

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ADMINISTRATOR OF SECURITIES**

In the Matter of)
)
DOMINIC SALVATO) OAH No. 19-1182-SEC
) Agency No. 2019-00385
_____)

NOTICE TRANSMITTING FINAL DECISION

Attached is the administrative law judge's decision in this matter, which became the final agency decision on April 23, 2021 by operation of AS 44.64.060(f).

Judicial review of the decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the decision is mailed or otherwise distributed.

DATED: April 30, 2021.

By: Signed
Office of Administrative Hearings

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ADMINISTRATOR OF SECURITIES**

In the Matter of)	
)	
DOMINIC SALVATO)	OAH No. 19-1182-SEC
_____)	Agency Case No. 2019-000385

DECISION AND ORDER

I. Introduction

Dominic Salvato published a series of statements on a Facebook page that he maintained. The statements urged shareholders to elect Michael Beasley to the Board of Mr. Salvato’s Native regional corporation, and they voiced various criticisms of the Corporation and its Board. The Alaska Department of Commerce, Community and Economic Development, Division of Banking and Securities (Division) investigated and determined that Mr. Salvato’s Facebook posts amounted to proxy solicitations, that they contained material misrepresentations, and that Mr. Salvato had not complied with Division regulations regarding filing of the solicitations and related disclosure requirements. The Division issued a “cease and desist order” that included findings of violations and proposed penalties. Mr. Salvato challenged the Division’s order and requested an administrative hearing.

An evidentiary hearing was held on August 11, 2020. Based on the evidence presented at the hearing, this Decision concludes that Mr. Salvato’s Facebook posts were proxy solicitations, and that his posts violated Division regulations prohibiting material misrepresentations in solicitations, and requiring simultaneous filing of solicitations and other disclosures with the Division. The Division’s cease and desist order is therefore affirmed as to each of these findings of violation; it is modified, however as to the penalty to be imposed on Mr. Salvato.¹

II. Facts

Mr. Salvato is a shareholder of the Sealaska Corporation (SC), a corporation organized under the Alaska Native Claims Settlement Act (ANCSA). The SC periodically holds shareholder meetings where it elects Board members. Prior to these meetings, SC sends voting members election and proxy information. Although the content of these

¹ Agency Record (AR) 000024 – 000028 (Division’s Cease and Desist Order, December 13, 2019).

communications were not made a part of the record in this case, it was undisputed that in prior years and in 2019 the SC offered shareholders a “voting incentive” or “proxy incentive” of \$25 that they would receive if they returned a completed proxy form to the corporation.² These materials and the voting incentive offer were sent by SC to shareholders in early May 2019.³ The corporation seeks shareholder proxies in order for the corporation to be able to meet shareholder quorum requirements for the annual meeting.⁴

There are no material facts in dispute as to the contents of Mr. Salvato’s Facebook posts at issue in this case. Mr. Salvato had previously created a Facebook page called “Sealaska Shareholders Underground” (SSU).⁵ He did this apparently in response to SC management allegedly barring him from access to the official Sealaska website or Facebook site. He continued to maintain the SSU page through the relevant period in 2019.

In February and March 2019, prior to receiving SC’s election and proxy information, Mr. Salvato published a series of posts on the SSU Facebook page and on other Facebook pages maintained by other SC shareholders (“Shareholders of Sealaska” and “Sealaska Shareholders closed Facebook Group”). Mr. Salvato confirmed in his sworn testimony that he authored all of these Facebook posts. The posts are found in the record at AR 000016-000020, and are quoted verbatim below:

- (1) SSU is making a new rule for Sealaska’s BOD election 2019. ***We’re going to start campaigning any damn time we feel like.⁶
- (2) Sealaska by-laws are not state and federal laws. Bring it you corrupt bunch of cowards. Let’s let the facts unfold in a court of law.⁷
- (3) Michael Beasley needs your support in 2019. Vote you’re [sic] proxies for Michael Beasley for Board of Directors of the Sealaska Corporation *** This solicitation of your proxy is solely requested by Sealaska Shareholders Underground and D.Salvato administrator.⁸
- (4) As an exercise sum up what you could do to benefit shareholders enough to vote for you, in 200 words or less. That is all independent candidates have. What does management have? A postage paid envelope for the return of the proxy. When received they will release \$25 from your last dividend. Candidates are restricted from campaigning until that postage paid envelope

² AR 000135; Haugen testimony.

³ AR 000025.

⁴ AR 000085; Haugen testimony.

⁵ Salvato testimony; *see* AR 000016-20.

⁶ AR 000016 (posted to SSU page on Feb. 19, 2019).

⁷ AR 000016 (posted to SSU page on Feb. 28, 2019).

⁸ *Id.* (posted to SSU page on Feb. 28, 2019).

arrives. Plus 150k to promote they're [sic] slate. All expenses paid for endorsed candidates and the instrument of this decades old fraud. Discretionary voting. I refuse to wait until proxies are on they're [sic] way back to management before I start campaigning for the person I wish. Micheal Beasley.⁹

(5) Management will work to take this page down. If all Sealaska shareholder post, at their page, the header with Michael Beasley's picture with the footnote that I (D.Salvato) solicited you for you're [sic] proxy in the upcoming Sealaska 2019 BOD election.¹⁰

(6) Micheal Beasley hasn't applied for the nominee packet and has until the 25th to do so. With a little encouragement maybe we could convince Mick to apply for the nominee packet. Tell all friends and family to hope and prey [sic] Mick applies for the Nominee Packet.¹¹

(7) *Photo posted of Michael Beasley.* This header isn't current. I don't even know if Mick plans to run. I just like this header. It's from three years ago. Post for Artistic content only.....¹²

(8) 907-586-1512 Let Sealaska know how you feel about the creation of another executive position, without shareholder approval. And when the proxies arrive vote for Michael Beasley.¹³

(9) BEAT SEALASKA'S MANAGEMENT AT THEY'RE [sic] OWN GAME. Vote for Michael Beasley when proxies arrive. D.Salvato / Sealaska Shareholders Underground¹⁴

(10) Dominic Salvato By posting this, my hope is Sealaska's management will take me to court. My desire is to get ANCSA election rules before a jury. As with any court case my defense allows me the right of discovery that's where the skeletons are kept.¹⁵

(11) Dominic Salvato The domination and greed of our chairman finally put him in a position where shareholders have caught him in a lie.¹⁶

(12) Dominic Salvato I've sent Sealaska's attorney an email. When you're [sic] proxy arrives, vote for Mick Beasley. Tell you're [sic] friends and family.¹⁷

(13) Dominic Salvato Give Mick Beasley all you're [sic] proxies and collect that \$25 within a week of when the proxies arrive. Why wait for campaign statements to be published. Don't miss out on the early bird prizes. Mark all your proxies for Michael Beasley and send in the postage paid envelope. You

⁹ *Id.* (posted to SSU page on Feb. 28, 2019).

¹⁰ *Id.* (posted to SSU page on unspecified date in Feb. 2019).

¹¹ *Id.* (posted to SSU page on March 4, 2019).

¹² AR 000017 (posted to SSU page on unspecified date in Feb. 2019).

¹³ *Id.* (posted to SSU page on unspecified date in March 2019).

¹⁴ *Id.* (posted to Shareholders of Sealaska page on unspecified date in Feb. 2019).

¹⁵ AR 000018 (posted to Shareholders of Sealaska page on unspecified date in Feb. 2019).

¹⁶ *Id.*

¹⁷ *Id.*

will be doing all of us a favor by keeping the most trusted boardmember where he belongs.¹⁸

(14) Dominic Salvato An SSU survey found shareholders won't be held to BOD elections rules. **Shareholder begins 2019 election without the permission of the candidate himself.¹⁹

(15) Dominic Salvato Management hopes and prays it comes down to voting ... it's a stall, a diversion a suckers bet. We're past that point. It's demonstrate or parish as the decedents of a once proud people [sic]. Mick Beasley has opened new avenues to meet shareholders needs. If they cast him out, I believe shareholders will rise up and demand resignations in mass.²⁰

(16) Dominic Salvato When the proxy arrives, check Michael Beasley send it back, collect \$25.* this is defiantly a proxy solicitation done without the candidates authorization.[sic]²¹

(17) Dominic Salvato SHARE THIS POST Michael Beasley hasn't applied for the nominee packet and has until the 25th to do so. With a little encouragement maybe we could convince Mick to apply for the nominee packet. Tell all friends and family to hope and prey [sic] Mick applies for the Nominee Packet.²²

(18) Dominic Salvato If I was too [sic] say more, some would think I was jumping the gun on board of director elections.²³

(19) Dominic Salvato No one asked you for you're vote or you're proxy. [sic] We want you to join us in asking Mick to run for shareholder interests again.²⁴

(20) Dominic Salvato Defy the board of directors. It's time they learn who is really in the drivers seat. Post endorsements for Michael Beasley re-election at ALL our personal pages. And keep it there until the final tally of votes in the coming BOD election.²⁵

(21) Dominic Salvato After receiving the same letter from Sealaska legal Brad did, I don't see it as bullying. It is an opportunity to hammer out issues pertaining to Sealaska's and ANCSA rules governing BOD election in a courtroom. My immediate response as follow [sic]:

Dominic Salvato
Tue, Feb 26, 3:17 PM (17 hours ago)
to Jaeleen, Michael, Budd
Received, thank you.
Thank you Jaeleen,

18

Id.

19

Id. (posted to Shareholders of Sealaska page on unspecified date in Feb. 2019).

20

Id. (posted to Sealaska Shareholders "closed Facebook Group" on unspecified date in Feb. 2019).

21

Id.

22

Id. (posted to Sealaska Shareholders "closed Facebook Group" on March 6, 2019).

23

Id. (posted to Sealaska Shareholders "closed Facebook Group" on unspecified date in Feb. 2019).

24

Id.

25

Id. (posted to Sealaska Shareholders "closed Facebook Group" on Feb. 28, 2019).

Nothing personnel [sic] but I welcome a court appearance in regards to any and all ANCSA election rules. Please proceed.
The issues I wish to bring to light, the paying for returned proxies before campaign statements are published.
The issue of an illegal dividend by disbursing funds not based on shares held.
A wait of over eighteen months in resolving Banking and Security complaints.
The restriction of never being allowed at the official Sealaska website.
Being given a life sentence from representing my stock by being by-lawed out of running for the board of director.
I'm sure there's more. I look forward to grinding these issues out in a courtroom.
Shareholders can only benefit from these issues coming to light.
Respectfully,
Dominic Salvato /SSU^[26]

(22) Dominic Salvato **I'm sick of the stacking of the deck in BOD elections. Candidates aren't allowed to campaign until proxy statements arrive. This is the SCAM. By not allowing independent candidate to campaign until management offers shareholders \$25 (withheld from the last dividend) for returned proxies. Candidates [sic] statements won't be published for up to another six weeks. Management restricts campaigning while paying board endorsed candidates expenses and employees discretionary voting. Plus extends the election so they can monitor the returns and apply 150k where needed. But more importantly, pay for you're vote with money they shorted you last December. Management knows many shareholders need the \$25 desperately, and can't afford to study candidate issues. All this has been perfected over the last five decades.²⁷

(23) Dominic Salvato They sent me the same letter. Do you really think Sealaska management would put themselves in a position of discovery? My response too [sic] the letter was, please proceed. I welcome the opportunity to grind issues out in a courtroom.²⁸

Mr. Salvato readily admitted that he published all of these materials; he testified that he did so in order to “agitate, agitate, agitate.”²⁹ He also admitted that he did not file the posts with the Division at the same time that he posted them on Facebook.³⁰

Jaeleen Kookesh, a Vice President at SC, filed a complaint in the form of a “request for investigation of Alaska Native Corporation proxy solicitation” with the Division on March 21, 2019.³¹ The complaint included copies of the Facebook posts quoted above. In a follow-up letter to the Division, Ms. Kookesh explained that SC believed Mr. Salvato's posts

²⁶ AR 000019 (posted to Sealaska Shareholders “closed Facebook Group” on Feb. 27, 2019).

²⁷ AR 000020 (posted to Sealaska Shareholders “closed Facebook Group” on unspecified date in Feb. 2019).

²⁸ *Id.*

²⁹ Salvato testimony.

³⁰ *Id.*

³¹ AR 000045-54 (*see also* AR 000085-86).

violated the law as false or misleading statements because, among other things, they implied that they were lawful proxy solicitations; they implied that Alaska law did not apply to the posts, and that Mr. Salvato was not bound by Alaska law; they asserted that SC’s voting incentive monies had been illegally withheld from shareholder dividends; they asserted that SSU had conducted a survey regarding shareholders not being bound by board election rules; and they stated that SC’s chairman had been caught in a lie.³²

The Division then conducted an investigation, during which Division investigator Adam Marks spoke with Mr. Salvato by telephone and in a face-to-face meeting. During the phone conversation, Mr. Salvato stated to Mr. Marks that “he violated ANCSA proxy regulations purposefully with the intent of compelling a lawsuit from Sealaska.”³³ During the subsequent in-person meeting with Mr. Marks, Mr. Salvato admitted that when he referred in one of his Facebook posts to “an SSU survey [that] found shareholders won’t be held to board election rules,” he had not really conducted a survey of shareholders but had only “surveyed himself.”³⁴ Regarding his Facebook post indicating that “shareholders caught [SC’s chairman] in a lie,” Mr. Salvato told Mr. Marks that he had included details of the alleged lie in another Facebook post and would provide a copy of that post to Mr. Marks.³⁵ In a later email exchange with Mr. Marks, however, Mr. Salvato declined to provide a copy of that Facebook post, instead stating “I don’t remember, let the complainant provide it ... I’ve called them corrupt and liars hundreds of times... .”³⁶

After completing its investigation, on December 13, 2019 the Division issued Order No. 19-38-S, entitled “Temporary Cease and Desist Order Effective Immediately, Assessing Civil Penalties, with Notice of Hearing Rights and Notice of Final Cease and Desist Order” (Order).³⁷ The Division served the Order on Mr. Salvato by email and certified mail on December 13, 2019.

The Order focuses on several specific items included within Mr. Salvato’s Facebook posts quoted above. The Order asserts that the Facebook posts are “proxy statements” as defined in 3 AAC 08.365(14) “because they are communications that were made available to

³² AR 000084-86.

³³ AR 000057.

³⁴ AR 000058. Mr. Salvato later testified that his reference to a survey had been intended as a joke.

³⁵ *Id.*

³⁶ AR 000074.

³⁷ AR 000024-28.

shareholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.”³⁸ It further asserts that Mr. Salvato “violated 3 AAC 08.307 by failing to file his proxy solicitations concurrently with the Administrator when he distributed them to shareholders;” that he “violated 3 AAC 08.355 by failing to file with the Administrator required disclosures relating to proxy solicitation;” and that he “violated 3 AAC 08.315(a) by materially misrepresenting that the Voting Incentive was paid in lieu of a portion of [SC’s Fall 2018 Dividend to shareholders], that the Voting Incentive was illegal, that SSU has the authority to establish election rules for the Sealaska Board of Directors, and that SSU conducted a survey of Sealaska Shareholders.”³⁹ Based on these allegations, the Order imposes a civil penalty on Mr. Salvato in the amount of \$1,500, and orders him to comply with all provisions of Alaska statutes and regulations governing proxy solicitations.⁴⁰

Shortly after he received the Order from the Division, Mr. Salvato submitted a formal request for an administrative hearing. In his request, he asserts that “my rights of free speech and due process require a hearing.”⁴¹ The matter was then referred to the Office of Administrative Hearings (OAH).

After the matter was referred to OAH, the hearing schedule was postponed several times to accommodate continuance requests from both Mr. Salvato and the Division.⁴² The hearing was finally held via teleconference on August 11, 2020. Mr. Salvato represented himself and testified on his own behalf. The Division was represented by Assistant Attorney General Robert Schmidt. Investigator Adam Marks and Chief of Enforcement Leif Haugen testified on behalf of the Division. At the end of the hearing, the record was closed and the matter was taken under advisement.

On January 8, 2021, while the proposed decision was being drafted, the Alaska Supreme Court issued its decision in *Ahmasuk v. Division of Banking and Securities* (Slip Opinion No. 7498), a case involving the issue of what constitutes a proxy solicitation under the Division’s statutes and regulations. The record was reopened to allow the parties to submit briefs addressing whether *Ahmasuk* “affect[s] the ultimate disposition that should be

³⁸ AR 000026.

³⁹ AR 000026-27.

⁴⁰ AR 000027.

⁴¹ Salvato handwritten request for hearing, Dec. 16, 2019. Mr. Salvato never subsequently elaborated on these constitutional arguments.

⁴² The impact of the Covid-19 pandemic also played a role in hearing delays.

reached” in this case.⁴³ On January 25, 2021, the Division submitted a short brief addressing the impact of *Ahmasuk*, as further discussed below. Mr. Salvato did not submit a supplemental brief. The record was then closed.

III. Discussion

A. Applicable law on proxy solicitations

The questions presented in this case are: (1) were some or all of Mr. Salvato’s Facebook posts “proxy solicitations” as defined in Division regulations; and (2) if so, did he violate Alaska law by publishing them?

