

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21400

In the Matter of

MICHAEL SZTROM and
DAVID SZTROM,

Respondent.

RESPONDENTS' ANSWER AND
AFFIRMATIVE DEFENSES TO ORDER
INSTITUTING ADMINISTRATIVE
PROCEEDINGS

I.

Respondents MICHAEL SZTROM and DAVID SZTROM (collectively, “Respondents” or the “Sztroms”), by and through their undersigned counsel, and herewith submit their Answer and Affirmative Defenses to the Order Instituting Administrative Proceedings (“OIP”), as follows:

II.

Respondents do not deny that in the civil action known as *SEC v. Michael Sztrom, et al.*, Case No. 3:21-cv-00086-H-RBB (S.D. Cal.), without admitting or denying the allegations in the SEC’s Complaint, they each consented to entry of a Final Judgment that enjoins them from future violations of the statutes and rules described in the OIP. Nor do Respondents deny that the U.S. Securities and Exchange Commission’s (“SEC”) Complaint in that action alleged what the SEC states that it alleged in the OIP. Except as specifically admitted, however, Respondents deny the remaining allegations in the OIP and deny that any remedial relief is warranted or appropriate.

III.

Under the facts and circumstances in this case, Respondents deny that any remedial action by this Tribunal is appropriate or in the public interest pursuant to Section 203(f) of the Advisors Act.

AFFIRMATIVE DEFENSES

Respondents assert the following affirmative defenses and reserve the right to amend this Answer to assert additional affirmative defenses when and if, in the course of their investigation, discovery, or preparation for hearing it becomes appropriate to assert such affirmative defenses. In asserting these defenses, Respondents do not assume the burden of proof for any issue that would otherwise rest on the Division of Enforcement.

1. Any and all relief sought or to be proposed by the SEC is impermissibly punitive upon Respondents.
2. Any and all relief sought or to be proposed by the SEC is not in the public interest and is not appropriate relief for the protection of investors or investment advisory clients.
3. Any and all relief sought or to be proposed by the SEC is unnecessary because, among other reasons, Respondents have no prior or subsequent record of non-compliance with the SEC's rules and regulations.
4. Any and all relief sought or to be proposed by the SEC is inappropriate because Respondents did not possess scienter, act with bad intent, or knowingly engage in misconduct.
5. Any and all relief sought or to be proposed by the SEC is inappropriate because Respondents alleged actions (or inactions) were undertaken with the approval, knowledge and/or under the supervision of their supervisors at Advanced Practice Advisors, LLC ("APA"), including, but not limited to, APA's President and APA's compliance officers.

6. Any and all relief sought or to be proposed by the SEC is inappropriate and not warranted because Respondents' alleged actions (or inactions) were undertaken with the knowledge and/or approval of APA's custodian broker(s).
7. Any and all relief sought or to be proposed by the SEC is inappropriate and not necessary because the alleged actions underlying this matter occurred between August 2015 and June 2016 (or nearly *7 to 8 years ago*), and is barred by laches, and the SEC has waived or is estopped from seeking further sanctions against Respondents.
8. Any and all relief sought or to be proposed by the SEC is inappropriate because no investors or advisory clients lost any money or were damaged in any manner whatsoever as a result of Respondents' alleged actions.
9. Any and all relief sought or to be proposed by the SEC is inappropriate and not necessary because there is no likelihood of reoccurrence of the alleged violations, as demonstrated by, among other things, the fact that Respondents have worked as investment advisor representatives for at least seven years since without any violations.
10. In addition to the sanctions imposed by the District Court, no further sanctions or remedial actions are appropriate because Respondents were punished in the District Court proceedings, and have suffered substantial collateral consequences from the SEC's investigation and enforcement proceedings, including, but not limited to, loss of customers and clients, lost income, duress, payment of substantial legal fees, and the payment of a \$25,000 civil money penalty by each Respondent.
11. This Administrative Proceeding violates Articles I and II, the Seventh Amendment and/or the Due Process Clause of the United States Constitution.
12. The OIP fails to state a cause of action upon which relief may be granted.

CONCLUSION

For the reasons stated herein, and as will be demonstrated further at hearing, Respondents respectfully request that the OIP and this Administrative Proceeding be dismissed without the imposition of any further sanctions or remedial actions.

Dated: May 25, 2023

MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO PC

By s/ Sean T. Prosser
Sean T. Prosser

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CERTIFICATE OF SERVICE

Pursuant to Rule 141 of the Commission's Rules of Practice, I hereby certify that service of the foregoing RESPONDENTS' ANSWER AND AFFIRMATIVE DEFENSES TO ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS was made via electronic service on this 25th day of May, 2023, to the following parties:

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/s/ Sean T. Prosser

Sean T. Prosser