

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101171 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22187

In the Matter of

Kenneth E. Shipley,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Kenneth E. Shipley (“Shipley” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.
3. Section 13(g) of the Exchange Act and the rules promulgated thereunder require any person who is directly or indirectly the beneficial owner of more than 5% of a class of registered equity security as of a specified time, and who has not made an acquisition subject to Section 13(d) of the Exchange Act, to file a statement with the Commission disclosing certain information and to file certain updating amendments. The duty to file is not dependent on any intention by the stockholder, but on a mechanical 5% ownership test.
4. While subject to the reporting requirements of Section 16(a) of the Exchange Act as an officer and director of Legacy Housing Corporation ("Legacy") and as a greater than 10% beneficial owner of Legacy's registered class of common stock, Respondent violated Section 16(a) on multiple occasions by failing to timely file reports of transactions in Legacy's securities. Respondent also violated Section 13(g) by failing to file as required on Schedule 13G with respect to his beneficial ownership in Legacy.

Respondent

5. Shipley, age 65, is a resident of Levelland, Texas. He has been an executive officer and director of Legacy, and been a greater than 10% beneficial owner of Legacy's common stock since it was registered with the Commission under Section 12 in December 2018 in connection with its initial public offering ("IPO"). In addition to serving as a director of Legacy, Respondent was President and CEO of Legacy Housing Corporation ("Legacy") through June 7, 2022, and has

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

served as Executive Vice President since June 7, 2022. At all relevant times, Respondent is and has been subject to Sections 13(g) and 16(a) of the Exchange Act.

Issuer

6. Legacy is a Texas corporation with its principal place of business in Texas. Legacy's common stock is and has been registered with the Commission under Section 12 of the Exchange Act since December 13, 2018 and trades on the NASDAQ (ticker: LEGH).

Applicable Legal Framework

7. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders").

8. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 report within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

9. Exchange Act Rule 16a-1(f) defines the term "officer" to include an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function, and any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer.

10. Although the Commission has encouraged the practice of many issuers to "help their [officers and directors] or submit the [] filings on their behalf . . . [in order] to facilitate accurate and

timely filing,” Section 16 places the responsibility to report changes in securities ownership on insiders.²

11. During the time period herein, under Section 13(g) of the Exchange Act and the operation of Rule 13d-1(d), any person, including a group, who, as of the end of a calendar year, was directly or indirectly the beneficial owner of more than 5% of any class of equity security registered under Section 12 of the Exchange Act, and who had not made an acquisition subject to Section 13(d), was required publicly file with the Commission a disclosure statement containing the information specified by Schedule 13G within 45 days after the end of the calendar year in which the obligation arises.³ During the time period herein, Exchange Act Rule 13d-2(b) required that a person filing a Schedule 13G pursuant to Rule 13d-1(d) file an annual amendment within 45 days after the end of each calendar year if there were any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions applied.⁴

12. There is no state of mind requirement for violations of Section 16(a) and 13(g) and the rules thereunder.⁵ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁶

² Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25789 (May 13, 2003).

³ On October 10, 2023, the Commission adopted amendments to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) to update and shorten certain filing deadlines (the “2023 Amendments”). Modernization of Beneficial Ownership Reporting, SEC Release No. 34-98704 (Oct. 10, 2023), 88 Fed. Reg. 76896 (Nov. 7, 2023). Among other provisions, the 2023 Amendments replaced the requirement in Rule 13d-1(d) to require that such a greater than 5% beneficial owner as of the end of any calendar quarter to file an initial statement on Schedule 13G within 45 days of the end of the quarter in which the obligation arises. Id. at 76897, 76917. Compliance with this new requirement is required beginning September 30, 2024. See id. at 76942.

⁴ The 2023 Amendments replaced this requirement with a requirement to file an amendment within 45 days after the end of a calendar quarter in which a material change occurs to the information previously set forth. See id. at 76898, 76921. Compliance with this new requirement is required beginning September 30, 2024. See id. at 76942.

⁵ See, e.g., SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”).

⁶ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally SEC Release No. 34-47809, 68 Fed. Reg. at 25792 (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

13. Since Legacy’s common stock became registered with the Commission on December 13, 2018, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) as an officer, director, and greater than 10% beneficial owner, and remains subject to those requirements in each of those capacities. Respondent timely filed an initial statement of beneficial ownership on Form 3 on December 13, 2018.

14. Subsequently, Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	7/16/2019	7/18/2019	8/16/2019
4	7/25/2019	7/29/2019	8/16/2019
4	8/8/2019	8/12/2019	8/16/2019
4	8/9/2019	8/13/2019	8/16/2019
4	10/22/2019	10/24/2019	10/28/2019
4	8/13/2020	8/17/2020	9/14/2020
4	8/14/2020	8/18/2020	9/14/2020
4	8/17/2020	8/19/2020	9/14/2020
4	8/18/2020	8/20/2020	9/14/2020
4	8/19/2020	8/21/2020	9/14/2020
4	8/20/2020	8/24/2020	9/14/2020
4	8/25/2020	8/27/2020	9/14/2020
4	8/28/2020	9/1/2020	9/17/2020
4	8/31/2020	9/2/2020	9/17/2020
4	9/1/2020	9/3/2020	9/17/2020
4	9/2/2020	9/4/2020	9/17/2020
4	9/3/2020	9/8/2020	9/17/2020
4	9/4/2020	9/8/2020	9/17/2020
4	9/8/2020	9/10/2020	9/17/2020

day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)” (emphasis added).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	9/9/2020	9/11/2020	9/17/2020
4	9/10/2020	9/14/2020	9/17/2020
4	10/9/2020	10/14/2020	10/16/2020
4	10/12/2020	10/14/2020	10/16/2020
4	12/21/2020	12/23/2020	1/11/2021
4	10/4/2021	10/6/2021	10/8/2021

15. Respondent's late-reported transactions all involved open-market sales of Legacy common stock, with aggregate proceeds of \$1.8 million. Approximately half of Respondent's transactions between July 2019 and October 2021 were reported one or more days late.

16. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File on Schedule 13G

17. Respondent has been subject to the reporting requirements of Exchange Act Section 13(g) since December 31, 2018 as a beneficial owner of more than 5% of Legacy's registered class of common stock, and remains subject to those requirements.

18. Pursuant to Section 13(g) and the operation of Rules 13d-1(d) and 13d-2(b), Respondent was required to file an initial Schedule 13G statement by February 14, 2019, and to thereafter file annual amendments to such statement within 45 days after the end of each calendar year if there were any changes in the information reported in the previous filing on that Schedule.

19. Respondent failed to make any filings on Schedule 13G until July 21, 2022—after the Commission's enforcement staff contacted him regarding his failure to file. On July 21, 2022, Respondent filed an initial Schedule 13G statement to report his beneficial ownership as of December 31, 2018, as well as filed three amendments to the Schedule 13G to report his beneficial ownership as of December 31, 2019, December 31, 2020, and December 31, 2021.

20. As a result of the conduct described above, Respondent violated Section 13(g) of the Exchange Act and Rule 13d-1 thereunder.

Respondent's Remedial Efforts

21. Respondent has represented that his delinquent filings resulted from the failure of senior Legacy personnel to make timely filings on his behalf. Respondent's reliance on Legacy does not excuse his violations because an insider retains legal responsibility for compliance with

the filing requirements, including the obligation to assure that the filing is timely and accurately made.⁷ In addition, here, Respondent took inadequate and ineffective steps to monitor whether timely and accurate filings were made on his behalf by Legacy.

22. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent, circumstances relating to Respondent's representations as to reliance, and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(g) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$30,000 to the Securities and Exchange Commission, for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch

⁷ See SEC Release No. 34-47809, 68 Fed. Reg. at 25789 (“[A]n insider is legally responsible for filing regardless of who submits a filing on the insider’s behalf.”); Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release 34-37260 (May 31, 1996), 61 Fed. Reg. 30376, 30386 (June 14, 1996) (“Each beneficial owner [making a joint or group filing] will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.”); see also Bettina Bancroft, 53 SEC Docket 1955, 1993 WL 81744, at *3 (Mar. 23, 1993) (settled order) (“Although the Commission encourages individuals to obtain professional assistance in meeting their filing obligations, Section 16 of the Exchange Act places the responsibility to report changes in securities ownership on insiders.”).

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6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Kenneth E. Shipley as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary