

STATE OF CONNECTICUT
DEPARTMENT OF BANKING
 260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800



Jorge L. Perez
 Commissioner

 *
IN THE MATTER OF: *
 *
JOHN MARK DOWNING *
f/k/a JOHN MARK ESEPPI *
CRD NO. 1912842 *
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 *
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ORDER TO CEASE AND DESIST
ORDER TO MAKE RESTITUTION
NOTICE OF INTENT TO FINE
AND
NOTICE OF RIGHT TO HEARING
DOCKET NO. CRF-18-8420-S

I. PRELIMINARY STATEMENT

1. The Banking Commissioner (“Commissioner”) is charged with the administration of Chapter 672a of the General Statutes of Connecticut, the Connecticut Uniform Securities Act (“Act”), and Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies (“Regulations”) promulgated under the Act.

2. Pursuant to Section 36b-26(a) of the Act, the Commissioner, through the Securities and Business Investments Division (“Division”) of the Department of Banking, has conducted an investigation into the activities of John Mark Downing f/k/a John Mark Eseppe (“Respondent”) to determine if Respondent has violated, is violating or is about to violate provisions of the Act or Regulations (“Investigation”).

3. As a result of the Investigation, the Commissioner has reason to believe that Respondent has violated certain provisions of the Act.

4. As a result of the Investigation, the Commissioner has reason to believe that a basis exists to issue a cease and desist order against Respondent pursuant to pursuant to Section 36b-27(a) of the 2018 Supplement to the General Statutes (“2018 Supplement”).

5. As a result of the Investigation, the Commissioner has reason to believe that a basis exists to order that Respondent make restitution pursuant to Section 36b-27(b) of the 2018 Supplement.

6. As a result of the Investigation, the Commissioner has reason to believe that a basis exists to impose a fine upon Respondent pursuant to Section 36b-27(d) of the 2018 Supplement.

II. RESPONDENT'S PAST CRIMINAL HISTORY RELATING TO THE SECURITIES BUSINESS

7. Respondent is an individual whose addresses last known to the Commissioner are: 39 McLaughlin Terrace, Derby, Connecticut 06418-2126; and 89 Shelton Avenue, Shelton, Connecticut 06484-6044. Respondent was registered as a broker-dealer agent under the Act at various times from July 6, 1989 to April 4, 1997. Respondent has never been registered as an investment adviser under the Act.

8. On November 30, 2004, Respondent plead guilty to three counts of first-degree larceny in the Judicial District of Litchfield (Docket No. LLI- CR04-0577603-T), arising out of Respondent's involvement in a Ponzi-like investment scheme he conducted in Connecticut. The court sentenced Respondent to serve eight years of a sixteen-year prison sentence. On April 10, 2008, Respondent's sentence was modified and the sentence was suspended after he served four years in prison, followed by five years of probation on each of the three counts. On June 2, 2008, Respondent was charged in the Judicial District of Litchfield with violating the terms of his probation based on his alleged attempt to solicit investors to invest their money with Respondent. On January 29, 2010, the court ordered that Respondent's probation continue and that there be no change to the sentences previously imposed on him.

9. In addition to the above, on April 25, 2006, Respondent plead guilty in the 292nd Judicial District Court in Dallas County, Texas, to one felony count of a false statement in connection with the sale of securities in Texas (Docket No. F04-00197-GIR).

III. STATEMENT OF FACTS

10. In April 2017, Investor One, a Connecticut resident, met Respondent through an acquaintance who was renting a room to Respondent.

11. Soon after Investor One and Respondent met, Respondent began talking to Investor One about helping Investor One invest her money by trading her brokerage account. Respondent proposed to Investor One that he manage her retirement account in exchange for a share of any profits generated. Specifically, in May 2017, Respondent urged Investor One to move her existing retirement account from Scottrade, Inc. ("Scottrade") to TD Ameritrade, Inc. ("TD Ameritrade"), because Respondent said he was very familiar with TD Ameritrade's trading platform. In May 2017, Investor One opened a TD Ameritrade account, transferred the funds in her Scottrade account into the TD Ameritrade account and gave Respondent access to the TD Ameritrade account. Investor One and Respondent entered into a verbal agreement that Respondent would trade only \$5,000 in the account and in exchange, Respondent would take a share of the profits from any trading gains.

12. Respondent made several representations to Investor One, including the following: (i) if Respondent managed her account there would be no losses, only gains; (ii) if there were any trading losses in Investor One's account, Respondent would refund the account immediately; and (iii) Respondent would only trade \$5,000 out of the approximately \$23,000 in the account.

13. In June 2017, Investor One discovered that Respondent had incurred \$23,400 in trading losses in her account.

14. On June 18, 2017, after Investor One confronted Respondent about the losses in her account, both Respondent and Investor One signed a document stating that "Jack Downing owes [Investor One] \$23,400 and agrees to pay her for lost stocks via Ameritrade ASAP 7/1/17 on or before 7/1/17." To date, despite Investor One's multiple attempts to collect money from Respondent, Respondent has not repaid Investor One any of the \$23,400 in trading losses he incurred in her account.

**IV. STATUTORY BASIS FOR ORDER TO CEASE AND DESIST,
ORDER TO MAKE RESTITUTION AND ORDER IMPOSING FINE**

a. Violation of Section 36b-6(c)(1) of the Act –
Unregistered Investment Adviser

15. Paragraphs 1 through 14, inclusive, are incorporated and made a part hereof as if more fully set forth herein.

16. Respondent transacted business as an investment adviser in Connecticut absent registration under the Act, as more fully described in paragraphs 10 to 14, inclusive, above. Such conduct constitutes a violation of Section 36b-6(c)(1) of the Act, which forms a basis for an order to cease and desist to be issued against Respondent under Section 36b-27(a) of the 2018 Supplement, an order of restitution to be issued against Respondent under Section 36b-27(b) of the 2018 Supplement, and for the imposition of a fine upon Respondent under Section 36b-27(d) of the 2018 Supplement.

b. Violation of Section 36b-5(a) of the Act –
Prohibited Activities of Investment Advisers

17. Paragraphs 1 through 16, inclusive, are incorporated and made a part hereof as if more fully set forth herein.

18. Respondent directly or indirectly received compensation or other remuneration for advising another person as to the value of securities or their purchase or sale. In conjunction with such activity, the conduct of Respondent, as more fully described in paragraphs 10 to 14, inclusive, above, constitutes employing a device, scheme or artifice to defraud the other person; making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon such other person. Such conduct constitutes a violation of Section 36b-5(a) of the Act, which forms a basis for an order to cease and desist to be issued against Respondent under Section 36b-27(a) of the 2018 Supplement, an order of restitution to be issued against Respondent under Section 36b-27(b) of the 2018 Supplement, and for the imposition of a fine upon Respondent under Section 36b-27(d) of the 2018 Supplement.

V. ORDER TO CEASE AND DESIST, ORDER TO MAKE RESTITUTION, NOTICE OF INTENT TO FINE AND NOTICE OF RIGHT TO HEARING

WHEREAS, as a result of the Investigation, the Commissioner finds that, with respect to the activity described herein, **JOHN MARK DOWNING f/k/a JOHN MARK ESEPPI** has committed at least one violation of 36b-6(c)(1) of the Act and at least one violation of Section 36b-5(a) of the Act;

WHEREAS, notice is hereby given to Respondent that the Commissioner intends to impose a maximum fine not to exceed one hundred thousand dollars (\$100,000) per violation upon Respondent;

WHEREAS, the Commissioner further finds that the issuance of an Order to Cease and Desist, Order to Make Restitution, and the imposition of a fine upon Respondent is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policies and provisions of the Act;

WHEREAS, the Commissioner **ORDERS** that **JOHN MARK DOWNING f/k/a JOHN MARK ESEPPI CEASE AND DESIST** from directly or indirectly violating the provisions of the Act, including without limitation: (i) transacting business as an investment adviser in Connecticut absent registration under the Act; and (ii) in connection with directly or indirectly receiving compensation or other remuneration for advising another person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, employing a device, scheme or artifice to defraud the other person; making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon such other person;

WHEREAS, the Commissioner **ORDERS** that **JOHN MARK DOWNING f/k/a JOHN MARK ESEPPI MAKE RESTITUTION** of any sums obtained as a result of his violations of Sections 36b-6(c)(1) and 36b-5(a) of the Act, plus interest at the legal rate set forth in Section 37-1 of the General Statutes of Connecticut. Specifically, the Commissioner **ORDERS** that:

1. Within thirty (30) days from the date this Order to Make Restitution becomes permanent, Respondent shall provide the Division with a written disclosure which covers the period from

April 1, 2017, to the date this Order to Make Restitution becomes permanent and which contains (i) the name and address of each investment advisory client, (ii) the amount Respondent collected from each investment advisory client, and (iii) the amount of any refunds of principal or purported interest payments Respondent made to each investment advisory client;

2. Within forty-five (45) days from the date this Order to Make Restitution becomes permanent, Respondent shall reimburse each investment advisory client the amount of funds collected from that investment advisory client plus interest, less funds returned in the form of purported refunds of principal and purported interest payments, with respect to all transactions effected from April 1, 2017, to the date this Order to Make Restitution becomes permanent. Such restitution shall be made by certified check, and shall be sent by certified mail, return receipt requested, to each affected investment advisory client; and
3. Within ninety days (90) days from the date this Order to Make Restitution becomes permanent, Respondent shall provide the Division with proof in the form of copies of the certified checks and the return receipts required by paragraph 2 of Section V of this Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Fine and Notice of Right to Hearing (collectively, "Order"), that Respondent has reimbursed each investment advisory client the amount of funds collected from each such investment advisory client plus interest, less funds returned in the form of purported refunds of principal and purported interest payments, with respect to all transactions effected from April 1, 2017, to the date this Order to Make Restitution becomes permanent.

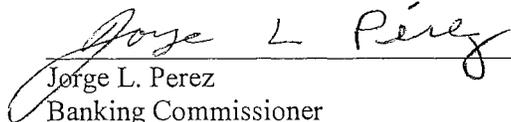
THE COMMISSIONER FURTHER ORDERS THAT, pursuant to Section 36b-27 of the 2018 Supplement, Respondent will be afforded an opportunity for a hearing on the allegations set forth above if a written request for a hearing is received by the Department of Banking, Securities and Business Investments Division, 260 Constitution Plaza, Hartford, Connecticut 06103-1800 within fourteen (14) days following Respondent's receipt of this Order. To request a hearing, complete and return the enclosed Appearance and Request for Hearing Form to the above address. If Respondent will not be represented by an attorney at the hearing, please complete the Appearance and Request for Hearing Form as "pro se". If a hearing is requested, the hearing will be held on October 31, 2018, at 10 a.m. at the Department of Banking, 260 Constitution Plaza, Hartford, Connecticut.

The hearing will be held in accordance with the provisions of Chapter 54 of the General Statutes of Connecticut. At such hearing, Respondent will have the right to appear and present evidence, rebuttal evidence and argument on all issues of fact and law to be considered by the Commissioner.

If Respondent does not request a hearing within the time period prescribed or fails to appear at any such hearing, the allegations herein against Respondent will be deemed admitted. Accordingly, the Order

to Cease and Desist and Order to Make Restitution shall remain in effect and become permanent against Respondent and the Commissioner may order that the maximum fine be imposed upon Respondent.

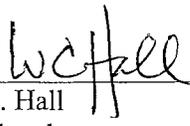
Dated at Hartford, Connecticut,
this 13th day of September 2018.



