

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4879 / April 6, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18427

In the Matter of

Tobias J. Preston,

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Tobias Preston (“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 and the findings contained in paragraph III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

1. Respondent Tobias Preston, age 55, is a resident of Redding, California. Respondent is the founding member, majority owner, and president of McKinley Mortgage Co.

LLC (“MMC-FL”), an investment adviser not registered with the Commission, and was associated with MMC-FL at all relevant times.

2. On March 27, 2018, a final judgment was entered by consent against Respondent permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in a civil action entitled Securities and Exchange Commission v. McKinley Mortgage Co. LLC, et al. (Civil Action 2:18-cv-00616-MCE-CMK), in the United States District Court for the Eastern District of California.

3. The complaint in the District Court action alleged, *inter alia*, that Respondent defrauded investors in a pooled investment fund known as Alaska Financial Company III LLC (“AFC III”), which was created by Respondent and his affiliated investment advisory entity, MMC-FL, the manager of AFC III. The complaint further alleged that Respondent improperly transferred \$18.2 million of AFC III investor money to MMC-FL, in excess of the management and overhead fees described to investors in the offering documents, including over \$4.3 million that he used for personal purposes. Respondent also allegedly used approximately \$12 million directly from AFC III to make unsecured loans to entities he controlled, which purchased real estate and invested in undeveloped land in Mexico, contrary to the representations in AFC III’s offering materials. The complaint also alleged that Respondent oversaw the preparation and distribution of investor materials that falsely stated that AFC III’s assets were earning between 12% and 14%, when many of the assets were earning little or no returns.

4. The conduct that is the basis of Respondent’s permanent injunction occurred while Respondent was associated with 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’s Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent 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.

Any reapplication for association by 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 this 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.

By the Commission.

Brent J. Fields
Secretary