

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86540 / August 1, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5313 / August 1, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33582 / August 1, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19301

In the Matter of

KENDALL J. GROOM, CPA,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) 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 15(b) 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 Kendall J. Groom (“Groom” or “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 15(b) of the Securities and 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

This case involves misappropriation of investment advisory client funds by Groom, who at all relevant times was an investment adviser representative of a registered investment adviser and a registered representative of a registered broker-dealer. In January 2012, Groom became the trustee for two related trusts that had approximately \$6.6 million in assets. Groom also managed the investments for the trusts. From March 2012 through January 2016, Groom diverted approximately \$460,000 of the trusts’ assets to brokerage, advisory, and bank accounts that he owned or controlled. This amount exceeded his disclosed trustee fees.

Respondent

1. Kendall J. Groom, age 69, resides in Fresno, California. From 2000 to December 2016, he was an investment adviser representative of an SEC registered investment adviser (“Investment Adviser Firm”). In addition, from 1999 to December 2016, he was a registered representative of Investment Adviser Firm’s affiliated broker-dealer, which is also registered with the Commission. Currently, Groom is a registered and investment adviser representative of a dually SEC-registered broker-dealer and investment adviser. Groom is also a certified public accountant licensed by the state of California since 1981. He provides accounting services through an accounting firm in which he owns a minority interest (“Accounting Firm”).

Background

2. In 1990, a married couple, who were long-time tax clients of Groom, created two trusts for estate planning purposes (“Trust A” and “Trust B”, collectively, the “Trusts”). When the last surviving spouse (the “Surviving Spouse”) died in January 2012, Groom became the trustee, as specified by the Trusts.

3. Groom acted as an investment adviser for the Trusts. The Trusts’ governing documents gave Groom discretionary authority to buy and sell securities for the Trusts, allowed Groom to receive fair and reasonable compensation for services rendered as a fiduciary to the Trusts, including all decisions regarding selecting, retaining, and selling trust assets, which included securities, and allowed Groom to set his own fees. Groom set his fee as a percentage of

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.

the total amount of assets in the Trusts, based on a national bank's published, undiscounted rate for providing trustee services.

4. In January 2012, Trust A held securities worth approximately \$2.7 million and Trust B held securities worth approximately \$3.2 million, among other assets. In March 2012, Groom liquidated all of these securities. In October 2012, Groom made lump-sum distributions to five individuals named as beneficiaries of Trust A as specified by the trust. The remaining beneficiaries of Trust A and the beneficiaries of Trust B (the "Beneficiaries") were non-profit, charitable organizations. The Beneficiaries were to receive equal shares of the remainder of each trust's assets.

Trust Accountings and Initial Distributions

5. On May 17, 2013, Groom's attorney sent each of the Beneficiaries a letter and an accounting prepared by Accounting Firm under Groom's supervision. The letter explained that the accounting showed each trust's assets at the time Groom became trustee, expenses paid, income received, and the current value of trust assets.

6. The accountings specified the planned distributions to the Beneficiaries, \$386,774 for each Beneficiary of Trust A and \$687,707 for each Beneficiary of Trust B. The accountings also itemized reserves for trust administration expenses, estimated income taxes, and trustee fees payable to Groom.

7. The letter requested that each of the Beneficiaries waive a formal accounting and court approval of the planned distributions from the Trusts to allow for an immediate distribution, subject to a reserve for taxes and administrative expenses. The letter also stated that any excess funds from each trust would be distributed proportionately among the Beneficiaries of that trust.

8. Each of the Beneficiaries waived the formal accounting and court administration for the Trusts.

9. By August 2013, Groom distributed the full amount disclosed on the accounting to all of the Beneficiaries of Trust A. In October 2013, Groom transferred all of the funds remaining in Trust A's bank account to Trust B's bank account.

10. Between July 2013 and January 2014, Groom distributed the full amount specified in the accounting to one beneficiary of Trust B, \$650,000 to another beneficiary of Trust B ("Beneficiary A"), and \$625,000 to each of the three remaining beneficiaries of Trust B. Beneficiary A and the three remaining Beneficiaries received \$37,707 and \$62,707 less than the amounts specified in the accounting, respectively.

Tax Refunds Owed to Trusts and Final Tax Returns

11. After Groom distributed the accountings to the Beneficiaries, he prepared and filed income tax returns for Surviving Spouse and both Trusts. The tax returns for tax year 2012

reflected \$177,000 in tax refunds due. Tax returns for subsequent years reflected that the Trusts had no tax liability.

Misappropriation of Trust Assets

12. Beginning in March 2012, two months after he became trustee for the Trusts, through January 2016, Groom diverted a total of approximately \$460,000 from the Trusts. This amount exceeds the trustee fees Groom disclosed on the accountings he provided to the Beneficiaries. Groom deposited most of this money in his personal bank and brokerage accounts and an advisory account owned by Client A (“Client A’s Account”). At all relevant times, Investment Adviser Firm was the investment adviser for Client A’s Account and Groom was the investment adviser representative.

