

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Courts for the District of Columbia

U.S. Securities and Exchange Commission,
100 F Street, N.E.
Washington, DC 20549

Applicant,

v.

James K. McKillop,

Los Angeles, CA
(310) 888-1870

Defendant.

Case: 1:19-mc-00043
Assigned To : Walton, Reggie B.
Assign. Date : 3/26/2019
Description: Misc.

**APPLICATION OF THE SECURITIES AND EXCHANGE COMMISSION FOR AN
ORDER UNDER SECTION 21(e)(1) OF THE SECURITIES EXCHANGE ACT OF 1934
ENFORCING COMPLIANCE WITH ADMINISTRATIVE ORDER**

Applicant Securities and Exchange Commission (“SEC” or “Commission”) hereby applies to the Court for an order pursuant to Section 21(e)(1) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u(e)(1), requiring compliance by Respondent, James K. McKillop (“McKillop”), from Los Angeles, California, with a final SEC administrative order entered against him on December 12, 2000.

In support, the Commission states as follows:

INTRODUCTION AND SUMMARY

1. By this Application, the Commission seeks to enforce its order entered December 12, 2000, entitled *In the Matter of James K. McKillop d/b/a BKL BrokerLink Capital Research and Communications*, Exchange Act Release No. 43712 (hereafter, the “2000 Order”). A copy of the 2000 Order is attached as Exhibit 1.

2. The 2000 Order, in part, found that McKillop engaged in the business of effecting interstate transactions in connection with the sale of stocks in public shells for the accounts of others for compensation in the form of stock and/or cash. Specifically, the 2000 Order found that McKillop assisted in the sale of twenty-one public shell companies from at least January 1999 and continuing in 2000 by, among other things, bringing purchasers and sellers together, screening potential purchasers, meeting with potential purchasers, helping negotiate fees, and acting as an intermediary.

3. In the 2000 Order, the Commission, pursuant to Sections 15(b)(4) and 21C of the Exchange Act, censured McKillop, and ordered him to cease and desist from committing or causing any violation or future violation of Section 15(a) of the Exchange Act.

4. McKillop violated the 2000 Order by acting as an unregistered broker in violation of Section 15(a) of the Exchange Act.

PARTIES

5. **The Commission** is an agency of the United States Government. The Commission's principal office is located at 100 F Street, N.E., Washington, DC 20549.

6. **James K. McKillop**, age 59, resides in Los Angeles, California. In 1994, McKillop (then known as James Maserati) pled guilty to one count of conspiracy to commit mail fraud related to a debt consolidation solicitation fraud.¹

OTHER RELEVANT PERSONS

7. **Tiber Creek Corp.** ("Tiber Creek"), a Delaware corporation with its principal place of business in Beverly Hills, California, assists companies in going public. Tiber Creek has never been registered with the Commission in any capacity.

¹ *U.S. v. James Maserati*, 2:94-cr-809 (C.D. Cal. 1994).

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27(a) of the Exchange Act, 15 U.S.C. §§ 78u(e)(1) and 78aa(a).

9. Venue lies in this Court pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the acts and transactions alleged in this Complaint occurred within the District of Columbia and were effected, directly or indirectly, by making the use of means or instrumentalities of transportation or communication in interstate commerce, or the mails. For example, filings for public shells of which McKillop was a director, officer, and fifty per cent shareholder were electronically filed with the Commission, which is headquartered in the District of Columbia.

10. McKillop, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business described in this Complaint.

THE COMMISSION'S 2000 ORDER

11. On December 12, 2000, the Commission issued the 2000 Order under the Exchange Act and rules thereunder. Specifically, the 2000 Order was instituted against McKillop as the Respondent, with his consent, pursuant to Sections 15(b)(4) and 21C of the Exchange Act, 15 U.S.C. §§ 78o(b)(4) and 78u-3.