Jorge L. Perez
Banking Commissioner

CERTIFICATION

I hereby certify that on this 14th day of September 2018, I caused to be mailed by certified mail, return receipt requested, the foregoing Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Fine and Notice of Right to Hearing to John Mark Downing f/k/a John Mark Eseppi at:
39 McLaughlin Terrace, Derby, Connecticut 06418-2126, certified mail no. 7016 2710 0000 5896 9032;
89 Shelton Avenue, Shelton, Connecticut 06484-6044, certified mail no. 7016 2710 0000 5896 9049;
6 Chatfield Street, Seymour, Connecticut 06483, certified mail no. 7016 2710 0000 5896 9056; and
P.O. Box 125, Shelton, Connecticut 06484, certified mail no. 7016 2710 0000 5896 9063.



W.C. Hall
Paralegal



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 Commissioner

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CRD NO. 1912842 *
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ORDER TO CEASE AND DESIST
ORDER TO MAKE RESTITUTION
NOTICE OF INTENT TO FINE
AND
NOTICE OF RIGHT TO HEARING
DOCKET NO. CRF-18-8420-S

APPEARANCE AND REQUEST FOR HEARING

Please enter the appearance of:

 (Attorney/Pro Se Respondent)

 (Mailing Address)

E-mail Address: _____

Telephone Number: _____ Facsimile Number: _____

The above-named individual is qualified as provided in Section 36a-1-32 of the Regulations of Connecticut State Agencies and authorized to represent and accept service in the above-entitled case for:

The Respondent

All Respondents

The following Respondent(s) only

Signed: _____ Date: _____
(Attorney/Pro Se Respondent)

By returning this form, you can expect to receive a telephone call with the hearing officer and the prosecuting attorney approximately two weeks prior to the scheduled hearing date to discuss issues related to the number of anticipated witnesses, possibility of settlement and anticipated length of the hearing, and other related issues.



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Jorge L. Perez
Commissioner

INSTRUCTIONS

You, John Mark Downing f/k/a John Mark Eseppi, are the Respondent in the enclosed Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Fine and Notice of Right to Hearing (collectively "Order"). Under Connecticut law, you have been afforded an opportunity for hearing after reasonable notice. Please read the following instructions carefully.

1. If you wish to request a hearing on the Order, you or your attorney must complete and return the enclosed Appearance and Request for Hearing Form **no later than fourteen (14) days after the date you received the Order**. If you fail to return the Appearance and Request for Hearing Form requesting a hearing, the Order to Cease and Desist and Order to Make Restitution will **automatically become permanent** and the Commissioner may impose the **maximum fine** upon you of one hundred thousand dollars (\$100,000) per violation.
2. You have the right to be represented by an attorney at such hearing. The Appearance and Request for Hearing Form should be mailed to the Department of Banking, Securities and Business Investments Division, 260 Constitution Plaza, Hartford, Connecticut 06103-1800. If you request a hearing within the time specified, the hearing will be held on October 31, 2018, at 10 a.m., at the Department of Banking, 260 Constitution Plaza, Hartford, Connecticut.
3. You have the right to resolve or settle this case. Please contact the prosecuting attorney if you wish to have such conversations. If you have any additional questions or issues related to this case, or to the date, time or place of the hearings, please contact the prosecuting attorney. The prosecuting attorney assigned to this case is Attorney Elena Zweifler; her telephone number is (860) 240-8145.
4. If you return the Appearance and Request for Hearing Form, the Commissioner may issue a notification of hearing and designation of hearing officer that acknowledges receipt of a request for a hearing, designates a hearing officer and sets the date of the hearing in accordance with Section 4-177 of the General Statutes of Connecticut and Section 36a-1-21 of the Regulations. You can expect to receive a telephone call with the hearing officer and the prosecuting attorney approximately two weeks prior to the scheduled hearing date to discuss issues related to the number of anticipated witnesses, possibility of settlement and anticipated length of the hearing, and other related issues.

TEL: (860) 240-8299

FAX: (860) 240-8178

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website: <http://www.ct.gov/dob>