

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85633 / April 12, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5223 / April 12, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33445 / April 12, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19144

In the Matter of

STANLEY S. BAE

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, 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 pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Stanley S. Bae (“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 Administrative and Cease-and-Desist Proceedings pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment

Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, 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

These proceedings arise out of a fraudulent offering scheme and investment advisory fraud. Bae is a former investment adviser representative at advisory firm RGT Capital Management, Ltd. (“RGT”). From at least 2013 through March 2016 (the “relevant period”), Bae directed his clients to invest in First Picks Holdings LLC (“First Picks”)—a private company based in Beverly Hills, California. First Picks owns and operates restaurants in the central coast and Los Angeles areas of California. When marketing these investments, Bae portrayed First Picks as a safe and profitable investment opportunity. Investors were also told that their funds would be used to build new restaurants. As Bae knew or was reckless in not knowing, these representations were false or misleading. In reality, First Picks was struggling financially and lacked cash flows to fund operations, making it a risky investment. It routinely required new investor funds to pay past due financial obligations. Due to its perilous financial condition, First Picks also had to use investor funds to stay afloat—rather than to build new restaurants. Consequently, Bae violated the antifraud provisions of the federal securities laws and breached his fiduciary obligations to his advisory clients.

Respondent

1. Bae is 53 years old and lives in Orange County, California. From August 2011 until March 2016, Bae was an equity partner and Managing Director in RGT’s Irvine, California office. He exercised autonomy in directing his clients’ investments. Bae was registered as an Investment Adviser Representative of RGT.

Other Relevant Entities

2. First Picks is a Delaware limited liability company founded in 2007 and based in Beverly Hills, California. During the relevant period, First Picks was a franchisee of a national restaurant chain and owned and operated 11 restaurants in the Central Coast and Los Angeles areas in California. Neither First Picks nor its securities are registered with the Commission in any capacity.

3. RGT is a Texas limited partnership based in Dallas, Texas. Founded in 1985, RGT provides wealth advisory services to clients and serves as the investment adviser to certain private funds. RGT has been a Commission-registered investment adviser since May 1986. During the

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.

relevant period, RGT operated an additional office in Irvine, California, which was closed in October 2016.

Background

4. Throughout the relevant period, Bae acted as an investment adviser to his clients. In that capacity, Bae was in the business, for compensation, of recommending securities to them that would meet their investment goals. This relationship was memorialized in an investment advisory agreement that was executed between Bae (on behalf of RGT) and each of his clients.

5. As an investment adviser representative, Bae was a fiduciary to his advisory clients. Consequently, he had a fundamental obligation to act in his clients' best interests and to provide investment advice that was in their best interests. He also owed his clients a duty of undivided loyalty and utmost good faith. He was also required to employ reasonable care to avoid misleading his clients and to provide them full and fair disclosure of all material facts.

6. Bae did not fulfill these obligations to his clients. He recommended that they invest in First Picks, which he knew was a risky private investment. When doing so, he knowingly did not disclose that:

- First Picks was financially strapped and was having difficulty satisfying basic obligations, such as payroll and rental payments on its restaurants;
- client funds would be used to meet these basic obligations, rather than to build restaurants as represented; and
- projected investment returns were unrealistic due to First Picks' troubled financial state.

7. For example, Bae recommended that a client ("Client 1") invest in First Picks. When initially presenting the investment, he told Client 1 that the investment would be used to build new restaurants. In a follow-up email, Bae told Client 1 that if First Picks executed as planned, he could expect returns of 3% in Year 1—climbing to 7-12% in Year 3.

8. A second email sent to Client 1 included a presentation that (1) showed that four restaurants were slated to open soon; (2) claimed that the average restaurant generated "over \$390,000 in EBITDA" per year;² and (3) listed a generic set of risk factors—such as unforeseen changes in the economy and instability in the financial markets.

9. Client 1 and a partner invested \$225,000 in a First Picks equity interest based on Bae's recommendation and the information Bae had sent him regarding the investment opportunity.

10. The recommendation was misleading. Bae knew, but did not tell Client 1, that:

² EBITDA is earnings before interest, taxes, depreciation, and amortization—which is a key measure of financial performance.

- First Picks had incurred consistent operating losses;
- First Picks’ outside accountants had expressed concerns about its ability to continue as a going concern;
- First Picks was regularly having trouble paying its bills—and as a result was consistently asking Bae for additional funds to “bail out” the business; and
- First Picks was behind on its new restaurant construction because vendors had threatened to halt construction due to unpaid invoices.

11. The claim that Client 1’s investment funds would be used primarily to fund new-restaurant construction was also misleading. In reality, the funds were used for other purposes—including to pay delinquent vendor invoices, payroll, taxes, insurance, and other ongoing expenses. Bae, who was in regular contact with First Picks’ principals regarding its cash flow needs, knew that the funds were expected to be spent this way.

12. Any reasonable investor would have wanted to know about this information, which demonstrated that First Picks may have trouble surviving—much less paying the promised investment returns and/or expanding its business. By not disclosing it, Bae violated his fiduciary obligations to Client 1.

13. As another example, Bae recommended the First Picks investment to another client (“Client 2”). Client 2 was an advisory client who had retained Bae as his investment adviser in 2006. Client 2 instructed Bae that he wanted to pursue conservative investments.

14. Bae recommended that Client 2 purchase a \$225,000 equity interest in First Picks. Bae portrayed the investment as a safe investment, consistent with Client 2’s conservative investment strategy. Based on Bae’s recommendation, Client 2 made the investment.

15. Bae did not fulfill his obligations to Client 2. He did not disclose that First Picks was a risky investment and that the company was in financial distress.

16. As a result of the conduct described above, Bae willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

17. As a result of the conduct described above, Bae willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Bae shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent Bae 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; and

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.

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 shall pay a civil money penalty in the amount of \$35,000 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). Payment shall be made in the following installments: 1. \$17,500 payable within 14 days of the entry of the Order; and 2. the remaining balance payable within 364 days of the entry of the Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

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 Stanley S. Bae 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 Eric Werner, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, TX 76102.

E. 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.

Vanessa A. Countryman
Acting Secretary