

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3273 / September 7, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14536

In the Matter of

**MONTFORD AND COMPANY,
INC. d/b/a MONTFORD
ASSOCIATES,**

and

ERNEST V. MONTFORD, SR.,

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 203(e), 203(f), AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Montford and Company, Inc. d/b/a Montford Associates (“Montford Associates”) and Sections 203(f) and 203(k) of the Advisers Act against Ernest V. Montford, Sr. (“Montford,” together with Montford Associates, “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. *Montford Associates* is a registered investment adviser chartered in Georgia with a principal place of business in Atlanta, Georgia.

2. *Montford*, age 64, resides in Atlanta, Georgia. During the relevant time period, Montford was President, Chief Executive Officer, Chief Compliance Officer, and 100% owner of Montford Associates.

B. OTHER RELEVANT ENTITIES

3. *SJK Investment Management, LLC* (“SJK”) is a registered investment adviser, chartered in North Carolina with a principal place of business in Greensboro, North Carolina.

4. *Stanley J. Kowalewski* (“Kowalewski”), age 38, resides in Summerfield, North Carolina. During the relevant time period, Kowalewski was Chief Executive Officer, Chief Investment Officer, and 100% owner of SJK. On January 6, 2011, the Commission filed an emergency civil injunctive action charging Kowalewski and SJK with securities fraud, and obtained a temporary restraining order and asset freeze.

C. ALLEGATIONS

Respondents’ Claims of Independence

5. During the relevant period, Respondents provided fee-based investment advisory services to institutional investors. These services included, among others, recommending investment managers to clients, monitoring manager performance, and reporting quarterly to clients on manager performance. In connection with providing their services, Respondents claimed to provide “independent” investment advice.

6. Montford Associates’ Forms ADV – filed with the Commission in 2009 and 2010, and signed by Montford – included representations regarding Respondents’ independence. Item 8.B.3 of Part I of the Forms ADV filed on May 8, 2009 and March 26, 2010 disclosed that Respondents did not have any sales interests in the securities they recommended. Item 13 of Part II, as filed on March 4, 2009 and March 29, 2010, stated that Respondents received no economic benefit from a non-client in connection with giving advice to clients. Schedule F of those same filings represented that Respondents would “disclose to clients ... all matters that reasonably could be expected to impair [the firm’s] ability to make unbiased and objective recommendations.” Also in Schedule F, the Forms ADV specifically disclosed that Respondents did “not accept any fees from investment managers or mutual funds.” (Emphasis supplied.) During the relevant period, Respondents made this disclosure directly to clients.

7. Montford Associates’ promotional materials represented that the firm was “a source of independent investment advice for institutional investors.” Montford Associates’ website contained articles touting the benefits of an “independent” investment adviser. In one, Montford Associates states “[t]he best investment advisors are *independent* – without affiliations to ... money managers.” In another, Montford states clients “need a strategy they can trust, because investments ... should be based on merit, not ... undisclosed compensation.” Finally, Montford Associates’ letterhead claimed that the firm is an “Independent Investment Management Consultant.”

Respondents Received Fees for Promoting SJK Without Disclosing Those Fees to Clients

8. In 2010, Montford Associates received two payments totaling \$210,000 from Kowalewski and SJK. These payments represented approximately 25 percent of Montford Associates' total revenue in 2010. The chronology of payments and related services is set forth below.

9. As of June 2009, eleven Montford Associates clients were invested with Kowalewski, who at that time was associated with a registered investment adviser based in the Washington, D.C. area (the "DC Adviser"). In July 2009, Kowalewski left the DC Adviser and created SJK.

10. Beginning in approximately May or June 2009, Montford met with clients to recommend that they stay with Kowalewski and transfer their funds from the DC Adviser to SJK. Through his initial meetings with clients, Montford became aware that his clients were concerned that Kowalewski was leaving the DC Adviser to start his own company.

