

1 regulations thereunder at Title 10, California Code of Regulations ("CCR").

2 II. STATEMENT OF FACTS

3 3. This action is brought in order to deny a certificate of investment adviser to
4 Respondent Equity Personnel, Inc. ("EPI") pursuant to CC section 25232. At all relevant times
5 Herbert George Woller ("Woller") was the President and control person of EPI. EPI is a Wyoming
6 domestic corporation, formed on November 18, 2008, and a California foreign corporation formed
7 on September 10, 2009. EPI is located at 3111 Camino Del Rio North, Suite 443, San Diego,
8 California 92108.

9 4. On February 17, 2010, EPI filed an application for an investment adviser certificate
10 with the Department ("California application"). EPI omitted material disclosures required in the
11 California application under Item 11 of the Form ADV and falsely answered "No" to disclosure
12 items requiring a "Yes" answer.

13 5. In the California application, Item 11 Disclosure Information states that if the
14 applicant is registering with a state, they must respond to the questions as posed and therefore, limit
15 disclosure to ten years following the date of an event **only** in responding to Items 11.A(1), 11.A(2),
16 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date
17 of an event is the date the final order, judgment, or decree was entered.

18 6. Therefore, for many disclosure items it is required that disclosures be made even if
19 the event date was more than ten years ago. For instance, Item 11.D(1) asks if any state regulatory
20 agency **ever** found you or any advisory affiliate, which includes officers and all persons directly or
21 indirectly controlling applicant, to have made a false statement or omission, or been dishonest,
22 unfair, or unethical. EPI answers No to this disclosure item. However, Woller as an advisory
23 affiliate of EPI in his capacity as President and control person was found to have made a false
24 statement or omission, and been dishonest or unethical by the State of Alaska Department of
25 Community, Commerce, and Economic Development Division of Banking and Securities ("Alaska")
26 on March 26, 1996. Attached hereto as **Exhibit 1** is a certified copy of an Administrator's Decision
27 and Order by Alaska denying Woller's investment adviser Principal application and his company
28 F.A.C. Inc.'s investment adviser application based on: 1) Woller engaging in dishonest or unethical

1 practices in the securities business by Woller's use of his father's name and social security number
2 when attempting to provide verification of employment for obtaining credit from Seattle Mortgage
3 and other creditors; and 2) Woller filing applications for registration that contained statements that
4 were, in light of the circumstances under which they were made, false or misleading with respect to
5 material facts, including, but not limited to: a) Woller's failure to disclose his indictment by a grand
6 jury; b) Woller's failure to disclose an FBI investigation of his bankruptcy proceedings; c) Woller's
7 failure to properly disclose the basis for his termination of employment with G.R. Stuart; d) Woller's
8 failure to disclose his IRS tax lien and judgment against him for unpaid child support; and e)
9 Woller's failure to properly disclose the use of another identity, namely that of Herbert A. Woller
10 (his father's identity).

11 7. Item 11.D(3) asks if any state regulatory agency **ever** found you or any advisory affiliate
12 to have been a cause of an investment-related business having its authorization to do business
13 denied. EPI answers No to this disclosure item when in actuality Woller was the cause of Alaska
14 denying him an investment adviser license. See Exhibit 1.

15 8. Item 11.D(5) asks if any state regulatory agency **ever** denied your or any advisory
16 affiliate's registration or license, or otherwise prevented you or any advisory affiliate, by order, from
17 associating with an investment-related business. Once again EPI answers No to this disclosure item
18 when in actuality Alaska issued an Order denying Woller an investment adviser and investment
19 advisor principal license.

20 **III. EPI SHOULD BE DENIED AN INVESTMENT ADVISER CERTIFICATE**
21 **PURSUANT TO CORPORATIONS CODE SECTION 25232 FOR: 1) ACTS COMMITTED**
22 **AS SPECIFIED UNDER SUBDIVISIONS (A) AND (E); AND 2) ORDERS LISTED UNDER**
23 **SUBDIVISION (D).**

24 9. Corporations Code section 25232 provides, in pertinent part:

25 The commissioner may, after appropriate notice and opportunity for hearing,
26 by order censure, deny a certificate to, or suspend for a period not exceeding
27 12 months or revoke the certificate of, an investment adviser, if the
28 commissioner finds that the censure, denial, suspension, or revocation is in the
public interest and that the investment adviser, whether prior or subsequent to
becoming such, or **any partner, officer or director thereof or any person
performing similar functions or any person directly or indirectly
controlling the investment adviser, whether prior or subsequent to**

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becoming such, or any employee of the investment adviser while so employed (emphasis added):

- (a) Has willfully made or caused to be made in any application for a certificate or any report filed with the commissioner under this division...any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.
- (d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other state denying...his or her registration as an investment adviser...
- (e) Has willfully violated any provision of . . . **Title 4 (commencing with Section 25000)**... or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor (emphasis added).

A. EPI SHOULD BE DENIED AN INVESTMENT ADVISER CERTIFICATE PURSUANT TO CORPORATIONS CODE SECTION 25232 (A)

10. As an officer and control person of EPI, Woller has willfully made in the California application a statement, which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application a material fact which is required to be stated therein as specified under CC section 25232

(a).

11. In Item 11 of the California application, Woller makes numerous false statements and omissions of material fact: a) Item 11.D(1) asks if any state regulatory agency ever found you or any advisory affiliate, which includes officers and all persons directly or indirectly controlling applicant, to have made a false statement or omission, or been dishonest, unfair, or unethical. EPI answers No to this disclosure item. However, Woller as an advisory affiliate of EPI in his capacity as President and control person was found to have made a false statement or omission, or been dishonest, unfair, or unethical by Alaska as illustrated in Exhibit 1; b) Item 11.D(3) asks if any state regulatory agency ever found you or any advisory affiliate to have been a cause of an investment-related business having its authorization to do business denied. EPI answers No to this disclosure

1 item when in actuality Woller was the cause of Alaska denying him an investment adviser license;
2 and c) Item 11.D(5) asks if any state regulatory agency ever denied your or any advisory affiliate's
3 registration or license, or otherwise prevented you or any advisory affiliate, by order, from
4 associating with an investment-related business. Once again EPI answers No to this disclosure item
5 when in actuality Alaska issued an Order denying Woller an investment adviser license.

6 12. Woller omits to disclose the above material information to the Department in the
7 California application and falsely misrepresents that he does not have these relevant disclosures and
8 therefore EPI's California Application should be denied.

9 **B. EPI SHOULD BE DENIED AN INVESTMENT ADVISER CERTIFICATE**
10 **PURSUANT TO CORPORATIONS CODE SECTION 25232 (E)**

11 13. Woller has willfully violated CC section 25245, which states:

12 "It is unlawful for any person willfully to make any untrue statement of a material
13 fact in any application...with the commissioner under this part, or willfully to omit to
14 state in any such application... any material fact which is required to be stated
15 therein."

16 14. In Item 11 of the California Application, Woller makes numerous false statements
17 and omissions of material facts: a) Item 11.D(1) asks if any state regulatory agency ever found you
18 or any advisory affiliate, which includes officers and all persons directly or indirectly controlling
19 applicant, to have made a false statement or omission, or been dishonest, unfair, or unethical. EPI
20 answers No to this disclosure item. However, Woller as an advisory affiliate of EPI in his capacity
21 as President and control person was found to have made a false statement or omission, or been
22 dishonest, unfair, or unethical by Alaska; b) Item 11.D(3) asks if any state regulatory agency ever
23 found you or any advisory affiliate to have been a cause of an investment-related business having its
24 authorization to do business denied. EPI answers No to this disclosure item when in actuality
25 Woller was the cause of Alaska denying him an investment adviser license; and c) Item 11.D(5) asks
26 if any state regulatory agency ever denied your or any advisory affiliate's registration or license, or
27 otherwise prevented you or any advisory affiliate, by order, from associating with an investment-
28 related business. Once again EPI answers No to this disclosure item when in actuality Alaska issued
an Order denying Woller an investment adviser license.

1 15. Woller willfully violates CC section 25245 by failing to disclose the above material
2 information to the Department as required in the California application and by falsely
3 misrepresenting that he does not have these relevant disclosures and therefore EPI's California
4 application should be denied.

5 **C. EPI SHOULD BE DENIED AN INVESTMENT ADVISER CERTIFICATE**
6 **PURSUANT TO CORPORATIONS CODE SECTION 25232 (D)**

7 16. As an officer and control person of EPI, Woller is or has been the subject of an order
8 of the securities administrator of Alaska denying his registration as an investment adviser.

9 17. On March 26, 1996, Alaska issued an Order denying Woller an investment adviser
10 license. See Exhibit 1.

11 18. EPI 's California application should be denied because Woller as the President and
12 control person of EPI has been the subject of another state regulator denying him registration as an
13 investment adviser.
14

15 **IV. RELIEF REQUESTED**

16 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
17 to deny an investment adviser certificate to EPI: 1) for willful acts committed as specified in CC
18 section 25232 (a) and (e) and in violation of CC section 25245 by making false statements and
19 omissions of material facts on the California application; and 2) for orders listed under CC section
20 25232 (d).

21 WHEREFORE, IT IS PRAYED that Respondent EPI is denied an investment adviser
22 certificate pursuant to CC section 25232.

23 Dated: April 18, 2011

PRESTON DuFAUCHARD

California Corporations Commissioner

By: _____

MICHELLE LIPTON
Sr. Corporations Counsel
Enforcement Division