12. The 2000 Order, in part, found:

- a. McKillop, from Los Angeles, California, was the sole owner of BKL BrokerLink Capital Research and Communications. Ex. 1 ¶ A.
- b. From at least January 1999 and continuing in 2000, McKillop assisted in the sale of twenty-one public shell companies, not only bringing purchasers and

sellers together, but also screening potential purchasers, meeting with potential purchasers, helping negotiate fees, and generally acting as an intermediary. Ex. 1 ¶ D.

- c. McKillop solicited purchasers of shell companies through an Internet website, www.bkl.com, The Wall Street Journal, and other media. The website, which McKillop drafted, stated that BKL BrokerLink “primarily assist(s) companies in going public quickly via a merger with a public shell.” The website offered advice regarding alternative methods for privately held companies to become public, including merging with an existing shell company. The website instructed potential purchasers to send McKillop an executive summary or business plan or to fill out a questionnaire provided on the website. After screening potential purchasers, McKillop referred them to a securities lawyer who created public shells for this purpose. Most of the shells were Delaware corporations with 5,000,000 shares issued and outstanding, with no operating histories, no liabilities and no material assets. McKillop negotiated the prices offered for some of the public shells. McKillop earned one third of the first \$100,000 in fees and one half of all amounts over \$100,000. Ex. 1 ¶ E.

13. The Commission, deeming remedial sanctions to be “appropriate and in the public interest,” ordered that “[p]ursuant to Section 21C of the Exchange Act, [McKillop] cease and desist from committing or causing any violation or future violation of Section 15(a) of the Exchange Act ...” Ex. 1 ¶ III.B.

14. The 2000 Order remains in effect.

MCKILLOP'S VIOLATION OF THE 2000 ORDER

15. Since at least July 2012, Tiber Creek Corp. ("Tiber Creek") was a business operated by McKillop and his business associate James M. Cassidy that assisted private companies in going public. As part of that business, Tiber Creek created and maintained an inventory of corporations, for which McKillop and Cassidy served as the officers, directors, and fifty percent shareholders. Tiber Creek registered those corporations with the Commission and thereby created public shell companies. Tiber Creek, through McKillop, solicited private operating companies and charged them a fee for providing services that, in most instances, resulted in the private company gaining control of one of Tiber Creek's public shells. In these instances, Tiber Creek customers often were able to take their private companies public without conducting a traditional initial public offering. Since July 2012, McKillop, along with Cassidy and Tiber Creek, effected securities transactions for more than one hundred public shell companies.

16. Tiber Creek was created to provide services to assist private companies in going public. As part of the services it offered, Tiber Creek, by and through McKillop, created and maintained an inventory of public shell companies that it made available to its customers. McKillop, on behalf of Tiber Creek, solicited potential customers through an advertising program including search engine optimization and ads, a collection of websites,² videos, written solicitations, classified advertisements, and a paid referral network.

17. To engage Tiber Creek, and take advantage of its services, private operating companies paid a per-transaction fee. In exchange for this fee, McKillop and Cassidy effected securities transactions between one of its public shells and the private operating company, in a

² Tiber Creek owned and maintained numerous websites, such as publicshell-publicshells.com, that solicited contact information which Tiber Creek used for sales leads.

process referred to by Tiber Creek as a transfer of control. Tiber Creek's fee, usually \$100,000, was not eligible for payment, under its standard agreement, unless it completed the transfer of a public shell to a customer.

18. McKillop's compensation was drawn exclusively from the proceeds of Tiber Creek. When McKillop redeemed his shares in the public shell during the sale transaction, he received no consideration except for the customer's fee paid to Tiber Creek.

19. Tiber Creek provided certain advice as to the merits of potential customers' investment in a public shell. For example, it was routinely recommended to Tiber Creek customers that they recapitalize as Delaware public reporting shells and recommended that customers issue themselves five million shares of the public shell to maintain a minimum share price. McKillop, on behalf of Tiber Creek, discussed with customers their respective needs, such as anticipated accounting and investor relation services. McKillop did not perform any substantial duties on behalf of any particular public shell. His position with the public shells was exclusively in connection with services rendered by Tiber Creek.

