

“Picking the Winner”: SEC Sanctions Investment Adviser and an Associate for “Rigging” the Game

Article By:

Peter D. Hutcheon

On Wednesday, Aug. 10, 2022, the U.S. Securities and Exchange Commission (“SEC”) instituted two related Administrative and Cease-and-Desist Proceedings: one against IFP Advisors, LLC, a Florida limited liability company (“IFP”) headquartered in Tampa and registered with the SEC as an Investment Adviser since 2008, which as of May 2022 had more than \$10 billion under management; and the other against Richard Keith Robertson (“Robertson”), age 56, of Del Mar, California, who was from October 2010 to December 2018 an investment adviser representative (“IAR”) associated with IFP. The SEC asserted that during the 2010 to 2018 period, Robertson “engaged in undisclosed ‘cherry-picking,’ a practice of fraudulently allocating profitable trades to favored accounts at the expense of his advisory clients.” I have previously addressed “cherry-picking” in my Aug. 8, 2022, Blog [“The SEC ‘Special Ops’ of Enforcement: Five Cases Identified by the Analysis and Detection Center.”](#) Robertson was able to cherry-pick “by buying securities in an omnibus account and then waiting until later in the day to allocate the securities to his or to his [preferred] clients’ accounts.” This was much like betting on the horses in “The Sting,” where bets were made after the winners were already known. IFP was charged in its Proceeding with i) failure to supervise Robertson; ii) failure to implement policies and procedures designed to prevent securities law violations; and iii) false and misleading statements in its Forms ADV about client safeguards to prevent IARs from putting their own interests ahead of their IFP clients.

The SEC cited Robertson for violating the following: Section 10(b) of the Securities Exchange Act of 1934, as amended (the “34 Act”) and Rule 10b-5 thereunder for fraudulent conduct in connection with the purchase or sale of securities; Sections 206(1) and (2) of the Investment Advisers Act of 1940, as amended (the “40 Act”) for violating the prohibition against an investment adviser from using any device to defraud a client; and for violating the prohibition of an investment adviser from engaging in a transaction or practice which operates as a fraud on a client. Robertson consented to the entry of an Order in the Robertson Proceeding that requires Robertson to cease and desist from future violations of the cited securities laws; prevents Robertson from ever again participating in the securities industry in any capacity; and requires Robertson to disgorge \$592,437 plus prejudgment interest and to pay a civil money penalty of \$300,000 – the disgorgement and the penalty to be paid in specified installments along with interest. IFP, in the Proceeding against it, consented to an Order that requires it to retain an independent compliance consultant (the “Consultant”) to review IFP’s policies and procedures, evaluate them, and propose revisions to improve IFP’s compliance regime, all of which was to be documented in a written report to IFP and the Commission within six months;

to implement the Consultant's recommendations within 90 days thereafter; to enter into a contract with the Consultant forbidding any employment of the Consultant to assist or consult with IFP; to cease and desist future violations of the cited 40 Act Sections; to be censured; and to pay a \$400,000 civil penalty in specified installments plus interest.

Sometimes even the "Stingers" are tempted to pick too many cherries and get STUNG instead.

©2025 Norris McLaughlin P.A., All Rights Reserved

National Law Review, Volume XIII, Number 17

Source URL: <https://natlawreview.com/article/picking-winner-sec-sanctions-investment-adviser-and-associate-rigging-game>