

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

HARD COPY

*In re the Application of*

*Frederick Shultz and Blair Mielke*

*For review of action taken by FINRA*

*Admin. Proc. File No. 3-16022*



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**REPLY BRIEF OF BLAIR MIELKE  
IN SUPPORT OF APPLICATION FOR REVIEW**

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Counsel for Blair Mielke  
and Frederick Shultz

Dated: December 8, 2014

**II. FINRA’s brief mischaracterizes statements in Applicant’s initial brief.**

FINRA’s brief states: “Mielke and Shultz admit that Tuberville advised them that Brookstone Securities would need to approve the offering materials for MIP before Mielke and Shultz would be permitted to sell membership interests through the firm. Applicants Br. at 7.” In fact, page 7 of the Applicant’s brief states the following: “Tuberville said Brookstone would need to review and approve the offering materials for Midwest before Brookstone would sell Midwest.” Thus, Applicant’s brief only states that Brookstone would need to approve the offering materials needed to be approved before *Brookstone* would sell the investment, not that the offering materials needed be approved before *Mielke and Shultz* could sell the investment.

In addition, footnote 19 of the FINRA brief states: “Mielke and Shultz do not dispute that the statements on the Outside Business Interests Schedules were false. Applicants Br. at 14.” There is no admission on page 14 (or elsewhere) of the Applicants Brief that the statements on the Outside Business Interests Schedules were false. The closest thing to such a statement on page 14 is this statement: “Any problem with the compliance questionnaires must be considered in light of the ongoing communications between Midwest and Brookstone.” Thus, the Applicants’ brief does not admit the statements on the Outside Business Schedules were false.

**III. FINRA Brief fails to address adequately important area of Mielke's testimony.**

The FINRA brief fails to address a crucial part of Mielke's testimony. Mielke testified that Brookstone was aware Midwest was selling the investments before Brookstone approved the sale of the investment through Brookstone. R. 1913-1914. A version of the private placement memorandum received by Brookstone supports Mielke's testimony, as it states Midwest was already selling the investment. R. 1907, 6522 (RX-115).<sup>3</sup> Another version of the private placement memorandum provided to Brookstone states Midwest had a book value of over Three Million Dollars (\$3,000,000) and nineteen (19) investors. R. 6561. Mielke had a conversation with Brookstone in January 2008 that included a discussion of who had already invested in Midwest. R. 1920-1921. Thus, the approval by Brookstone of a private placement memorandum was only to approve sales by other Brookstone representatives; sales by Mielke and Shultz had already been approved by Brookstone.

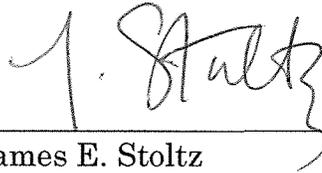
This issue is the heart of this case. Mielke had received approval from Brookstone to sell the Midwest investment long before approval of the private placement memorandum. Approval of the private placement memorandum was only to facilitate sales by Brookstone.

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<sup>3</sup> Page 9 of the Applicant's first brief on this issue contains an incorrect page citation. The citation at the end of the first full paragraph on that page should cite page number 6522, not page 6601.

**IV. Sanctions are excessive and oppressive.**

As noted in the FINRA Brief, Section 19 of the Exchange Act gives the Commission the right to alter sanctions that are oppressive or excessive. As stated in the Applicant's initial brief, there are numerous factors in FINRA's sanctions guidelines which should mitigate severity of the sanctions imposed here. There is no evidence Mielke sought to defraud or harm any investor (or did actually harm or defraud any investor) and ample evidence he sought to comply with FINRA rules. As such, a bar is an excessive sanction.



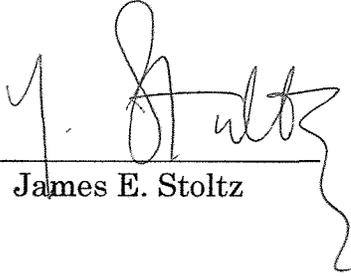
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**CERTIFICATE OF SERVICE**

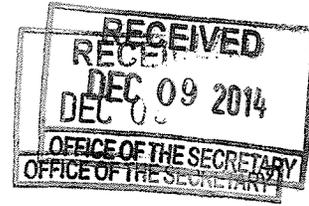
I hereby certify that on the 8<sup>th</sup> day of December, 2014, I served a copy of this document on the following by Federal Express at the following address and sent a copy by facsimile to the same at 202.728.8264.

Jante C. Turner  
FINRA  
Office of the General Counsel  
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December 8, 2014

**VIA OVERNIGHT DELIVERY**

Office of the Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Mail Stop 1090 –Room 10915  
Washington, DC 20549

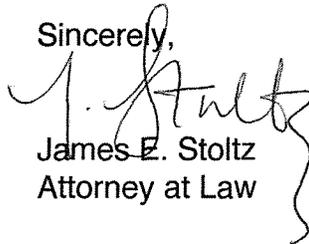
*Re: Application for Review by Blair Mielke and Frederick Shultz*

To whom it may concern:

Please find enclosed original signed version of the Reply Brief of Blair Mielke. These documents were filed with the SEC on December 8, 2014 by facsimile to the following number: 202.772.9324. The document has also been faxed to the Office of the General Counsel of the FINRA and is also being sent to that office by overnight delivery.

Thank you for your cooperation in this matter.

Sincerely,



James E. Stoltz  
Attorney at Law

Enclosures

Cc: FINRA (by overnight delivery)