11. In August 2009, Montford told Kowalewski that Montford Associates would need to get paid for his work, which included recommending SJK and assisting in the transfer of client funds from the DC Adviser. In response, Kowalewski agreed to pay Montford Associates. At some later point before November 2009, Kowalewski informed Montford that two payments would be made: one of \$130,000 near the end of 2009, and one after SJK had finished its first year of business (in late 2010). Montford understood that the first payment would be made after Montford Associates' clients invested with SJK.

12. Before and continuing after the payment plan was established, Montford recommended to clients that they invest with Kowalewski. Montford recommended that each of Montford Associates' eleven clients invested with Kowalewski at the DC Adviser transfer their investments to the SJK-managed funds or accounts.

13. Client funds were initially transferred from the DC Adviser to SJK between August and October 2009. After Montford Associates' clients had transferred to SJK, on November 30, 2009, Montford Associates invoiced SJK for \$130,000. The invoice stated: "Marketing and Syndication Fee for the SJK Investment Management LLC Launch." SJK paid Montford Associates the entire amount by wire transfer on January 4, 2010.

14. After Montford Associates received this initial payment, Montford recommended that clients invest additional funds with SJK. Specifically, in March, June, July, and October 2010, respectively, certain Montford Associates clients made additional investments in SJK-advised funds based on Montford's recommendation. Additionally, in September 2010, Montford dissuaded one client from withdrawing its investment from SJK. Montford apprised Kowalewski of his efforts, forwarding him related correspondence.

15. Montford and Kowalewski agreed on an additional \$80,000 as the second payment for Montford Associates' services. On November 1, 2010, Montford invoiced SJK \$80,000 for "Marketing and Syndication Fee for the SJK Investment LLC Launch." SJK wired the funds to Montford Associates on that same day.

16. In total, Respondents' clients invested over \$80 million with SJK. Respondents' clients' assets represented approximately 90 percent of SJK's total assets under management.

17. Respondents' services to SJK and Kowalewski, and the related \$210,000 in fees, was material information to Respondents' clients, but at no time before January 2011, when the Commission filed an emergency action against Kowalewski and SJK, did Respondents disclose the services and fees to their clients.¹ Respondents also failed to update Item 8.B.3 of Part I of the Form ADV filed on May 8, 2009 and Item 13 and Schedule F of Part II filed on March 4, 2009, when those disclosures became materially inaccurate. Furthermore, Item 8.B.3 of Part I of Montford Associates' Form ADV filed on March 26, 2010 and Item 13 and Schedule F of Part II filed on March 29, 2010, were materially false when filed.

D. VIOLATIONS

18. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act by employing devices, schemes or artifices to defraud clients or engaging in transactions, practices or courses of business that defrauded clients or prospective clients.

19. As a result of the conduct described above, Respondents willfully violated Section 207 of the Advisers Act by making untrue statements of a material fact in registration applications or reports Respondents filed with the Commission and willfully omitting to state in such applications or reports material facts which were required to be stated therein.

20. As a result of the conduct described above, Respondent Montford Associates willfully violated, and Respondent Ernest Montford willfully aided and abetted and caused Montford Associates' violations of, Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder by failing to update registration applications or reports Respondents filed with the Commission when the information contained therein became materially inaccurate.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

¹ On January 6, 2011, the Commission filed an emergency civil injunctive action charging Kowalewski and SJK with securities fraud, and obtained a temporary restraining order and asset freeze. On February 2, 2011, the Commission obtained an order appointing a receiver over the assets of SJK and Kowalewski. As alleged in the Commission's complaint, Kowalewski misappropriated the money invested with SJK. Specifically, the Commission's complaint alleges that Kowalewski caused investors to pay SJK improper fees, which Kowalewski, in part, used to pay his personal expenses and SJK's operating expenses. On June 29, 2011, Kowalewski was permanently enjoined from violating the federal securities laws.

B. What, if any, remedial action is appropriate in the public interest against Respondent Montford Associates pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent Ernest Montford pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. Whether, pursuant to Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1), 206(2), 207, and 204 of the Advisers Act and Rule 204-1(a)(2) thereunder and whether Respondents should be ordered to pay disgorgement and civil penalties pursuant to Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary