549, but that payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition as of April 30, 2015 and other documents submitted to the Commission.

C. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and prejudgment interest. No other issue

shall be considered in connection with this petition other than whether the financial information provided by Respondent was, in any material respect, fraudulent, misleading, inaccurate, or incomplete. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary