

August 17, 2022

Hon. Robert J. Mega, P.J.Ch.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PART
UNION COUNTY
DOCKET NO. UNN-C-95-20

MATTHEW J. PLATKIN,
Acting Attorney General of New Jersey,
on behalf of
AMY KOPLETON,
Acting Chief of the New Jersey Bureau
of Securities,

Plaintiff,

v.

OWUSO A. KIZITO,
individually and as Managing Member of
Investigroup, LLC;
INVESTIGROUP, LLC
a Hawaiian limited liability company;
and INVESTIGROUP NP A NJ
NONPROFIT CORPORATION,
a New Jersey nonprofit corporation,

Defendants.

AMENDED ORDER¹

THIS MATTER having come before the Court upon the Motion for Entry of Final Judgment by Default as to Defendants Pursuant to R. 4:43-2(b) of Plaintiff Matthew J. Platkin, Acting Attorney General of New Jersey on behalf of Amy Kopleton, Acting Chief of the New Jersey Bureau of Securities; the Court having conducted an in-person proof hearing on the following dates: June 20, 2022; June 21, 2022; June 22, 2022; June 23, 2022; July 6, 2022; July 12, 2022; July 13, 2022; and July 14, 2022.

IT IS ORDERED on this 17 day of August 2022:

ORDERED, Owusu A. Kizito, Investigroup, LLC and Investigroup NP a NJ Nonprofit Corporation, individually and by or through any person, corporation, partnership, company, limited liability company, association, business formation of any type, partner, officer, attorney,

¹ Amended to fix amounts in order.

stockholder, employee, agent, successor, or any person or entity directly or indirectly under their control or working in concert with them or on their behalf, are **HEREBY PERMANENTLY ENJOINED AND RESTRAINED** from:

- A. Violating the Securities Law;
- B. The issuance for sale, offer for sale, solicitation, purchase, offer to purchase, promotion, negotiation, advertisement or distribution from or within New Jersey, of any securities by or on behalf of Defendants, their officers, directors, employees, agents, brokers, partners, stockholders, attorneys, successors, subsidiaries and affiliates;
- C. Effecting or attempting to effect transactions in securities from, in or within New Jersey without being registered as an agent and/or broker-dealer with the Bureau;
- D. Acting, from and within the State of New Jersey as: an agent as defined in N.J.S.A. 49:3-49(b); a broker-dealer as defined in N.J.S.A. 49:3-49(c); an investment adviser and/or an investment adviser representative as defined in N.J.S.A. 49:3-49(g); or from controlling or associating in any capacity with any broker-dealer or investment adviser doing business from, into or within the State of New Jersey;
- E. Controlling or associating in any capacity with any brokerdealer or investment adviser doing business from, into or within the State of New Jersey, or from controlling an issuer, or acting as an officer, director, or manager of an issuer as defined in N.J.S.A. 49:3-49(h) whose securities are offered for sale and/or sold in New Jersey; it is further

ORDERED, Defendants Kizito and Investigroup, LLC, are **HEREBY ORDERED** to pay \$15,161,043 as restitution for investors pursuant to N.J.S.A. 49:3-69(a). Defendants Kizito and Investigroup, LLC, are jointly and severally liable for the \$15,161,043; it is further

ORDERED, Each offer and sale of the Investigroup Securities by each of Defendants Kizito and Investigroup constitutes a separate violation of N.J.S.A. 49:3-56(a), N.J.S.A. 49:3-56(h), and N.J.S.A. 49:3-60, and is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1; it is further

ORDERED, Each violation of N.J.S.A. 49:3-52(a), N.J.S.A. 49:3- 52(b), and N.J.S.A. 49:3-52(c) by each of Defendants Kizito and Investigroup upon each investor is a separate violation and is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1; it is further

ORDERED, the Court HEREBY ASSESSES the following civil monetary penalties:

- A. \$1,505,000.00 against Defendant Owusu A. Kizito based on his 753 combined violations of N.J.S.A. 49:3-56(a), N.J.S.A. 49:3-60, and N.J.S.A. 49:3-52(a),(b), and (c) in connection with the sale of securities to 69 individuals pursuant to N.J.S.A. 49:3-70.1;
- B. \$1,505,000.00 against Defendant Investigroup, LLC, based on its 753 combined violations of N.J.S.A. 49:3-56(h), N.J.S.A. 49:3-60, and N.J.S.A. 49:3-52(a),(b), and (c) in connection with the sale of securities to 69 individuals pursuant to N.J.S.A. 49:3-70.1; it is further

ORDERED, final judgment is entered against Defendant Owusu Kizito in the amount of \$16,666,043.00, representing \$15,161,043.00 in restitution pursuant to N.J.S.A. 49:3-69(a) and \$1,505,000.00 in a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1; it is further

ORDERED, final judgment is entered against Defendant Investigroup, LLC in the amount of \$16,666,043.00, representing \$15,161,043.00 in restitution pursuant to N.J.S.A. 49:3-69(a) and \$1,505,000.00 in a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1; it is further

ORDERED, this Order shall be deemed served upon uploading to eCourts.

/s/ Robert J. Mega

Hon. Robert J. Mega, P.J.Ch.

Statement of Reasons Attached and set forth below.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PART
UNION COUNTY
DOCKET NO. UNN-C-95-20

MATTHEW J. PLATKIN,
Acting Attorney General of New Jersey,
on behalf of
AMY KOPLETON,
Acting Chief of the New Jersey Bureau
of Securities,

Plaintiff,

v.

OWUSO A. KIZITO,
individually and as Managing Member of
Investigroup, LLC;
INVESTIGROUP, LLC
a Hawaiian limited liability company;
and INVESTIGROUP NP A NJ
NONPROFIT CORPORATION,
a New Jersey nonprofit corporation,

Defendants.

STATEMENT OF REASONS

Argued: June 20, 2022; June 21, 2022; June 22, 2022; June 23, 2022; July 6, 2022; July 12, 2022;
July 13, 2022; and July 14, 2022.

Decided on: August 16, 2022

The following attorneys are counsel of record:

Michael G. Eleneski, Esq., Evan A. Schowell, Esq., and Hovhannes Chekemian, Esq., attorneys
for Plaintiff, Matthew J. Platkin, Acting Attorney General of New Jersey on behalf of Amy
Kopleton, Acting Chief of the New Jersey Bureau of Securities.

John L. Weichsel, Esq., and Chong S. Kim, Esq., attorneys for Defendants Owusu A. Kizito,
individually and as Managing Member of Investigroup, LLC; Investigroup, LLC, a Hawaiian
limited liability company; and Investigroup NP, a New Jersey nonprofit corporation.

By: The Honorable Robert J. Mega, P.J.Ch.

PARTY CLAIMS AND RELIEF SOUGHT

The present matter before the Court is Plaintiff Matthew J. Platkin's, Acting Attorney General of New Jersey on behalf of Amy Kopleton, Acting Chief of the New Jersey Bureau of Securities ("Plaintiff") Motion for Entry of Final Judgment by Default Pursuant to R. 4:43-2(b). The Court conducted a proof hearing as set forth herein.

- A. Finding that Defendants Owusu A. Kizito, Investigroup LLC and Investigroup NP (collectively, "Defendants") engaged in the acts and practices alleged in the Verified Complaint;
- B. Finding that such acts and practices constitute violations of the New Jersey Uniform Securities Law (1997), N.J.S.A. 49:3-47 to -89 (the "Securities Law");
- C. Permanently enjoining Defendants Kizito and Investigroup LLC from violating the Securities Law in any manner;
- D. Permanently enjoining the issuance for sale, offer for sale, solicitation, purchase, offer to purchase, promotion, negotiation, advertisement or distribution from or within New Jersey, of any securities by or on behalf of Defendants, their officers, directors, employees, agents, brokers, partners, stockholders, attorneys, successors, subsidiaries and affiliates;
- E. Permanently enjoining Defendants Kizito and Investigroup LLC from effecting or attempting to effect transactions in securities from, in or within New Jersey without being registered as an agent and/or broker-dealer with the Bureau;
- F. Permanently enjoining Defendants Kizito and Investigroup LLC from acting, from and within the State of New Jersey as: an agent as defined in N.J.S.A. 49:3-49(b); a brokerdealer as defined in N.J.S.A. 49:3-49(c); an investment adviser and/or an investment adviser representative as defined in N.J.S.A. 49:3-49(g); or from controlling or associating in any capacity with any broker-dealer or investment advisor doing business from, into or within the State of New Jersey;
- G. Permanently enjoining Defendant Kizito from controlling or associating in any capacity with any broker-dealer or investment adviser doing business from, into or within the State of New Jersey, or from controlling an issuer, or acting as an officer, director, or manager of an issuer as defined in N.J.S.A. 49:3-49(h) whose securities are offered for sale and/or sold in New Jersey;
- H. Assessing civil monetary penalties against Defendants Kizito and Investigroup LLC, jointly and severally, for each violation of the Securities Law in accordance with N.J.S.A. 49:3-70.1;
- I. Requiring Defendants Kizito and Investigroup LLC, jointly and severally, to pay restitution and requiring Investigroup NP to disgorge all profits and/or all funds gained through violations of the Securities Law; and
- J. Affording Plaintiff any additional relief the Court may deem just and equitable.

EVIDENTIARY FINDINGS

The Court has entered the following items into evidence based upon findings by the Court and/or stipulation from the Parties. A stipulation is when the Parties have agreed to certain facts.

The Court should treat these facts as undisputed, i.e., the Parties agree that these facts are true. As with all evidence, undisputed facts can be accepted or rejected by the Court in reaching a decision.²

J1 Exhibits:

- P1: Pre-Hearing Stipulation
- P4: Screengrab of Investigroup LLC website.
- P5: Dr. Owusu A. Kizito Resume
- P6: Investigroup LLC Registration
- P7: Address Change Request BoB
- P8: Questionnaire and Resume
- P9: Investigroup NP registration
- P10: Screengrab of Investigroup NP website
- P11: SEC Form D Filings for Investigroup LLC
- P12: Subscription Agreement Compilation
- P13: SEC Deposition Transcript (dated: December 3, 2019)
- P14: 2016 Investigroup Private Placement Memorandum
- P15: August 2018 Bank Statements
- P15a: Spreadsheets for Accounts 4437 (dated: August 10, 2018 – August 24, 2018) and 5026 (dated: August 13, 2018 – August 20, 2018)
- P16: March 2019 Bank Statements
- P16a: Spreadsheet for Account 5026 (dated: March 7, 2019 – March 11, 2019)
- P17: April 2019 Bank Statements
- P17a: Spreadsheet for Account 5026 (dated: April 3, 2019 – April 11, 2019)
- P17b: Redacted Images of two Checks
- P17c: Document produced by Santander Bank (Copy of Wire Check)
- P18: May-July 2017 Bank Statements
- P18a: Computer Spreadsheet for Accounts 3087 (dated: May 16, 2017 – July 5, 2017) and 3747 (dated: June 1, 2017 – June 5, 2017)

² See State v. Wesner, 372 N.J. Super. 489 (App. Div. 2004).

P19: August 2019 Bank Statements

P20: March-April 2018 Bank Statements for Account 3087 (dated: March 20, 2018 – April 11, 2018)

P20a: Spreadsheet (4 pages)

P21: Merchant Cash Advance Packet

P22: Merchant Cash Advance Spreadsheet

P23: Xui Zhu Tan Decision – Appeal

P24: Suarez Default Judgment (dated: January 18, 2019)

P25: Direct Capital Corp Judgment (dated: August 8, 2018)

P26: Federal Tax Lien (dated: August 7, 2012)

P27: Release of Federal Lien Kizito (dated: June 22, 2015)

P28: Standby Letter of Credit Compilation

P29: ASICS Standby Letter of Credit

P30: ASICS Invoice – Transfer

P31: Weston Letter (dated: October 3, 2018)

P32: Letter re Short Term Investments (dated: April 26, 2019)

P33: IG Response to Emdin (dated: June 7, 2019)

P34: Investigroup v. First American Complaint

P35: Capitalization Table – Summary of Investors who purchased membership units

P36: Investor U.N. Subscription Agreement

P37: Investor U.N. Shareholder Agreement (dated: May 18, 2020)

P41: Investor T.A.B. Subscription Agreement

P42: Excerpt of Investor Report 2020 (dated: December 31, 2020)

P43: Project Management Services Agreement

P44a: Pages 39 and 40 of LaChapelle Certification

P45: Copy of New Jersey Statute Annotated

P46: New Jersey Uniform Securities Law (page 13)

P50: Tax Lien Letter from IRS to Kizito (dated: September 8, 2017)

P51: Kizito’s 2017 1099 Tax Form

P52: Kizito's 2018 1099 Tax Form

P53: 2019 1099 prepared by Kizito

P54: 2020 News Press Release

P55: 2016 Investigroup NP 990 Tax Return

P56: 2017 Investigroup NP 990 Tax Return

P57: 2019 1099 for Investigroup

P58: 2019 Investigroup NP 990 Tax Return

P59: Investigroup NP's 2020 1099 Tax Form

P60: 2020 Investigroup NP 990 Tax Return

P63: Investigroup Financial Disclosure Form

P64: Investigroup NP NJ Bureau Disclosure Form

P65: IRS Explanation Regulation for Capital Contributions

P66: Application for Paycheck Protection Program (PPP)

P67: Investigroup LLC Payroll Form Records

P68: US Spending by Prime Account (3 pages)

P69: Tracking of Direct Payments (2 pages)

P70: 2014 Supreme Court Filing (Cert. Default & NY Judgment)

P71: Kizito Brief Filed in NY Appellate Division

P72: 2018 Private Placement Memorandum (PPM)

P73: Appeal Decision and Order (NY Appellate Division)

P74: Agreement between Investigroup LLC and Fog Logistics

P75: Indictment of Fred Asante

P76: DOJ Article Re: Ghana Top Money Launderer (Asante)

P77: Project Management Agreement with Felix Kumi

P78: Order to Show Cause (dated: October 28, 2020)

P79: Tweets from Dr. Kizi Investigroup account

P80: African Development Fund Website

P81: Consent Order (dated: December 24, 2020)

P82: American Daily Post Article (dated: April 22, 2022)
P83: Dr. Kizito NY Weekly Article
P84: Investafund Website
P85: USA Today Article: 10 Financial Advisors
P86: The American Reporter Article (dated: June 13, 2022)
P87: Disrupt Article Investigroup
D4: Kizito's 2016 U.S. Income Tax Return (Incomplete)
D7: Kizito's 2019 U.S. Income Tax Return
D8: Kizito's Amended 2017 U.S. Income Tax Return
D9: Kizito's 2018 Revised U.S. Income Tax Return
D10: Email Chain (dated: October 10, 2018)
D11: Private Placement Memorandum
D14a: Redacted Exhibit 11
D17: Exhibit 1 from Supplemental Report of Michael Saccomanno

J2 Exhibits:

B1: Richard W. Barry CV
B2: SEC Investor Bulletin: Private Placements Under Regulation D (dated: September 24, 2014)
B3: NASAA Top Investment Threats for 2022; Top 10 Investor Traps 2009
B3a: FBI Alert Re: Fictitious Standby Letters of Credit
B4: Long-Term Capitalization Table produced by Defendants (Redacted)
B5: Short-Term Capitalization Table produced by Defendants (Redacted)
B6: Table of Investigroup LLC Investors (IGLLC Membership Units and Standby Letters of Credit)
B6a: Table of PMS Investors and Transactions
B7: Defendants Response to Interrogatories (Supplemental)
B8: New Jersey Bureau of Securities Financial Disclosure Certification for a Business Investigroup LLC (dated: December 15, 2020)
B8a: New Jersey Bureau of Securities Financial Disclosure Certification for a Business for Investigroup NP (dated: December 15, 2020)

B9: Private Placement Memorandum (“PPM”) for Defendants Sale of Membership Units – select pages (dated: January 19, 2016)

B10: Investigroup LLC Units; Private Placement Memorandum – select pages (dated: 2018)

B11: Kizito Produced Document titled the Musimenta Audit including financial statements for 2015-2018

B12: Cliff Musimenta Response to the Bureau’s inquiry including review report and attached financial statements for year end 2017 and first quarter 2018

B13: Schedule of select information from Defendant Kizito’s tax returns from the time period of 2015-2019

B14: Investigroup LLC Profit and Loss and balance sheet for 2016, 2017, and 2018 – Hammerstedt Production

B15: Investigroup NP 990 U.S. tax return for year ending 2019

B16: Defendants’ production of a document titled Audited Financial Statements for the year end October 31, 2020, for Double Plus LTD

B17: Defendant produced Investigroup LLC and Double Plus LTD Project Management Services agreement with Felix Kumi

B18: Defendant produced Investigroup LLC and Double Plus LTD’s agreement with Fog Logistics and Fred Asante (dated: December 26, 2019)

B19: Referenced Pages of Investigroup Business Plan prepared by Blue Moon 2016

B20: Excerpts of Transcript of Kizito’s SEC Testimony (dated: December 3, 2019)

B25: Chart of account applications, pandemic relief applications, and communications; re: Kizito’s continued claim of 100% ownership of Investigroup LLC

B27: Excerpts of Print out of Investigroup LLC website

B28: Investigroup International LLC formation information Delaware Secretary of State

B29: Double Plus LTD TD Bank Account #8314 analysis

B30: Double Plus LTD TD Bank Account #8314 application

B32: First American Financial letter dated October 17, 2018 Re: Investigroup LLC Standby Letter of Credit

B35: Addendum to Investigroup Subscription Agreement for Investor H.A.

B38: Defendants Form D filing (dated: October 10, 2018)

B39: Defendants Amended Form D filing (dated: December 31, 2019)

- B40: Clear Vision Consulting and Associates Corp. corporate information NY State
- B43: IRS Guidance Re: Form 1040 Profit and Loss from a Business and reporting for single member LLCs
- B44: Investigroup LLC Wells Fargo Bank Account #6211 Account Analysis
- B45: PPP Loans
- B46: Investor T.A.B. Subscription Agreement (dated: November 9, 2019)
- B47: Table of Bank Accounts reviewed
- B48: State of New Jersey Office of the Attorney General, Deficiency Demand (dated: June 4, 2021)
- B49: Referenced Items of Defendant Kizito's response to deficiency response
- B50: Schedule of Personal and Unknown expenses from 7/29/2016 to 12/30/2016
- B51: Investor C.M.'s \$20,000.00 investment
- B52: Chart of HSBC account \$0803 showing receipt and transfer of investor U.N. funds
- B52a: Chart showing Investor U.N.'s funds moving from Investigroup HSBC account #0803 to Asante and Fog Logistics
- B53: Chart of Repayment of Investor Funds
- B54: Letters re: short-term investments

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Direct evidence means evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact. On the other hand, circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn. An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence. It is not necessary that facts be proved by direct evidence. They may be proved by circumstantial evidence or by a combination of direct and circumstantial evidence. Both direct and circumstantial evidence are acceptable as a means of proof. Indeed, in many cases, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence. In any event, both circumstantial and direct evidence should be scrutinized and evaluated carefully.

CREDIBILITY FINDINGS

In considering credibility of each witness, the Court considers the following factors:

- the appearance and demeanor of the witness;
- the manner in which he or she may have testified;
- the witness' interest in the outcome of the trial if any;
- his or her means of obtaining knowledge of the facts;
- the witness' power of discernment meaning his or her judgment - understanding;
- his or her ability to reason, observe, recollect and relate;
- the possible bias, if any, in favor of the side for whom the witness testified;
- the extent to which, if at all, each witness is either corroborated or contradicted, supported or discredited by other evidence;
- whether the witness testified with an intent to deceive the Court;
- the reasonableness or unreasonableness of the testimony the witness has given;
- whether the witness made any inconsistent or contradictory statement;
- and any and all other matters in the evidence which serve to support or discredit his or her testimony.

See State v. Allen, 308 N.J. Super. 421, 427-428 (App. Div. 1998).

FALSE IN ONE – FALSE IN ALL

This principle guides the Court with respect to the credibility of witnesses, meaning that if the Court believes that any witness deliberately lied, on any fact significant to the Court's decision in this case, the Court may reject all of that witness' testimony, or, in its discretion, the Court may believe some of the testimony and not believe other parts of the testimony. Further, if the Court believes that any witness deliberately lied, on any fact significant to the Court's decision in this case, the Court has the right to reject all of that witness' testimony. However, in the Court's discretion, the Court may believe some of the testimony and not believe other parts of the testimony. This is commonly known as false in one, false in all.

See State v. Ernst, 32 N.J. 567 (1960).

Credibility Findings

The following witnesses testified at the trial: Michael P. LaChapelle, Owusu A. Kizito, Richard W. Barry, and Michael A. Saccomanno.

Michael P. LaChapelle

Michael P. LaChapelle (“LaChapelle”) was the first witness called to testify. Plaintiff called LaChapelle to testify. LaChapelle is currently employed as an investigator in the Enforcement Unit of the New Jersey Bureau of Securities and has held his current position since 2003. LaChapelle began his investigation by reviewing documents received that represent a complaint that had been submitted to the State of New Jersey on behalf of certain investors. LaChapelle received proof of investments and other documents from Defendants. Several bank accounts were subpoenaed through LaChapelle’s investigation. LaChapelle testified to performing online searches, utilizing google, and identified a number of websites related to Investigroup LLC and Kizito.

LaChapelle testified that he searched the Electronic Data Gathering, Analysis and Retrieval System (“EDGAR system”) showed two Form D filings by Investigroup LLC, the first of which was dated 2018. The 2018 Form D filing had been backdated to 2016 and attempted to claim a 506(c) exemption from securities registration. In his investigation of expenses and payments made from the Investigroup LLC bank accounts, LaChapelle noted there were periodic payments to Maserati. LaChapelle also testified that there were several large cash withdrawals. LaChapelle testified that there were no corresponding documents to the Bureau to explain charges or cash withdrawals from the accounts. LaChapelle testified that no general ledger, books or records were maintained by Defendants, and therefore had to rely solely on provided bank statements.

In addressing the credibility factors, LaChapelle’s testimony was reasonable and consistent, and his overall demeanor and appearance was appropriate. LaChapelle had a good recollection of his investigation, was clear with his responses, and has experience in the field of securities regulation and enforcement. The Court finds that his overall ability to reason, observe, recollect and relate are acceptable. LaChapelle was direct with his answers, utilizing information he gathered during his investigation to answer questions on direct and cross examination. With respect to his knowledge, LaChapelle had a clear understanding of the laws and regulations pertaining to securities. The Court notes that LaChapelle is employed by the New Jersey Bureau of Securities, nevertheless, LaChapelle has a duty to conduct his investigations and testimony in

accordance with the law and would likely lose his job and credibility were he to do otherwise. LaChapelle's testimony was reasonable, professional and did not appear to be biased. The Court finds that LaChapelle did not testify with an intent to deceive the Court. Therefore, the Court accepts LaChapelle as a credible witness.

Owusu A. Kizito

Dr. Owusu A. Kizito ("Kizito") was the second witness to testify. Kizito was called to testify by Plaintiff. During his testimony, Kizito was asked about the 2017 Investigroup NP tax returns and certain boxes that were checked off. He claimed that boxes are automatically checked off and that he has since filed amended returns. Kizito testified that he did not tell investors that certain Investigroup LLC bank accounts were closed by Merchant Cash Advance Companies. Kizito would ask why questions were relevant and had to be instructed that his role was not to ask questions but to answer them. When asked about the 2019 Investigroup NP tax returns, specifically about a \$60,000.00 payment to himself, he claimed that he had put \$60,000.00 of his own money into the Investigroup NP bank account and was reimbursing himself.

When asked about his personal tax returns for 2020 and why they had not been submitted during discovery, Kizito claimed he had submitted them and then resubmitted them the week of June 27, 2022. Kizito further claimed that he submitted all requested documents during discovery, a claim that was contested by Plaintiff's Counsel. Discovery was not being provided. The Court issued two orders eventually striking Defendants' pleadings because discovery had not been completed.

From 2017 to 2020, Kizito claims to have paid himself approximately \$1,000,000.00 from Investigroup LLC and around \$150,000.00 from Investigroup NP, so in four years he received approximately \$1,150,000.00. Kizito repeatedly classified these payments as reimbursements. On a non-profit financial disclosure form, only one account was listed with slightly more than \$1,000.00. Kizito claims he did not get a chance to complete the form, however, at the bottom of the document before the signature line where Kizito's signature is located, is a disclaimer that the form is completed and accurate. The form was not completed and was not accurate.

When asked about Investigroup LLC's 2019 individual tax return and Schedule C form, Kizito testified that he did not want to miss anything from the bank statements in the tax returns,

so he included capital contributions as revenue, something that is not supposed to be done as the IRS Code clearly states that capital contributions are not to be classified as revenue. Kizito testified that he counted the capital contributions as revenue and/or sales, but of the \$11,000,000.00, approximately \$10,000,000.00 were capital contributions, so they are not revenue. Kizito claimed that categorizing money as capital contributions or revenue depends on how you explain it.

In addressing the credibility factors, Kizito's testimony, the Court finds it incredible due to his attempts to justify his actions and deny any and all responsibility. Kizito's testimony showed a lack of reasonableness or diligence in that his justifications for certain actions and decisions are mere self-justifications and do not reflect the professionalism in a field in which he holds himself out to be a professional of accounting. For example, when asked about obvious misrepresentations and omissions on documents, Kizito would push it off and maintain that he did nothing wrong. Kizito frequently attempted to explain circumstances and provide detail to yes or no questions that made little to no sense and at times would attempt to avoid an answer all together. Kizito's demeanor would change when asked questions that would require unfavorable answers, whether it was a change in posture or tone of voice. Kizito would poke at the inside of his elbow and fidget with his hands during direct examination.

Looking to whether the witness made any inconsistent or contradictory statements, on many occasions Kizito would contradict his own testimony. For example, when asked why he claimed to be a single-member LLC on tax forms, he said that the company was a single-member LLC as he was the sole owner, but then admitted to selling equity ownership shares in his company. When asked whether he made any misrepresentations or whether documents were completed incorrectly, Kizito initially testified that everything was done properly, but later admitted to documents being incorrect and requiring amendments and was learning as time went on about mistakes made. Looking to the manner in which he testified, Kizito was defensive, closed off, and at times, hostile or uncooperative during direct examination by Plaintiff's counsel, but softer and more open to questioning and providing answers for his counsel. When asked questions that a tax professional should have answers to, he was unsure or could not recall, specifically when asked questions about his own tax returns and the inaccuracies or omissions therein. Kizito admitted to not keeping customary books and records. He relied solely on his checkbook and cancelled checks. There were no ledgers for either receipts or expenses. The Court finds this incredible given

Kizito's representation of being a professional in the field of accounting. Accordingly, the Court finds that Kizito testified with an intent to deceive the Court. Therefore, the Court does not find his testimony to be credible.

Richard W. Barry

Richard W. Barry ("Barry") testified as an expert in the field of securities regulation and accounting. Barry was retained by the Bureau for the purpose of examining the facts and circumstances of securities sold by Defendants and to determine whether the sale of securities complied with New Jersey laws and statutes. Barry testified that he is paid for his services at approximately \$275 an hour and that his fee is not contingent on the outcome of this matter. Barry investigated and prepared a report covering compliance with the New Jersey laws on securities, the use of funds by Defendants, disclosures, and the calculation of damages. Barry reviewed documents provided by Defendants and the Bureau which included bank statements, independent audit reports, accounting of profit and loss statements, available bank wires, checks, canceled checks, tax forms, various bank documents, deposition transcripts from the SEC taken on December 3, 2019, litigation testimony taken by the Bureau Division of Law of Kizito in 2020 and all attached exhibits. The Court accepted Richard W. Barry as an expert in the field of securities regulation and accounting.

In addressing the credibility factors, the Court notes that Barry's testimony was reasonable and consistent, and his overall appearance and demeanor was appropriate. Barry had a good recollection of his investigation, was clear and concise with his responses, and has an extensive background in the field of securities regulation and accounting, all of which support his ability to reason, observe, recollect, and relate. Barry was straightforward and unwavering with his responses, relying on evidence and statutory analysis to support his findings. With respect to his knowledge, Barry was accepted as an expert in the field of securities regulation and accounting. As an expert witness, Barry does not have a personal interest in the outcome of the trial nor does the Court find that Barry exhibited any bias in favor of the side for whom he testified. When testifying, Barry's responses to questions were professional, reflective of his expertise, and neutral. The Court finds that Barry did not testify with an intent to deceive the Court. Therefore, the Court finds his testimony credible.

Michael A. Saccomanno

Michael A. Saccomanno (“Saccomanno”) was the called by Defendants and was the last witness called to testify. Saccomanno is Partner-In-Charge of Friedman LLP’s Forensic Accounting, Litigation Support & Valuation Services practice. Saccomanno has over 15 years of experience in the field of forensic accounting. Saccomanno was engaged by Defendants to review Richard Barry’s report and provide an evaluation of the damages calculated. Saccomanno testified that he verified the starting point of Barry’s analysis and verified within 95% of investor repayments. Saccomanno inquired to Kizito of the investor U.N.³, of normal business expenses, and the various real estate projects that Kizito was investing in. The Court accepted Saccomanno as an expert in the field of forensic accounting.

Saccomanno determined normal business expenses by reviewing bank statements and canceled checks. He then created a chart of regular business expenses that would have been made which included cell phone bills, rent, office supplies, software expenses, and payments to companies that prepared the Private Placement Memorandums. Saccomanno testified that he left out payments to Kizito and any checks or transfers made to Kizito from the Investigroup bank accounts. Saccomanno determined there were over \$92,000.00 in normal business expenses from the same time period in Barry’s report, thus he would reduce the damages determined by Barry by roughly \$92,000.00. As a result of his analysis and experience, Saccomanno determined the remaining damages prior to any potential mitigating factors is limited to around \$4.4 million.

In his testimony, Saccomanno stated that he was instructed by counsel for Defendants to rely solely on the Certification of Investor U.N., which was determined to be hearsay as Investor U.N. did not testify and the validity of the Certification could not be determined. But for the Certification of Investor U.N., Saccomanno testified that he agreed with Plaintiff Expert Barry’s starting number minus the amount of normal business expenses he calculated and came to around \$15,068,930.00 before any potential mitigating factors. Potential mitigating factors included various real estate projects Kizito is involved in, but as Saccomanno testified, he is not an expert in real estate and could not definitively made any assessments as to those projects.

³ U.N. denotes the initials of an individual investor.

On cross examination by Plaintiff's counsel, Saccomanno testified to having reviewed the source of funds in the accounts that were used to pay back investors and determined that some of the funds utilized were from pandemic relief funds.

In addressing the credibility factors, the Court notes that Saccomanno's testimony was reasonable and consistent, and his overall demeanor and appearance was appropriate. Saccomanno's testimony was consistent, corroborated, and supported by the evidence presented. Saccomanno obtained his knowledge by reviewing Barry's report, documents produced by Defendant, and by conducting inquiries. Saccomanno indicated that the difference in his calculations were in part due to information he was given by Kizito and told to accept and rely on as true and accurate. Saccomanno had a good recollection of his investigation, was clear and concise with his responses, and has an extensive background in the field of forensic accounting, all of which support his ability to reason, observe, recollect, and relate. With respect to his knowledge, Saccomanno has been recognized by this Court as an expert in the field of forensic accounting. As an expert witness, Saccomanno does not have a personal interest in the outcome of the trial nor does the Court find that Saccomanno exhibited any bias in favor of the side for whom he testified. The Court notes that Saccomanno was engaged by Defendants in this matter but finds that he was neutral in his testimony as he testified to agreeing with Barry's calculation of damages but deviated when he was instructed by Defendants' counsel to rely on the Certification of Investor U.N. Saccomanno testified that the reliance on Investor U.N.'s Certification was vital in reducing the total amount of damages. The Court finds that Saccomanno did not testify with intent to deceive the Court. In so far as he could rely on information he was instructed to accept as true, some of which was discounted at trial as unsubstantiated. Therefore, the Court finds Saccomanno to be credible.

PROCEDURAL HISTORY

On October 26, 2020, Plaintiff Gubir S. Grewal, Attorney General of New Jersey, on behalf of Christopher W. Gerold, Chief of the New Jersey Bureau of Securities ("Plaintiff"), filed its Initial Complaint against Defendants Owusu A. Kizito, Investigroup, LLC, and Investigroup NP (collectively "Defendants").

On October 28, 2020, Plaintiff filed an Order to Show Cause for Temporary Restraints that was entered by the Court.

On December 24, 2020, the Court entered a Consent Order temporarily restraining Defendants pursuant to the Order to Show Cause and the Verified Complaint.

On January 28, 2021, counsel for Defendants requested an extension on the time to respond to Plaintiff's Verified Complaint. On January 29, 2021, the Court entered a Consent Order granting Defendants' extension to February 16, 2021.

On February 16, 2021, Defendants submitted their Answer to Plaintiff's Verified Complaint.

On March 3, 2021, the Court entered a Case Management Order setting out dates for responsive answers to interrogatories, responses to notices to produce, expert reports, depositions, and a case management conference.

On April 14, 2021, counsel for Defendants submitted consent to substitution of attorney.

On June 1, 2021, the Court entered a Case Management Order setting out dates for a case management conference, deficiency notices, responses depositions, and expert reports.

On June 17, 2021, Plaintiff filed a Motion to Suppress Defendants' Answer and Affirmative Defenses. The Court granted Plaintiff's Motion on July 23, 2021.

On September 29, 2021, Defendants filed a Motion to Vacate the Court's July 23, 2021 Order Suppressing and Striking Defendants' Answer and Defenses without prejudice. On October 14, 2021, Plaintiff filed a Cross-Motion to Suppress Defendants' Answer and Affirmative Defenses with prejudice. On October 22, 2021, the Court granted Plaintiff's Cross-Motion to Suppress Defendants' Answer and Affirmative Defenses with prejudice, entered Default on the docket pursuant to R. 4:43-1, and denied Defendants' Motion to Vacate Suppression of their Answer without prejudice.

On November 11, 2021, Plaintiff requested Default be entered as to Defendants Owusu Kizito, Investigroup LLC, and Investigroup NP. The request was marked deficient as it was a letter filing rather than an actual request for default.

On April 27, 2022, Plaintiff filed the present Motion for Entry of Final Judgment by Default as to Defendants. On May 18, 2022, the Court scheduled a proof hearing for this matter on May 24, 2022. An adjournment was granted, and the proof hearing was rescheduled for June 14, 2022.

On June 20, 2022, the proof hearing commenced. The proof hearing concluded on July 14, 2022.

FACTUAL FINDINGS

The Court finds the following facts after hearing testimony from the parties and their respective witnesses. The Court finds that Kizito and Investigroup LLC⁴ did in fact offer and sell securities. Such securities were in the form of investment contracts called “Membership Units”. (Barry, July 12, 2022, 103:20-116:6; J-1, P-11; Kizito, July 6, 2022, 137:21-138:17). Those sales of Membership Units resulted in sales to at least 61 investors totaling \$15,727,651.00 beginning in July 2016. (Barry, July 12, 2022, 128:9-137:2; B-6). In addition to the Membership Units, Kizito and Investigroup LLC offered and sold securities under the guise of promissory notes or SBLC Notes. (Barry, July 12, 2022 116:7-118:1). As to the SBLC Notes, Kizito and Investigroup LLC sold at least \$460,000.00 of such to 8 investors. (Barry, July 12, 2022, 120:100122:7, 128:9-137:2; P-28; B-6). As between the Membership Units and the SBLC Notes, Kizito and Investigroup LLC collectively sold at least \$16,187,651.00 to at least 69 different investors. (Barry, July 12, 2022, 128:9-137:2; B-6).

The Membership Units and SBLC Notes were required to either be registered with Plaintiff pursuant to N.J.S.A. 49:3-60, exempt from registration, or federally covered securities. (Barry, July 12, 2022, 102:14-118:1; J-1, P-11). Neither the Membership Units nor the SBLC Notes were registered with Plaintiff under either N.J.S.A. 49:3-61, N.J.S.A. 49:3-61.1, or N.J.S.A. 49:3-61.2. (Barry, July 12, 2022, 102:14-118:1; J-1, P-11). The Court also finds that neither the Membership Units, nor the SBLC Notes were exempt from registration or federally covered securities. (Barry, July 12, 2022, 102:14-118:1; J-1, P-11). In addition to neither being exempt, Kizito was not registered with Plaintiff as an agent authorized to sell such securities or offer to sell same within New Jersey under N.J.S.A. 49:3-49(b). (Barry, July 12, 2022, 150:24-152:1, Kizito, July 16, 2022, 137:21-138:17). Despite such lack of registration, Investigroup LLC employed Kizito to sell both the Membership Units and SBLC Notes. (Barry, July 12, 2022, 150:24-152:1; Kizito, July 6, 2022, 137:21-138:17).

⁴ Investigroup LLC and Investigroup NP are two distinct entities both controlled by Kizito. Investigroup LLC is a for-profit entity while Investigroup NP is a non-profit entity.

Between 2016 and 2018, Kizito, through Investigroup LLC and Investigroup NP, took funds earmarked for Investigroup LLC and transferred same to Investigroup NP to the tune of \$1,500,000.00. (Barry, July 13, 2022, 23:5-25:13). Of the monies invested, Kizito used funds for his personal expenses. (Barry, July 13, 2022, 75:8-78:15; B-50; LaChapelle, June 21, 2022; 25:17-27:9, 30:6-31:13; P-17A; J-1, P-14 p.20; P-72 p.19; Kizito, June 23, 2022, 137:19-150:3; P-20A. Additionally, the Court finds that Kizito and his agents acquired funds investors thought were being invested in SBLC Notes and used same in unrelated transactions. Barry, July 12, 2022, 118:2-119:13, 120:10-121:12; J-1, P-28; Kizito, July 6, 2022, 167:6-176:6.

In the Investigroup LLC Private Placement Memorandums (“PPM”), Kizito and Investigroup LLC told investors that approximately 76% of the proceeds would be used for a new office buildout, growth marketing, international expansion, strategic partnerships, legal and portal onboarding, and hiring/training. LaChapelle, June 21, 2022, 30:6-31:13; J-1, P-14, P-72. However, those funds were used for Kizito’s personal expenses and other non-business related expenses such as use of investor money to repay prior investors. (Barry, July 13, 2022, 75:8-78:15; P-50; LaChapelle, June 21, 25:17-27:9, 30:6-31:13; P-17A; J-1, P-14 p. 20; LaChapelle, June 22, 10:4-11:8; LaChapelle, June 22, 2022, 166:9-15; Kizito, June 23, 2022, 147:19-150:3; P-20A). In addition to non-business expense use of funds, Kizito failed to notify investors that Investigroup LLC was subject to multiple lawsuits. (LaChapelle, June 21, 102:2-106:9; J-1, P-25; Kizito July 6, 2022, 84:7-100:20; P-70; P-72). In addition to use of funds as described above, Kizito and Investigroup LLC omitted to disclose the use of the funds in such manner, including but not limited to cash withdrawal, transfers to Kizito personally, and pay-off of other investors. (Barry, July 13, 2022, 75:8-78:15; P-50, LaChapelle, June 21, 2022, 25:17-27:9, 30:6-31:13; P-17A; J-1, P-14; LaChapelle, June 22, 2022, 10:4-11:8; LaChapelle, June 22, 2022, 166:9-15; Kizito, June 23, 2022, 147:19-150:3; P-20A; P-15-P-20. Additionally, the Court finds that Kizito and Investigroup LLC diverted \$1,500,000.00 of investors funds to Investigroup NP without advising the investors of same. (Barry, July 13, 2022, 23:5-25:13). The investors were unaware of those transfers to Investigroup NP. (Id.).

Kizito and Investigroup LLC also failed to disclose to investors that Investigroup LLC had been borrowing funds from certain merchant cash advance companies (MCA) lenders and assigning rights to accounts receivable to such lenders. (LaChapelle, June 21, 2022, 88:12-102:1;

J-1, P-21, P-22, LaChapelle, June 22, 2022, 10:4-8, Kizito, July 6, 2022, 21:6-25:13; Barry, July 13, 2022, 146:20-147:12). Investor funds were used to repay such investors. (Id.). In addition to loans, Kizito and Investigroup LLC failed to disclose to investors that in 2011, the IRS had assessed taxes, interest and penalties against Kizito and Investigroup LLC and ordered them to repay same in the amount of \$262,37.00. (LaChapelle, June 21, 2022, 106:10-109:23; J-1, P-26, P-27; Kizito, June 23, 2022, 68:16-77:20; P-50).

Kizito and Investigroup LLC also failed to disclose to investors that the securities sold were not registered with Plaintiff or exempt from registration. (Barry, July 12, 2022, 103:20-118:1; J-1, P-11; Kizito, July 6, 137:21-138:17). In addition to the securities not being registered, with Plaintiff, Kizito and Investigroup LLC did not disclose to investors that Kizito was not registered with Plaintiff as an agent to sell securities. (Barry, July 12, 2022, 150:24-152:1; Kizito, July 6, 2022, 137:21-138:17).

LAW & ANALYSIS

Final Judgment

Rule 4:43-2(b) which guides the court with respect to final judgment by default by the court, states:

In all other cases, except Family Part matters recognized by Part V of these Rules, the party entitled to a judgment by default shall apply to the court therefor by notice of motion pursuant to R. 1:6, served on all parties to the action, including the defaulting defendant or the representative who appeared for the defaulting defendant. No judgment by default shall be entered against a minor or mentally incapacitated person unless that person is represented in the act by a guardian ad litem who has appeared therein. If, to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any allegation by evidence or to make an investigation of any other matter, the court, on its own motion or at the request of a party on notice to the defaulting defendant or defendant's representative, may conduct such proof hearings with or without a jury or take such proceedings as it deems appropriate. The notice of proof hearing shall be ordinary mail addressed to the same address at which process was served unless the party entitled to judgment has actual knowledge of a different current address for the defaulting defendant. Proof of service of the notice of motion and notice of any proof hearing shall certify that the plaintiff also has not actual knowledge that the defaulting defendant's address has changed after

service of original process or, if the plaintiff has such knowledge, the proof shall certify the underlying facts. In tort actions involving multiple defendants whose percentage of liability is subject to comparison and actions in which fewer than all defendants have defaulted, default judgment of liability is subject to comparison and actions in which fewer than all defendants have defaulted, default judgment of liability may be entered against the defaulting defendants but such questions as defendants' respective percentages of liability and total damages due plaintiff shall be reserved for trial or other final disposition of the action. If application is made for the entry of judgment by default in deficiency suits or claims based directly or indirectly upon the sale of a chattel which has been repossessed, the plaintiff shall prove before the court the description of the property, the amount realized at the sale or credited to the defendant and the costs of the sale. In actions for possession of land, however, the court need not require proof of title by the plaintiff. If application is made for the entry of judgment by default in negligence actions involving property damage only, proof shall be made as provided by R. 6:6-3(c).

In the present matter, final judgment is warranted as Defendants are in default and have failed to vacate same.

Offer and Sale of Securities

N.J.S.A. §49:3-60 which guides the court with respect to the offer or sale of securities, states in relevant parts

It is unlawful for any security to be offered or sold in this State unless:

- (a) The security or transaction is exempt under section 3 of P.L.1967, c.93 (C.49:3-50);
- (e) The security is registered under this act; or
- (f) It is a federal covered security for which a notice filing and fees have been submitted as required by section 14 of this act (C.49:3-60.1).

In the present matter, the Court finds that Defendants Owusu Kizito and Investigroup LLC violated N.J.S.A. 49:3-60 by offering and selling at least \$16,187,651 in unregistered securities to 69 investors. Under the statute, it is unlawful for any security to be offered or sold in the state of New Jersey unless it is either exempt, registered, or it is a federal covered security for which a notice filing and fees have been submitted. The securities offered and sold by and through Investigroup LLC and Kizito were not exempt from registration, were not registered, and were not

federal covered securities for which a notice filing and fees were submitted. During his testimony, Kizito acknowledged that the securities were not registered but claimed that he filed a Form D seeking exemption from registration. Filing a Form D does not equal exemption. Kizito also testified that he did not register any securities with the Bureau, this was supported by the both the LaChapelle and Barry investigations and subsequent testimony. As will be shown below and testified to by LaChapelle, the Court finds that Investigroup LLC violated N.J.S.A. 49:3-60 61 times as to the Membership Units and 8 times as to the SBLC Agreement. Similarly, Kizito violated N.J.S.A. 49:3-60 61 times as to the Membership Units and 8 times as to the SBLC Agreement. (LaChapelle, June 22, 2022, 28:14-52:3; P-44A, p.39-40 of LaChapelle Certification – Penalty Tables).

Required Registration

N.J.S.A. §49:3-56 which guides the court with respect to required registration, in relevant parts states:

(a) It shall be unlawful for any person to act as a broker-dealer, agent, investment adviser or investment adviser representative or Internet site operator in this State unless that person is registered or exempt from registration under this act

(h) It shall be unlawful for any broker-dealer or issuer to employ an agent in this State unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the bureau. When an agent terminates his connection with a particular broker-dealer or issuer, his authorization to engage in those activities which make him an agent is terminated.

In the present matter, the Court finds that Defendant Kizito violated N.J.S.A. 49:3-56(a). Kizito himself testified that he is not registered with the Bureau to sell securities. Kizito likewise is not federally registered to sell securities. Kizito testified on July 6, 2022, that he did not possess a license to sell securities, never registered with the Bureau to sell securities, and never registered federally to sell securities. Kizito is not exempt from registration. In his testimony on July 6, 2022, Kizito claimed that Blue Moon Logistics, the company that created the 2016 PPM, as part of their

services would complete all the registration with the state and federal government, which never happened.

Similarly, the Court finds that Defendant Investigroup LLC violated N.J.S.A. 49:3-56(h). As an issuer of securities, Investigroup LLC employed a non-registered agent that advertised, offered and sold securities. As mentioned above, Kizito is not registered on the state or federal level to sell securities. On July 6, 2022, Kizito testified that Investigroup LLC never submitted an application to sell securities and likewise never submitted an application for him to sell securities as an agent. As will be summarized below, the Court finds that Kizito violated N.J.S.A. 49:3-56(a) 61 times as to the Membership Units and 8 times as to the SBLC Agreements. (LaChapelle, June 22, 2022, 28:14-52:3; P-44A, p.39-40 of LaChapelle Certification – Penalty Tables). As to N.J.S.A. 49:3-56(h), the Court finds that Investigroup LLC violated same 61 times as to the Membership Units and 8 times as to the SBLC Agreements. (LaChapelle, June 22, 2022, 28:14-52:3; P-44A, p.39-40 of LaChapelle Certification – Penalty Tables).

Unlawful Activities

N.J.S.A. 49:3-52(a)

N.J.S.A. §49:3-52(a) makes it unlawful to “employ a device, scheme, or artifice to defraud” investors “in connection with the offer, sale, or purchase of securit[ies]” N.J.S.A. 49:3-52(a).

To make a prima facie showing that a person is liable for employing a device or scheme to defraud (sometime referred to as “scheme liability”), the Bureau Chief must demonstrate that the person committed a deceptive or manipulative act in furtherance of the alleged scheme to defraud. See SEC v. Kearns, 691 F. Supp. 2d 601, 617-618 (D.N.J. 2010) (interpreting 15 U.S.C. ~ 77q(a), which is identical to N. J. S .A. 49:3-52 (a)). A deceptive or manipulative act includes “conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme.” SEC v. Berry, 580 F. Supp. 2d 911, 923 (N.D. Cal. 2008). For instance, “masterminding a misleading accounting scheme can suffice as conduct that furthers a fraudulent scheme.” Ibid.

In SEC v. Better Life Club, 995 F. Supp. 167, 176 (D.D.C. 1998), the court granted the SEC summary judgment on its fraud claim where the defendant had misled investors about the source of their returns and the use of investment funds.

In concluding that it was undisputed that the individual defendant acted with scienter, the court reasoned that the defendant “must have known of the [issuer's] dire financial state, of the

[issuer's] inability to make the required payouts, and of his own [personal] withdrawals" because the defendant "oversaw [the issuer's] marketing, sale, and operation, and managed the finances of the entire operation." Id. at 177-78.

N.J.S.A. 49:3-52(b)

To prove a violation of N.J.S.A. 49:3-52 (b) and (c), Plaintiff must make a prima facie showing "that the defendants misrepresented or omitted a material fact in connection with a securities transaction." N.J.S.A. 49:3-52(b). Material information is the type of information a reasonable investor might have considered important in making his or her investment decision. See Affiliated Ute Citizens v. United States, 406 U.S. 128, 153-54 (1972); see also Basic Inc. v. Levinson, 485 U.S. 224, 240 (1988) ("[m]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information").

In the present matter, the Court finds that Defendants Investigroup LLC and Kizito, in connection with the offer, sale, or purchase of securities, engaged in acts, practices, or course of business which operated as a fraud or deceit upon investors in violation of the above referenced statutes. Kizito testified to a number of instances in which investors were not informed of facts that would very likely be material in deciding whether or not to invest with Defendants. When asked about a federal tax lien against himself and Investigroup LLC, Kizito testified that he never informed investors of the lien itself or the offer and compromise he made to the IRS which was accepted on April 4, 2017. The 2016 PPM that Kizito and Investigroup LLC had drafted for investors did not include any information about a tax lien and no updates were made to include the tax lien or the accepted offer and compromise. Investors were not informed that Defendants owed the IRS upwards of \$200,000.00, nor were they informed that the same account(s) their investment funds were being deposited to were being used to make payments to the IRS.

From the testimony, the Court finds that there were consistent misrepresentations and omissions in terms of what investors were being told or not told. According to testimony from LaChapelle, Kizito and Barry, investors were never told that the accounts their funds were being deposited into were being used to make payments to MCA companies, Maserati USA, Uber Eats, and other non-business-related entities like grocery stores. Kizito testified that the merchant cash advances were a means of funding the business and therefore business related, and while that may be possible, investors were never informed of such cash advantages, nor were they notified that a

merchant cash advance company that Investigroup LLC had taken a loan from had frozen one of Investigroup LLC’s accounts that contained investor funds.

Part of the 2016 and 2018 PPMs state that Investigroup LLC has no pending legal actions to which it is a known party. Kizito testified that the 2018 PPM was updated to include the Xui Zhu Tan case in which Investigroup LLC and Kizito were known parties. Contrary to his testimony, the PPM was not updated to include the pending legal action. Investors likewise were not informed that, as a result of that legal action, Kizito was found to have held himself out as an attorney and ordered to pay compensation to the plaintiffs.

As to N.J.S.A. 49:3-52(a), the Court finds that Investigroup LLC violated same 1 time as to the Membership Units and 1 time as to the SBLC Agreements. (LaChapelle, June 22, 2022, 28:14-52:3; P-44A, p.39-40 of LaChapelle Certification – Penalty Tables). Kizito violated same once as to the Membership Units and once as to the SBLC Agreements. (LaChapelle, June 22, 2022, 28:14-52:3; P-44A, p.39-40 of LaChapelle Certification – Penalty Tables).

As will be summarized below, as to N.J.S.A. 49:3-52(b), the Court finds that Investigroup LLC violated same 488 times as to the Membership Units and 56 times as to the SBLC Agreements. Similarly, Kizito violated same 488 times as to the Membership Units and 56 times as to the SBLC Agreements. (LaChapelle, June 22, 2022, 28:14-52:3; P-44A, p.39-40 of LaChapelle Certification – Penalty Tables).

By way of summation, the Court finds the below specific violations as set forth in the proof hearing. (LaChapelle, June 22, 2022, 28:14-52:3; P-44A, p.39-40 of LaChapelle Certification – Penalty Tables).

| Statute Violated | Violations by Investigroup | Violations by Kizito |
|----------------------------|--|--|
| <u>N.J.S.A. 49:3-52(a)</u> | 1 (Membership Unit) 1 (SBLC Agreement) | 1 (Membership Unit) 1 (SBLC Agreement) |
| <u>N.J.S.A. 49:3-52(b)</u> | 488 (Membership Unit) 56 (SBLC Agreement) | 488 (Membership Unit) 56 (SBLC Agreement) |
| <u>N.J.S.A. 49:3-52(c)</u> | 61 (Membership Unit) 8 (SBLC Agreement) | 61 (Membership Unit) 8 (SBLC Agreement) |

| | | |
|----------------------------|--|--|
| <u>N.J.S.A. 49:3-56(a)</u> | 0 (Membership Unit) 0 (SBLC Agreement) | 61 (Membership Unit) 8 (SBLC Agreement) |
| <u>N.J.S.A. 49:3-56(h)</u> | 61 (Membership Unit) 8 (SBLC Agreement) | 0 (Membership Unit) 0 (SBLC Agreement) |
| <u>N.J.S.A. 49:3-60</u> | 61 (Membership Unit) 8 (SBLC Agreement) | 61 (Membership Unit) 8 (SBLC Agreement) |
| <u>Total</u> | 672 (Membership Unit) 81 (SBLC Agreement) | 672 (Membership Unit) 81 (SBLC Agreement) |
| <u>Grand Total</u> | 753 Total Violations | 753 Total Violations |

Enforcement – Restitution and Disgorgement

N.J.S.A. §49:3-69. Enforcement actions by bureau chief

(a) If it appears to the bureau chief that any person has, or directly or indirectly controls another person who has engaged in, is engaging in, or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, or if it appears that it will be against the public interest for any person to issue, sell, offer for sale, purchase, offer to purchase, promote, negotiate, advertise or distribute any securities from or within this State, the bureau chief may take, in addition to any other enforcement actions available under this act and in the bureau chief’s discretion, either or both of the following actions:

(1) issue a cease and desist order against the persons engaged in the prohibited activities directing them to cease and desist from further illegal activity or doing any acts in furtherance thereof. Upon entry of such an order, the bureau chief shall promptly notify each person subject thereto that it has been entered and of the reasons therefor. In the case of an agent, notice shall also be given to the broker-dealer with which the agent is affiliated as shown on the Central Registration Depository, and in the case of an investment adviser representative, notice shall also be given to the investment adviser with which the investment adviser representative is affiliated as

shown on Form ADV, 17 C.F.R. s.279.1, or successor federal registration form;

(2) Have an action brought by the Attorney General in the Superior Court on the bureau chief's behalf to enjoin the acts or practices to enforce compliance with this act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. **In addition, upon a proper showing by the bureau chief, the court may enter an order of rescission, restitution or disgorgement or any other order within** the court's power, directed to any person who has engaged in any act constituting a violation of any provision of this act or any rule or order hereunder. The court may not require the bureau chief to post a bond. The court may proceed in the action in a summary manner or otherwise;

Generally, the principle of restitution is grounded in preventing unjust enrichment. See In re New Jersey State Board of Dentistry, 84 N.J. 582, 587 (1980) (citing Restatement 1st of Restitution ~ 1 (1937) (person unjustly enriched at expense of another required to make restitution to the other.)). Restatement 1st of Restitution ~ 1, Comment (a) provides:

A person obtains restitution when he is restored to the position he formerly occupied either by the return of something which he formerly had or by the receipt of its equivalent in money. Ordinarily, the measure of restitution is the amount of enrichment received but if the loss suffered differs from the amount of benefit received, the measure of restitution may be more or less than the loss suffered or more or less than the enrichment.