20. After the customer took control of the public shell, Tiber Creek, for at least certain clients, provided investor relations services and introductions to investment bankers and broker-dealers. Tiber Creek assisted customers with, among other things, filing registration statements, obtaining and preparing filings for a market maker, and fulfilling other financial reporting requirements to comply with rules established by the Commission and the Public Company Accounting Oversight Board.

21. During this time, McKillop was not, and is not currently, registered with the Commission as a broker or in any other capacity.

CLAIM FOR RELIEF

22. The Commission re-alleges and restates paragraphs 1 through 21 above.

23. The SEC brings this Application pursuant to authority conferred on it by Sections 21(d)(5) and 21(e)(1) of the Exchange Act [15 U.S.C. §§ 78u(d)(5) and 78u(e)(1)]. In particular, Section 21(e)(1) of the Exchange Act provides that, upon application of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding any person to comply with the provisions of the Exchange Act and the rules and regulations thereunder, and with Commission administrative orders instituted pursuant to the Exchange Act. “Section 21(e) of the Exchange Act expressly permits the Commission to seek enforcement of its orders by making application to the district court.” *SEC v. McCarthy*, 322 F.3d 650, 655 (9th Cir. 2003) (citing 15 U.S.C. § 78u(e)); *see also SEC v. Vittor*, 323 F.3d 930, 935 (11th Cir. 2003) (same).

24. Section 21(e) authorizes summary proceedings ““without formal pleadings, on short notice, without summons and complaints, generally on affidavits, and sometimes even *ex parte*,”” *McCarthy*, 322 F.3d at 655 (quoting *New Hampshire Fire Ins. Co. v. Scanlon*, 362 U.S. 404, 406-07 (1960)), because, “[b]y the time a § 21(e) application is filed by the Commission, the time and opportunity for adjudicating the merits of the claim have been exhausted; all that is left to do is enforce the order,” *id.* at 658; *see also SEC v. Gerasimowicz*, 9 F. Supp. 3d 378, 381 (S.D.N.Y. 2014) (“[L]itigants are precluded from challenging the validity of SEC orders in enforcement proceedings initiated pursuant to . . . Section 21(e)(1) of the Exchange Act.”); *SEC v. Securities Inv’r Protection Corp.*, 842 F. Supp. 2d 321, 326 (D.D.C. 2012) (following holding in *McCarthy* “that Congress’ use of the word ‘application’ in Section 21(e) of the Securities Exchange Act permitted the use of summary proceedings to enforce an order of the

Commission").

25. McKillop's Consent to the entry of an order in this proceeding is attached as Exhibit 2.

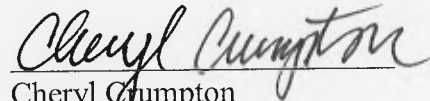
26. A Proposed Order is attached as Exhibit 3.

WHEREFORE, the Commission respectfully requests that the Court:

- (A) Enter an Order under Section 21(e) of the Exchange Act, in the form submitted, directing McKillop to comply with the Final Order; and
- (B) Retain jurisdiction over this matter for the purpose of enforcing the Order.

Dated: March 26, 2019

Respectfully Submitted,



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EXHIBIT 1



UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

IT IS HEREBY ATTESTED THAT:

Attached is a copy of ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 15(b)(4) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER, dated December 12, 2000, in the matter of James K. McKillop d/b/a BKL BrokerLink Capital Research and Communications, Administrative Proceeding File No. 3-10385.

This certified document was produced from the files of this Commission on

11/15/2018

Date

It is hereby certified that the Secretary of the U.S. Securities and Exchange Commission, Washington, DC, which Commission was created by the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is official custodian of the records and files of said Commission and was such official custodian at the time of executing the above attestation.

