

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78656 / August 24, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17418

In the Matter of

THOMAS T. M. HO

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Thomas T. M. Ho (“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 Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, 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:

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.

Summary

1. Respondent violated Section 15(a)(1) of the Exchange Act by acting as an unregistered broker-dealer in connection with his representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondent, an immigration attorney, recommended that his clients participate in the Immigrant Investor Program by investing in securities offered through an EB-5 Regional Center and helped effect the purchases. In addition to receiving legal fees from his clients, Respondent received a commission from the Regional Center for each investment he facilitated.

Respondent

2. Thomas T. M. Ho, age 74, is a resident of Honolulu, Hawaii. He is a licensed attorney specializing in immigration. During the relevant time period, he was a sole practitioner in Honolulu, Hawaii.

Background

3. The United States Congress created the Immigrant Investor Program, also known as “EB-5,” in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest \$1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or \$500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as “any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.” 8 C.F.R. § 204.6(e) (2015).

4. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as “EB-5 Investment Offerers.”

5. Various EB-5 Investment Offerers paid commissions to anyone who successfully sold limited partnership interests to new investors.

Respondent Received Commissions for His Clients’ EB-5 Investments

6. From at least January 2009 through December 2013, Respondent received commissions from one EB-5 Investment Offerer totaling \$37,500. On one or more occasions, the commission was paid to a foreign bank account identified by the Respondent despite the fact that the Respondent was U.S. based.

7. Respondent performed activities necessary to effectuate the transactions in EB-5 securities, including recommending one or more EB-5 Investment Offerers to his clients; acting as a liaison between the EB-5 Investment Offerers and the investors; and facilitating the transfer and/or documentation of investment funds to the EB-5 Investment Offerers. Respondent received transaction-based commissions for his services from the EB-5 Investment Offerer. While some of Respondent's activities overlapped with legal services, for which he received fees, Respondent was paid transaction-based compensation for the activities which effectuated the investor's transactions in EB-5 securities.

8. As a result of the conduct described above, Respondent violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Thomas T. M. Ho's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of \$37,500, prejudgment interest of \$2,500, and a civil money penalty of \$30,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). 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 Thomas T. M. Ho 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 Stephanie Avakian, Deputy Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

C. 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.

Brent J. Fields
Secretary