The authority to order disgorgement of unlawful gains is inherent in the historic equity jurisdiction of the Superior Court, Chancery Division. Cf. *Crowe v. DeGioia*, 90 N.J. 126, 137-138, 447 A.2d 173 (1982). *State v. Darby*, 246 N.J. Super. 432, 447, 587 A.2d 1309, 1317 (Super. Ct. App. Div. 1991); see also N.J.S.A. 49:3-69(a)(2) (authorizing an order for disgorgement upon finding of "any act constituting a violation of any provision" of the statute").

In the present matter, the Court finds that Kizito and Invest group received approximately \$16,187,651 from the sale of unregistered securities, \$1,026,000 of which has already been repaid.

(Barry, July 12, 2022, 128:9-137:2). Accordingly, the Court finds that **Defendants should pay restitution in the amount of \$15,161,043** for investors pursuant to N.J.S.A. 49:3-69(a). However, as to disgorgement, N.J.S.A. 49:3-69(a)(2) provides that the Court may order rescission, restitution **or** disgorgement. N.J.S.A. 49:3-69(a)(2) (emphasis added). The Court, here, finds that Plaintiff may receive one, but not all three of the remedies set forth in N.J.S.A. 49:3-69(a)(2). Plaintiff, here, seeks both restitution in the amount of \$15,161,043 and disgorgement in the amount of \$1,500,000. Despite Kizito's egregious conduct, the Court finds same to not be authorized by N.J.S.A. 49:3-69(a)(2). Accordingly, the request for disgorgement is **DENIED**.

Civil Penalties – N.J.S.A. 49:3-70.1

In addition to the above portions, the Securities Law provides for civil penalties for each violation. N.J.S.A. 49:3-70.1 provides that

“Any person who violates any of the provisions of this act or who violates any rule or order under this act, shall be liable for the first violation to a penalty of not more than \$10,000; for a second violation to a penalty of not more than \$20,000; and for each subsequent violation to a penalty of not more than \$20,000 per violation. One or more violations may occur at the same time or be part of the same conduct or pattern of conduct. The penalty shall be entered, with the requisite notice, sued for and recovered by and in the name of the bureau chief and shall be collected and enforced by summary proceeding pursuant to "the penalty enforcement law". N.J.S.A. 49:3-70.1

In terms of civil monetary penalties, the “amount of the penalty imposed is generally within the sound discretion of the trial judge”. State v. Lewis, 215 N.J. Super. 564, 574, 522 A.2d 485, 490 (Super. Ct. App. Div. 1987). The “absence of intent or mens rea may be a basis for mitigation”. Id. "The number of violations, their frequency, the precautions taken to prevent further mishaps and the circumstances under which the offenses occurred are all relevant factors in determining the penalty." Department of Health v. Concrete Specialties, Inc., 112 N.J. Super. 407, 411 (App. Div. 1970). Other factors which may be taken into account include the operation by defendants of a commercial business for profit without necessary permits and in part in violation of permit conditions and the fact that some of the violations here occurred notwithstanding. Lewis, 215 N.J. Super. at 574.

Civil monetary penalties like those prescribed by the [Securities Law] deter future unlawful behavior, compensate society at large for the harm suffered and compensate the government for

the cost of enforcing the applicable law. Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 129-30 (1987). As noted by the Supreme Court in the Matter of Garay, 89 N.J. 104 (1982), "there is no precise formula for determining the proper penalty." Id. at 116. However, penalties must be reasonable "as applied to the specific facts involved." Id. at 115.

There is a lack of concise direction in our jurisprudence as to whether a Defendant should be assessed the maximum penalty under N.J.S.A. 49:30-70.1 or a lesser amount. Plaintiff urges the Court to assess the maximum penalty due to "the egregious nature of Defendants' conduct". Conversely, Defendant offers no justifications for non-issuance of a penalty under N.J.S.A. 49:30-70.1. Plaintiff has routinely assessed penalties below the maximum statutorily permitted amount. See IMO Carl Barone, Michael Prendergast, et. al, 2005 N.J. Sec. LEXIS 22, *5 (NJ Div. of Consumer Aff., Bureau of Sec. September 7, 2005) (assessing monetary penalties of \$96,000.00 based on 21 violations at \$1,000.00 each and \$75,000.00 remuneration received); see also IMO Jay Eric Chanin, 2005 N.J. Sec. LEXIS 21, *7 (NJ Div. of Consumer Aff., Bureau of Sec. July 26, 2005) (assessing monetary penalties of \$80,000.00 based on 50 violations at \$1,000.00 each and an additional \$30,000.00 based on 15 violations); see also IMO Carl Barone, 2003 N.J. Sec. Lexis 41, *7 (NJ Div. of Consumer Aff., Bureau of Sec. October 10, 2003). However, in one instance, Plaintiff has levied the maximum statutory amount. See IMO Donnellan, 2002 N.J. Sec. LEXIS 71, *5 (NJ Div. of Consumer Aff., Bureau of Sec. November 15, 2002). There, the Defendant offered no mitigating factors and the maximum penalty was upheld. Id.

In the present matter, Plaintiff seeks \$15,161,043 in restitution, which was **GRANTED**, herein and above. Plaintiff sought \$1,500,000 in disgorgement, which was **DENIED** herein and above. Finally, Plaintiff sought civil monetary penalties of \$15,050,000.00 against Kizito and \$15,050,000 against Investigroup LLC based on a combined 753 violations of N.J.S.A. 49:3-56(h), N.J.S.A. 49:3-60, and N.J.S.A. 49:3-52(a)-(c) committed by each which will be discussed below.

Here, Defendants received least \$16,187,651.00 from 69 different investors. (Barry, July 12, 2022, 128:9-137:2; B-6). The Court finds that ordering penalties equal to the amount received by Defendants would not serve the purpose of N.J.S.A. 49-3:70.1. Rather, ordering such penalties would serve a punitive purpose, in violation of Darby, 246 N.J. Super. at 445. The penalties must be aimed to deter future unlawful behavior, compensate society at large for the harm suffered and compensate the government for the cost of enforcing the applicable law. Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 129-30 (1987). Further, the penalty ordered by the Court must be

reasonable "as applied to the specific facts involved." The Matter of Garay, 89 N.J. at 115. Here, the Defendants violated the above provisions 753 times each. Maximum penalties under N.J.S.A. 49-3:70.1 would result in penalties of \$15,050,000.00. Although Kizito's conduct was egregious, and he failed to offer any substantive mitigating factors, the Court finds a cumulative penalty of \$30,100,000.00 (\$15,050,000.00 to Kizito and \$15,050,000.00 to Investigroup LLC) based on remuneration Kizito solicited totaling \$16,187,651.00 would be unreasonable and excessive. Rather, the Court will exercise its discretion as set forth in Lewis, 215 N.J. Super. at 574 to set forth a penalty aimed at "deter[ing] future unlawful behavior, compensate society at large for the harm suffered and compensate the government for the cost of enforcing the applicable law". Henkels & McCoy, Inc., 108 N.J. 123, 129-30 (1987).

Accordingly, the Court is now tasked with crafting an appropriate civil penalty aimed at deterring future conduct from other individuals similarly situated to Kizito and Investigroup LLC. This is in addition to ordering restitution to the victims. Accordingly, the Court will order that Defendants be assessed penalties in the amount of \$1,505,000.00 each. \$1,000.00 for the first violation, and \$2,000.00 for each subsequent violation of the Securities Law. Such a penalty, in addition to restitution in the full amount received, will serve the purpose of deterrence. Additionally, the Court notes that N.J.S.A. 49:3-70.1 is discretionary with the Court. The Court may order no penalties (\$0), maximum penalties (\$10,000 for the first violation and \$20,000 for each subsequent violation), or any other amount in its discretion. The Court is exercising its discretion. Given Kizito's conduct, lack of consideration for following statutory protocols, acknowledgment of victims' susceptibility, the Court finds that penalties of \$1,505,000.00, 10% of the maximum allowed, will serve the proper deterrence purposes while not operating as punitive in nature. Accordingly, Plaintiff's request for civil penalties is **GRANTED** in the amount as follows: \$1,505,000.00 as to Kizito and \$1,505,000.00 as to Investigroup, LLC. Plaintiff's request the maximum penalty under N.J.S.A. 49:3-70.1 is **DENIED** for the reasons set forth above.