

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79756 / January 9, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4602 / January 9, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32417 / January 9, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17761

In the Matter of

**PETER HERSHMAN,
ESQ.**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(f) AND
203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, SECTIONS
4C AND 15(b) OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTION
9(b) OF THE INVESTMENT
COMPANY ACT OF 1940, AND RULE
102(e) OF THE COMMISSION'S
RULES OF PRACTICE, 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 public administrative and cease-and-desist proceedings be, and hereby are, instituted against Peter Hershman, Esq. ("Respondent" or "Hershman") pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Sections 4C¹ and 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"),

¹ Section 4C provides, in relevant part, that:

Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

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 Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act Of 1940, Sections 4C and 15(b) of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940, and Rule 102(e) of the Commission’s Rules of Practice, 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 finds³ that:

Summary

Peter Hershman is a Connecticut attorney engaged in business and estate planning and tax law. John Rafal is the former President and CEO of Essex Financial Services, Inc. (“Essex”), a dually-registered investment adviser and broker-dealer based in Essex,

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ 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.

Connecticut. From early 2011 to at least April 2013, Hershman and Rafal circumvented the rule regarding payments for client solicitations. Rafal agreed to pay Hershman for the referral of Hershman's wealthy client. The solicitation arrangement, and the resulting conflict of interest, was not disclosed to this client—an elderly widow with accounts valued in excess of \$100 million.

As a result, Hershman has willfully⁴ aided and abetted violations of Sections 206(1) and 206(4) of the Advisers Act and Rule 206(4)-3 thereunder.

Respondent

1. Peter Hershman, age 69, is a resident of Branford, Connecticut. Hershman is licensed to practice law in the State of Connecticut and has been an active member of the Connecticut bar since 1972, engaged in business and estate planning and tax law. Since 2010, he has practiced law at a New Haven, Connecticut law firm. Hershman has never been registered with the Commission in any capacity and does not hold any securities licenses.

Other Relevant Parties

2. John W. Rafal, age 66, is a resident of Old Lyme, Connecticut. He founded Essex, and served as its President from April 2003 until July 2013, when he assumed the role of Vice Chair. From April 2003 until October 2012, Rafal owned 40% of Essex. Hershman has known John Rafal for approximately twenty-five years. Hershman has referred clients of his law firm to Rafal for investment advisory services at Essex and Rafal has referred investment advisory clients to Hershman for legal advice. In October 2012, Rafal sold half of his ownership interest in Essex, becoming a 20% owner until July 2013, when he sold his remaining interest. He was discharged from Essex in November 2015.

3. Essex Financial Services, Inc. is a Connecticut corporation founded in 2003. Essex is dually registered with the Commission as an investment adviser and broker-dealer with its principal place of business in Essex, Connecticut. Essex is required to be registered with the Commission pursuant to Section 203(a) of the Advisers Act and Section 15(b) of the Exchange Act. Essex has been a wholly-owned subsidiary of Essex Savings Bank ("ESB") since July 2013. During the relevant time period, Essex was majority owned by ESB and partially owned by Rafal.

⁴ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

Facts

Rafal and Hershman Made an Undisclosed Referral Fee Arrangement

4. In 2010, Essex, Rafal, and Hershman began to discuss the referral of one of Hershman's clients, an elderly widow with total combined assets in her accounts in excess of \$100 million. Rafal selected himself and two other Essex Financial Advisors⁵ jointly to manage and supervise that client's accounts (the "Referred Accounts").

5. In the early Spring of 2011, before the client had moved any money to be managed by Essex, Hershman and Rafal discussed Hershman receiving part of the asset management fee Essex would receive for managing the client's accounts, if Hershman were to take and pass the appropriate licensing exam.⁶ Rafal and Hershman subsequently agreed that Hershman would receive an annual fee of \$50,000, paid quarterly, from the advisory fees paid by that client on the Referred Accounts.⁷ As part of that arrangement, Hershman agreed to become registered as an investment adviser agent for Essex.

6. The client decided to retain Essex to manage some of her money and to supervise money that was to remain in an account she owned at another adviser. The client executed an Essex Investment Management Agreement on May 4, 2011. The first of the Referred Accounts held at Essex was opened in May 2011 and additional Referred Accounts were opened at Essex in June 2011, August 2012, and November 2012. No disclosure concerning the solicitation fee was made to the client at those times or at any time while the client's assets were managed by Essex.

7. Essex made arrangements for Hershman to take the necessary test to become registered as an investment adviser agent in January 2012. Due to a death in his family, Hershman never took the exam and never became an investment adviser agent. Rafal and Essex knew that Hershman had not taken the test or been registered as an investment adviser agent.

8. Hershman did, however, remain in frequent contact with Rafal throughout 2012 regarding their mutual client. For instance, in June 2012, Hershman informed Rafal of his efforts to have a new \$4 million trust account, which was being established by the client, become an Essex-managed account.

⁵ Essex's term for its investment adviser representatives is "Financial Advisor."

⁶ Section 36b-6(c)(3) of the Connecticut Uniform Securities Act prohibits an investment adviser from paying a referral fee to a person who is not registered as an investment adviser agent under the Connecticut Uniform Securities Act. Essex's internal policies also prohibit Essex from paying a referral fee to an individual if the individual is not registered as an investment adviser agent.

⁷ The annual amount for future years was subject to change based on the value of assets in the Referred Accounts.

9. In July 2012, Hershman and Rafal spoke by telephone about Hershman's first payment pursuant to the referral arrangement. Rafal knew that Hershman was not a registered investment adviser agent and that the referral arrangement had not been disclosed to their mutual client. Nevertheless, Rafal agreed that Essex would pay the invoices forwarded by Hershman to Rafal. As Rafal knew that under the circumstances it would be improper for Essex to pay a referral fee to Hershman, Rafal and Hershman agreed that Hershman would send Essex an invoice in the form of a false bill for legal services.

10. In late July 2012, Hershman emailed Essex a \$25,000 invoice for legal services, representing the first two quarterly payments of 2012 pursuant to the referral arrangement. Rafal asked Hershman to break the bill into two separate \$12,500 invoices, and to send quarterly invoices going forward, explaining that the large amount would look bad on Essex's cash flow. Hershman sent a revised invoice to Essex in the amount of \$12,500.

11. Rafal forwarded the revised invoice to Essex's controller, directing her to pay it. On August 20, 2012, Essex sent Hershman a check in the amount of \$12,500.

12. In or around November 2012, Rafal asked Hershman to send a more detailed invoice for the first quarter of 2012 stating that Essex "needed something to put in the file for [the] auditors." Hershman complied, sending Rafal a detailed, itemized bill for the first quarter of 2012 that purported to reflect time spent working on legal matters for various Essex clients.

13. Hershman also sent Essex an itemized bill in the amount of \$12,690 for the second quarter of 2012, purporting to reflect time spent doing legal work for Essex related to various clients. Rafal forwarded the second quarterly bill to Essex's controller, directing her to pay it. Essex paid the invoice for the second quarter of 2012 on November 26, 2012.

14. On March 21, 2013, Hershman sent an invoice to Rafal in the amount of \$24,570, representing the last two quarters of 2012, once again purporting to reflect legal work for Essex, itemized by client.

15. On April 1, 2013, Hershman emailed Rafal requesting the status of his invoice for the last two quarters of 2012. Rafal directed Essex's controller to mail the check to Hershman and replied to Hershman that the check had been cut and would be sent out later that week.

16. Based on internal complaints at Essex concerning the undisclosed payments to Hershman for soliciting or referring this client to Essex of which Hershman was unaware, Essex directed Rafal not to pay Hershman's invoice for the last two quarters of 2012, and required Rafal to arrange for the return of the previous payments from Hershman.

17. On April 5, 2013, after being directed not to pay Hershman's invoice for the last two quarters of 2012, Rafal used an account owned by an entity that he controlled to pay Hershman \$24,570 – the balance due Hershman on the invoice for the last two quarters of 2012. Rafal concealed the \$24,570 payment from Essex.

18. On or about April 17, 2013, Rafal asked Hershman to return the previous payments made to Essex for the first two quarters of 2012 — totaling \$25,190. Hershman complied. Rafal subsequently paid Hershman \$25,190 from an account owned by an entity that he controlled.

19. On or about April 19, 2013, Hershman received a letter from Essex stating that the referral fee payments previously paid were prohibited by law and asking him to return all of the referral fees which he received to Essex as soon as possible. The letter acknowledged that Hershman had already returned \$25,190.

20. Neither Rafal nor Essex ever informed the advisory client who was owner of the Referred Accounts that the referral fee payments had occurred, or that there had been an agreement to pay Hershman a fee for the referral of the client's accounts to Essex.

21. In or around August 2013, after some former representatives of Essex contacted one of the client's representatives to report that Rafal was under investigation, Hershman disclosed to the client that he had received payments from Essex related to her accounts. At that point, Hershman told the client that he had received payments from Essex for "legal fees" and that he had subsequently returned those payments. Hershman did not disclose that the true nature of the payments was for his referral of her account to Essex, nor did he disclose that he had received replacement payment from Rafal for the returned payments.

22. The solicitation arrangement that Hershman had with Essex and Rafal, and the payments made pursuant to that solicitation arrangement, created a conflict of interest between Essex and Rafal and their advisory client. Essex, Rafal, and Hershman were aware of the conflict but did not disclose it to their mutual client.

Violations

23. As a result of the conduct described above, Hershman willfully aided and abetted Essex's and Rafal's violations of Section 206(1) of the Advisers Act, which prohibits investment advisers from directly or indirectly employing any device, scheme, or artifice to defraud any client or prospective client.

24. As a result of the conduct described above, Hershman willfully aided and abetted Essex's violations of Section 206(4) of the Advisers Act and Rule 206(4)-3 promulgated thereunder, which makes unlawful the payment, directly or indirectly, of a cash fee by an investment adviser required to be registered pursuant to Section 203 of the Advisers Act to a solicitor with respect to solicitation activities unless the disclosure and other requirements of the Rule are met.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Hershman's Offer.

Accordingly, pursuant to Sections 4C and 15(b) of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent Hershman cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(4) of the Advisers Act and Rule 206(4)-3 promulgated thereunder.

B. Respondent Hershman be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Hershman is denied the privilege of appearing or practicing before the Commission as an attorney.

E. Respondent Hershman shall pay disgorgement of \$49,760.00, prejudgment interest of \$4,923.57 and civil penalties of \$37,500.00, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Peter Hershman as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

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