

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10597 / December 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-17550

In the Matter of

TOD A. DITOMMASO,
ESQ.,

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
PURSUANT TO SECTION 8A OF
THE SECURITIES ACT OF 1933**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) as to Tod A. DiTommaso (“Respondent” or “DiTommaso”).

II.

On September 16, 2016, the Commission instituted public administrative proceedings pursuant to Section 8A of the Securities Act against DiTommaso (Rel. No. 10215). A hearing was held on May 10, 2017, after which a June 13, 2017 Initial Decision ordered DiTommaso to pay \$1,475 in disgorgement and a \$1,475 penalty. DiTommaso paid the ordered disgorgement and penalty, but prior to the deadline for the parties to appeal to the Commission, the Commission remanded the case to Chief Judge Murray for reassignment to a new ALJ pursuant to the United States Supreme Court’s decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018).

Respondent has submitted an Offer of Settlement (“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, Respondent consents to the entry of this Order Making Findings Pursuant To Section 8A of the Securities Act of 1933 (“Order”), as set forth below.

Respondent and the Division recognize that, according to *Lucia*, 138 S. Ct. 2044 (2018), Respondent is entitled to a “new hearing” before “another ALJ (or the Commission itself).” 138 S. Ct. at 2055. Respondent knowingly and voluntarily waives any claim or entitlement to such a new hearing before another ALJ or the Commission itself. Respondent also knowingly and voluntarily waives any and all challenges to the administrative proceedings or any and all orders that were issued during or at the conclusion of those proceedings, whether before the ALJ, the Commission, or any court, based upon any alleged or actual defect in the appointment of ALJ Carol Fox Foelak.

III.

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

A. Respondent

1. Tod A. DiTommaso, age 57, is a resident of San Rafael, California. DiTommaso issued ten Rule 144 attorney opinion letters that were prepared by Guy M. Jean-Pierre allowing Microcap Management LLC (“Microcap”), Bayside Realty Holdings LLC (“Bayside”), and Meadpoint Venture Partners, LLC (“Meadpoint”), or shareholders who received their shares from Bayside and Meadpoint, to sell purportedly unrestricted shares of Fusion Pharm, Inc. (“FSPM”) into the market.

B. Findings

2. FSPM is a Nevada corporation with its principal offices in Denver, Colorado. Its business focused on the development, production, and sale of refurbished shipping containers used primarily to grow cannabis. FSPM has never registered an offering of securities under the Securities Act or a class of securities under the Securities Exchange Act of 1934. As of April 4, 2011, FSPM’s stock was quoted on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group Inc. under the symbol FSPM. OTC’s website currently displays a Caveat Emptor/Grey Market warning, illustrated with a skull and crossbones, for FSPM common stock. During the relevant period, Scott M. Dittman, a founder of the company, was FSPM’s chief executive officer (“CEO”), president, and sole director.

3. Microcap, Bayside, and Meadpoint – Nevada limited liability companies – were either original securities holders, purchased stock from an individual shareholder, or were subsequent transferors of the blocks of FSPM securities in the transactions that were the subject of DiTommaso’s opinion letters. William Sears, who had been convicted of securities fraud in 2007, operated the entities, and Dittman was also part owner of Meadpoint. Sears is Dittman’s brother-in-law. Sears and Dittman operated FSPM as business partners and held themselves out as such to numerous individuals and investors. Sears was a *de facto* officer of FSPM.

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.

4. Sears and Dittman sold unregistered FSPM shares into the market through Microcap, Bayside, and Meadpoint, using various financial maneuvers and concealing their associations with the entities that made them affiliates of FSPM; these dealings include the transactions for which DiTommaso issued opinion letters. None of these transactions involved affiliates actually qualified for a Rule 144 exemption, and there is nothing in DiTommaso's filings to support such an assertion.

5. DiTommaso is an attorney licensed by the California State Bar. He issued ten attorney opinion letters relating to ten transactions in FSPM stock. He was paid a total of \$1,475 for the ten letters.

6. Each opinion letter was directed to FSPM's transfer agent, Pacific Stock Transfer, and opined that a stock certificate could be issued without a restrictive legend in that the applicable one-year holding period had passed as the entity involved, either Microcap, Bayside, or Meadpoint, was not an affiliate. The opinion letters enabled the removal of restrictive legends, which allowed the stock to be sold by the three affiliated entities and by investors who purchased from Bayside and Meadpoint. Account statements or confirmations of each entity show that the shares were sold into the market within a short time. There were no Form 144 filings by any of the three entities.

7. DiTommaso's involvement with the opinion letters was as follows: A friend introduced DiTommaso to attorney Guy Jean-Pierre, who explained that he was an in-house lawyer for various entities and would like an outside counsel to prepare attorney opinion letters concerning the companies, and DiTommaso agreed to provide the letters at a discounted price in exchange for Jean-Pierre's "ghostwriting" them. OTC had banned Jean-Pierre from rendering legal opinions and listed him on its Prohibited Attorney List as of April 21, 2010. In July 2011, Jean-Pierre contacted DiTommaso about issuing opinion letters concerning FSPM, and from July 2012 to August 2013, DiTommaso issued the letters that are the subject of this proceeding. Jean-Pierre "ghostwrote" each letter and forwarded supporting documentation, such as certificates from Dittman on behalf of FSPM and the original securities holders that explicitly stated warranties and representations as to the non-affiliate status of the concerned parties. DiTommaso reviewed the supporting documentation to verify the predicate facts for establishing the Rule 144 safe harbor.

8. With the benefit of hindsight, DiTommaso testified that, had he looked at all the documents for all the transactions together, there were "red flags all over the place," and he "would never ever have issued any opinion letters without making sure they are not affiliates." However, he looked at each transaction in isolation.

9. Documents available to DiTommaso before he issued the opinion letters contained indications that the entities might be affiliates of FSPM. Prior to issuing any letters, DiTommaso met with Dittman in July 2011; the email string that Jean-Pierre forwarded to DiTommaso regarding the logistics of the meeting included emails in the middle of the email string from Sears from the email address "wsears@fusionpharminc.com," exposing Sears as an employee and affiliate of FSPM.

10. Sears signed documents on behalf of Microcap and Meadpoint. FSPM stock certificates that Jean-Pierre sent to DiTommaso in connection with opinion letters were signed by Sandra Sears, President. DiTommaso did not ascertain her relationship, if any, to William Sears, and thus did not learn that she is his mother. Sandra Sears also signed a document as managing member of Bayside.

11. DiTommaso violated Sections 5(a) and 5(c) of the Securities Act.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act it is hereby ORDERED that:

A. Respondent DiTommaso shall pay disgorgement of \$1,475 and a civil penalty of \$1,475. DiTommaso previously satisfied these disgorgement and penalty obligations in connection with an Initial Decision issued by Administrative Law Judge Carol Fox Foelak on June 13, 2017.

B. 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