

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86710 / August 20, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5324 / August 20, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33591 / August 20, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19363

In the Matter of

FINANCIAL SHERPA, INC.,
AND JAMES L.
BEYERSDORF

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTIONS 203(e), 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”), and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Financial Sherpa, Inc. (“Financial Sherpa”) and James L. Beyersdorf (“Beyersdorf”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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, Respondents consent 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(e), 203(f) and 203(k) of the Investment Advisers Act of 1934, 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 Respondents' Offers, the Commission finds¹ that

Summary

This proceeding arises from the Respondents' "cherry-picking" of profitable option trades to benefit Beyersdorf. From October 2017 through April 2018, the Respondents disproportionately allocated profitable option trades to Beyersdorf or his wife and allocated unprofitable trades to many of Respondents' clients. As a result, Beyersdorf received \$232,166 in ill-gotten gains. Respondents also made false and misleading statements to their clients and prospective clients in Financial Sherpa's Forms ADV, Part 2A regarding their trading in the same securities as clients, trading at or around the same time as clients, and aggregating trading for multiple client accounts.

Respondents

1. Financial Sherpa, Inc., is a California corporation with its principal place of business in Angels Camp, California. Financial Sherpa is an investment adviser registered with the State of California and manages \$6.7 million in assets for 13 clients.

2. James L. Beyersdorf, age 48, is a resident of Angels Camp, California. Since 2016, Beyersdorf has been the sole employee, owner, officer, and control person of Financial Sherpa. Prior to founding Financial Sherpa, Beyersdorf was affiliated with various broker-dealers and investment advisers for 19 years.

Facts

3. Beyersdorf started Financial Sherpa in 2016. By 2019, Financial Sherpa had \$6.7 million in assets under management and 13 clients, all of whom were individual investors.

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

Respondents managed client accounts on a discretionary basis and charged clients an advisory fee of 1% of their assets under management.

4. Respondents' investment strategy for most of their clients was to invest approximately 90% of a client's assets in exchange traded funds ("ETFs") that were held long term and 10% in short term options trading. Beyersdorf's wife's account, however, did not hold ETF positions and almost exclusively traded options. Respondents' options trading generally involved purchasing SPDR S&P 500 ETF ("SPY") puts and calls within a few days of expiration.

5. Respondents' held their client's brokerage accounts at a registered broker-dealer. In trading the options, Respondents could either place the trade directly in the client accounts or in an omnibus trading account and later that day allocate the block trades to client accounts.

6. From October 2017 through April 2018, Respondents engaged in an undisclosed cherry-picking scheme by allocating profitable option trades to himself or his wife and unprofitable option trades to client accounts. Respondents were able to disproportionately allocate trades by buying options in Financial Sherpa's omnibus trading account in the morning and allocating the trade later in the day, generally just before the market close. If the option price went up between the time of the trade and the time of the allocation, Respondents generally allocated the trade or most of the trade to himself or his wife. In many instances, Respondents realized the profit on the cherry-picked trade in Beyersdorf's or his wife's account by selling the option near the close of trading. If, however, the option price went down between the time of the trade and the time of the allocation, Respondents generally allocated the trade or most of the trade to one or more clients.

7. Respondents' cherry-picking of profitable option trades financially benefited Beyersdorf and his wife and disadvantaged his clients. From October 2017 through April 2018, Beyersdorf and his wife had a net positive 45.2% one-day return on all options trades allocated to their accounts, while the clients had a net negative 45.0% one-day return on all option trades allocated to their account. This difference in the returns is statistically significant. The probability that the disproportionate allocations of profitable trades to Beyersdorf and his wife was due to random changes was less than one in a million. Beyersdorf's ill-gotten gain from the trading in his and his wife's account was \$232,166.

8. In May 2018, the broker-dealer that held the accounts of Respondents' clients terminated its relationship with Financial Sherpa. Respondents had their clients move their accounts to another broker-dealer. This broker-dealer requires investment advisers who use omnibus trading accounts to allocate the trades at the time the omnibus trade is placed. As a result, Respondents were prevented from cherry-picking profitable trades.

9. From October 2017 through April 2018, Respondents also made the following false and misleading statements regarding Respondents' trading in Financial Sherpa's Form ADV, Part 2A filings that were provided to clients:

a. The Form ADV, Part 2A filings stated: “Representatives of [Financial Sherpa] may buy or sell securities for themselves that they also recommend to clients.... Such transactions may create a conflict of interest. [Financial Sherpa] will always document any transactions that could be construed as conflicts of interest and will never engage in trading that operates to the client’s disadvantage when similar securities are being bought or sold.” This statement was false in that Respondents had Beyersdorf, his wife, and his clients all traded in short term SPY options, but disproportionately allocated the profitable trades to Beyersdorf and his wife and the unprofitable ones to the clients.

b. The Form ADV, Part 2A filings stated: “From time to time, representatives of [Financial Sherpa] may buy or sell securities for themselves at or around the same time as clients.... Such transactions may create a conflict of interest; however, [Financial Sherpa] will never engage in trading that operates to the client’s disadvantage if representatives of [Financial Sherpa] buy or sell securities at or around the same time as clients.” This statement was false in that Respondents traded for Beyersdorf and his wife and for his clients at or around the same time but disproportionately allocated the profitable trades to Beyersdorf and his wife and the unprofitable ones to the clients.

c. The Form ADV, Part 2A filings stated: “If [Financial Sherpa] buys or sells the same securities on behalf of more than one client, then it may... aggregate or bunch such securities in a single transaction for multiple clients in order to seek more favorable prices, lower brokerage commissions, or more efficient execution. In such case, [Financial Sherpa] would place an aggregate order with the broker on behalf of all such clients in order to ensure fairness for all clients; provided, however, that such trades would be reviewed periodically to ensure that accounts are not systematically disadvantaged by this policy.” This statement was false in that Respondents used aggregated orders in disproportionately allocating profitable trades to Beyersdorf and his wife and unprofitable trades to the clients and did not conduct periodic reviews of the aggregated trades to ensure that clients were not being systematically disadvantaged by the aggregated trading.

Violations

10. As a result of the conduct described above, Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit any person in connection with the purchase or sale of any security from (1) employing any deceptive device, scheme, or artifice to defraud; (2) making any false or misleading statement; or (3) engaging in any act, practice, or course of business that operates as a fraud on any person.

11. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit an investment adviser from (1) employing any device, scheme, or artifice to defraud any client or prospective client; and (2) engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client.

IV.

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

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

1. Financial Sherpa and Beyersdorf cease and desist from committing or causing any violations and any future violations Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act.

2. Beyersdorf 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.

3. 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.

4. Respondents shall, within 14 days of the entry of this Order, pay, jointly and severally, disgorgement of \$232,166, prejudgment interest of \$15,268, and a civil penalty of \$189,427 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment of the disgorgement and prejudgment interest is not

made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. 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 Respondents' names as Respondents 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 Alka Patel, Associate Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 444 S. Flower St., Suite 900, Los Angeles, California 90071.

5. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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
Secretary