For the Commission

Brent A. Fife

Secretary



U.S. Securities and Exchange Commission

UNITED STATES OF AMERICA Before the SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 43712 / December 12, 2000

ADMINISTRATIVE PROCEEDING
File No. 3-10385

In the Matter of James K. McKillop d/b/a BKL BrokerLink Capital Research and Communications Respondent.	ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 15(b)(4) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER
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I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against James K. McKillop d/b/a BKL BrokerLink Capital Research and Communications ("Respondent").

In anticipation of the institution of these administrative proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has accepted. Solely for the purposes of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying the findings herein, except for the jurisdiction of the Commission over him and over the subject matter of these proceedings, which are admitted, Respondent has consented to the entry of the findings and the imposition of the remedial sanctions and cease-and-desist order as set forth below.

II.

On the basis of this Order and the Offer submitted by Respondent, the Commission makes the following findings:

A. James K. McKillop ("McKillop") d/b/a/ BKL BrokerLink Capital Research and Communications ("BKL BrokerLink"), age 41, of Los Angeles, California, is the sole owner of BKL BrokerLink. McKillop was associated with a broker-dealer for fifteen months from approximately 1984 to 1986.

B. BKL BrokerLink is an investment banking and public relations consulting firm. It derives over 90 percent of its income from introducing private companies to a securities lawyer who takes the companies public via a reverse merger with a public shell.

C. Respondent engaged in the business of effecting interstate transactions in connection with the sale of stocks in public shells for the accounts of others for compensation in the form of stock and/or cash.

D. From at least January 1999 and continuing in 2000, Respondent assisted in the sale of twenty-one public shell companies, earning approximately \$992,000 plus 125,000 shares of stock. Respondent not only brought purchasers and sellers together, he also screened potential purchasers, met with potential purchasers, helped negotiate fees and generally acted as an intermediary.

E. Respondent solicited purchasers of shell companies through an Internet website, www.bkl.com, The Wall Street Journal, and other media. The website, which Respondent drafted, stated that BKL BrokerLink "primarily assist(s) companies in going public quickly via a merger with a public shell." The website offered advice regarding alternative methods for privately held companies to become public, including merging with an existing shell company. The website instructed potential purchasers to send Respondent an executive summary or business plan or to fill out a questionnaire provided on the website. After screening potential purchasers, Respondent referred them to a securities lawyer who created public shells for this purpose. Most of the shells were Delaware corporations with 5,000,000 shares issued and outstanding, with no operating histories, no liabilities and no material assets. Respondent negotiated the prices offered for some of the public shells, ranging from approximately \$100,000 to \$250,000, plus attorneys fees. Respondent earned one third of the first \$100,000 in fees and one half of all amounts over \$100,000.

F. Section 15(a) of the Exchange Act requires that any person or entity engaged in the interstate business of effecting securities transactions for the accounts of others must register with the Commission as a broker or dealer or, if a natural person, be associated with an entity that is registered with the Commission as a broker or dealer. By virtue of the conduct described above, Respondent willfully violated Section 15(a) of the Exchange Act.

III.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offer submitted by Respondent and to impose the sanctions specified therein.

Accordingly, IT IS ORDERED that:

A. Pursuant to Section 15(b)(4) of the Exchange Act, Respondent be censured;

B. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violation or future violation of Section 15(a) of the Exchange Act; and

C. Pursuant to Section 21B and Section 15(b)(4) of the Exchange Act, within thirty (30) days of the entry of this Order, Respondent shall pay a civil money penalty in the amount of \$10,000 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of the Comptroller, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter which identifies James K. McKillop d/b/a BKL BrokerLink Capital Research and Communications as the Respondent in this proceeding, the file number of

the proceeding, a copy of which cover letter and money order or check shall be sent to Donald M. Hoerl, Associate Regional Director, Securities and Exchange Commission, Central Regional Office, 1801 California Street, Suite 4800, Denver, Colorado 80202.

By the Commission.

Jonathan G. Katz
Secretary

<http://www.sec.gov/litigation/admin/34-43712.htm>

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Modified:12/15/2000