

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81385 / August 14, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-16175

In the Matter of

**KENNETH C. MEISSNER, JAMES
DOUG SCOTT, and MARK S. “MIKE”
TOMICH,**

Respondents.

ORDER ESTABLISHING FAIR FUND

On September 25, 2014, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 (the “Administrative Order”) ¹ against Kenneth C. Meissner (“Meissner”), James Doug Scott (“Scott”), and Mark S. “Mike” Tomich (“Tomich”) (collectively, the “Respondents”). In the Administrative Order, the Division of Enforcement (the “Division”) alleged that from August 2011 to January 2013, Gary Snisky (“Snisky”) recruited the Respondents to solicit prospective investors with false promises of no-risk, profitable alternatives to traditional annuities, when in fact, Snisky made no legitimate investments with investor funds. None of the Respondents was registered with the Commission as a broker or associated with a registered broker-dealer during this time.

On December 23, 2014, the Commission accepted Tomich’s settlement offer and issued an Order Making Findings and Imposing Remedial Sanctions and a Cease-And-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 as to Mark S. “Mike” Tomich (the “Settled Order”) ² to which Tomich consented without admitting or denying the findings, except as to jurisdiction and for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523. In the Settled Order, the Commission found that Tomich willfully violated Section 15(a) of the Exchange Act. The Commission ordered Tomich to pay disgorgement of \$48,327.00, prejudgment interest of \$2,976.87, and a civil penalty of \$48,000.00. The Settled Order provides that the Commission may distribute the penalties collected, if in its discretion, it

¹ Exchange Act Rel. No. 73226 (Sept. 25, 2014).

² Exchange Act Rel. No. 73925 (Dec. 23, 2014).

establishes a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended.

By Initial Decisions filed on April 7, 2015 and August 4, 2015, respectively,³ an Administrative Law Judge (“ALJ”) adjudicated the allegations against Meissner and Scott on motions for summary disposition filed by the Division. In both, the ALJ found the respondent willfully violated Section 15(a)(1) of the Exchange Act. The ALJ ordered Meissner to disgorge \$19,268.70, and ordered Scott to disgorge \$26,297.84 and pay prejudgment interest of \$2,294.22 and a civil penalty of \$15,000. By notices issued on May 20, 2015 (“Meissner Finality Order”) and September 28, 2015 (“Scott Finality Order”), respectively, the Initial Decisions became final and effective.⁴

Pursuant to the Settled Order, Tomich paid \$99,303.87, which is currently on deposit with the United States Department of the Treasury (“Treasury”). Pursuant to the Meissner Finality Order, Meissner has paid \$5,041.35, also held by Treasury. Collection activities continue on the obligations imposed by the Meissner Finality Order and the Scott Finality Order.

On December 9, 2016, the Commission appointed Damasco & Associates LLP (“Damasco”), a certified public accounting firm located in Half Moon Bay, California, as tax administrator to administer tax-related obligations that funds collected in this Administrative Proceeding may incur as a Qualified Settlement Fund under the Department of the Treasury Regulation § 1.468B-1.⁵

The Division now requests that a fair fund be established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds collected to date and for additional funds later collected from the Respondents (the “Fair Fund”), for distribution to harmed investors through the restitution process in the related criminal action, *United States v. Snisky*, No. 13-cr-00473-RM (D. Colo.) (the “Criminal Action”).

³ Initial Decision Rel. Nos. 768 (Apr. 7, 2015) and 850 (Aug. 4, 2015), respectively.

⁴ Exchange Act Rel. Nos. 75005 (May 20, 2015) and 76001 (Sept. 28, 2015), respectively.

⁵ Exchange Act Rel. No. 79522 (Dec. 9, 2016). Damasco & Associates LLP is now part of Miller Kaplan Arase LLP.

Accordingly, it is hereby ORDERED that, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is hereby established for the disgorgement, prejudgment interest, and penalty funds collected to date, and in the future, from the Respondents.

By the Commission.

Brent J. Fields
Secretary