13. Groom controlled Client A’s Account. He directed the delivery of Client A’s account statements to his office address, he was the investment adviser representative for Client A’s Account, and he was the transfer on death beneficiary of the account. Between March 2012 and October 2016, Groom directed all deposits to and disbursements from the account. None of the funds deposited into Client A’s Account belonged to Client A. Client A was not a beneficiary of the Trusts, nor did Client A provide services to the Trusts.

14. The funds Groom diverted from the Trusts primarily included tax refunds owed to the Trusts and funds held in Trust B’s advisory and bank accounts.

15. For example, Groom diverted approximately \$117,000 of tax refunds for tax year 2012 owed to the Trusts. Specifically, he deposited the Trusts’ federal tax refunds in Accounting Firm’s bank account, then transferred those funds to his personal bank account, and ultimately deposited Trust A’s federal tax refund into Client A’s Account. In addition, Groom deposited Surviving Spouse’s state tax refund, which was an asset of Trust B, into his personal bank account. Finally, he never deposited the Trusts’ state tax refunds for tax year 2012 into any Trust account. Groom did not prepare updated accountings reflecting the release of the tax reserves, receipt of the tax refunds, and the corresponding additional funds available for distribution to the Beneficiaries.

16. In March 2012, Groom wrote a check to Accounting Firm from a trust bank account for \$16,982.75. These funds were included in the accountings for the Trusts as decedent expenses. Accounting Firm never billed Surviving Spouse or the Trusts for these expenses.

17. In November 2013, Groom opened an advisory account in the name of Trust B with \$244,000 from Trust B’s bank account. Investment Adviser Firm was the investment adviser for this account and Groom was the investment adviser representative. Groom received approximately \$4,000 in advisory fees for serving as the investment adviser representative for this account in addition to charging trustee fees for managing these assets. Groom transferred approximately \$11,000 from Trust B’s advisory account to his brokerage account and Client A’s Account. In September 2015, Groom liquidated Trust B’s advisory account and transferred the \$232,010 in proceeds to Trust B’s bank account.

18. Ultimately, Groom transferred all of the remaining funds from Trust B's bank account to his personal bank account.

Misrepresentations to Beneficiary A and Investment Adviser Firm

19. In December 2015, Beneficiary A asked Groom about the remaining distribution from Trust B. Groom told Beneficiary A that its final distribution from Trust B, if any, would be approximately \$1,000 and would not be paid until after the statute for collections expired. Groom knew or was reckless in not knowing that Beneficiary A had only received \$650,000 of the \$687,707 distribution disclosed on the accounting. Groom also knew or was reckless in not knowing that this statement was false because the amount remaining in Trust B's bank account together with the funds Groom had already diverted were well in excess of Trust B's remaining liabilities.

20. In or around August 2016, Investment Adviser Firm's custodian raised concerns about some of Groom's transactions in Client A's Account. As a result, Investment Adviser Firm asked Groom to provide information about accounts for which he served as trustee.

21. In response, Groom told Investment Adviser Firm that he served as the trustee for Trust B and provided the accounting for Trust B. Groom told Investment Adviser Firm that he had not been paid all of the trustee fees reflected on the accounting for Trust B.

22. Groom also gave Investment Adviser Firm a written narrative in which Groom stated that the Beneficiaries had been paid in full.

23. At the time, Groom knew or was reckless in not knowing that his statements to Investment Adviser Firm were false or misleading. Groom's statement that he had not been paid all trustee fees for Trust B was false or misleading because he took funds that exceeded his disclosed trustee fees. Groom had not paid four of the Beneficiaries of Trust B the full amount of the distributions disclosed in the accounting. In addition, because he diverted funds from the Trusts, none of the Beneficiaries had been paid the amounts they were entitled to receive pursuant to the Trusts' documents.

Additional Distribution of Trust Assets

24. In August 2018, after the Commission's staff began investigating this matter, Groom distributed an additional \$25,000 each to three Trust B Beneficiaries. After making these payments, Groom retained approximately \$385,000 of Trust assets, which greatly exceeded his disclosed trustee fees.

25. In October 2018, Groom escrowed funds to make additional distributions to the Beneficiaries.

Violations

26. As a result of the conduct described above, Groom willfully committed violations of 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 and in the public interest to impose the sanctions agreed to in Respondent Groom's Offer.

Accordingly, pursuant to Section 15(b) 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. Groom cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent Groom 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; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

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, within 20 days of the entry of this Order, pay disgorgement of \$262,498.95, prejudgment interest of \$38,489.50, and a civil penalty of \$185,000 to the Securities and Exchange Commission. If timely payment of 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 Kendall J. Groom 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 Paul A. Montoya, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Ste. 1450, Chicago, Illinois 60604.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraph IV.D. above. 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
Secretary