1. Regulations

As to the first question, a Division regulation defines “proxy solicitation” as:

- (A) a request to execute or not to execute, or to revoke a proxy; or
- (B) the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.⁴⁴

As the second question, if a communication is deemed a proxy solicitation, Alaska law requires that it be filed concurrently with the Administrator of Securities when it is distributed to shareholders.⁴⁵ In addition, numerous disclosures must accompany the filing, including: the name and address of each participant joining in the solicitation; detailed information concerning the participant’s nominees for Board seats; participant’s financial interests and activities with the corporation; identification of legal proceedings where the participant’s interests were adverse to the corporation’s.⁴⁶ The filing must also provide a description of methods used to solicit proxies, estimated solicitation expenses, and who would bear those expenses.⁴⁷

Importantly, another Division regulation provides that “a solicitation may not be made by means of a proxy statement, proxy, notice of meeting, or other communication that contains a material misrepresentation.”⁴⁸ The regulation further provides:

A misrepresentation is a statement that, at the time and under the circumstances in which it is made (1) is false or misleading with respect to a material fact; (2) omits

⁴³ Order Reopening Record for Supplemental Briefing, January 15, 2021.

⁴⁴ 3 AAC 08.365(16).

⁴⁵ 3 AAC 08.307; *see* AS 45.55.139.

⁴⁶ 3 AAC 08.355.

⁴⁷ 3 AAC 08.355.

⁴⁸ 3 AAC 08.315 (a).

a material fact necessary in order to make a statement made in the solicitation not false or misleading; or (3) omits a material fact necessary to correct a statement, in an earlier communication regarding the solicitation of a proxy for the same meeting or subject matter, which has become false or misleading.

A misrepresentation is material if there is substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. A series of statements or omissions that are objectively false or misleading, but which might not be material misrepresentations if considered separately, might be material misrepresentations if there is a substantial likelihood that a reasonable shareholder would consider the series important in deciding how to vote. Subjective proof that one or more shareholders actually granted a proxy because of a misrepresentation is not required.^[49]

2. Case law

As noted, a Division regulation defines proxy solicitation to include “other communication[s] ... reasonably calculated to result in the procurement, withholding, or revocation of a proxy.”⁵⁰ This definition is potentially susceptible to a relatively broad interpretation of what does or does not constitute a proxy solicitation.

Some courts outside of Alaska have adopted a relatively broad definition for proxy solicitation. A variety of federal decisions have held that communications do not have to directly request the execution, withholding, or revocation of a proxy to be considered solicitations, if the aim is designed to ultimately accomplish such a result.⁵¹ Courts consider “whether the challenged communication, seen in the totality of circumstances, is reasonably calculated to influence a shareholder’s decision to provide, revoke, or withhold a proxy.”⁵² Courts also examine the manner and circumstances of the communication when determining whether it meets the definition of a proxy solicitation.⁵³ Factors considered include the timing of the communication; whether there is an ongoing proxy contest; and whether there is or will be a request for a shareholder’s

⁴⁹ *Id.*

⁵⁰ 3 AAC 08.365(16).

⁵¹ *See, e.g., Long Island Lighting Co. v. Barbash*, 779 F.2d 793, 795-796 (2nd Cir. 1985) (holding that proxy rules can cover communications that appear in publications of general circulation and are only indirectly addressed to shareholders).

⁵² *Gas Natural Inc. v. Osborne*, 624 Fed.Appx. 944, 950 (6th Cir. 2015) (unpublished decision) (*citing Long Island Lighting Co. v. Barbash*, 779 F.2d at 796).

⁵³ *Gas Natural Inc.*, 624 Fed.Appx. at 950 (a series of letters criticizing management held to meet the definition of solicitation, even though they did not contain the word “proxy” or identify specific candidates).

vote.⁵⁴ One federal court has found that letters to shareholders criticizing management and asking shareholders to withhold or revoke proxies were solicitations.⁵⁵

Until recently, decisions of the Alaska Supreme Court regarding the law of proxies have focused on the question of what constitutes a material misrepresentation in a solicitation, rather than the definition of proxy solicitation itself.⁵⁶ However, as mentioned above, while this case was pending the Court issued its decision in *Ahmasuk v. Division of Banking and Securities*,⁵⁷ directly addressing the question of what constitutes a proxy solicitation under the Division’s statutes and regulations. In that case the Division had fined Mr. Ahmasuk, a shareholder of Sitnasuak Native Corporation, for writing a newspaper opinion letter about the corporation’s shareholder proxy voting procedures – specifically the corporation’s policy of allowing “discretionary cumulative proxy voting” for director elections – without filing the letter with the Division as a proxy solicitation under 3 AAC 08.307 and without making required disclosures under 3 AAC 08.355. Mr. Ahmasuk appealed the Division’s sanction, and it was upheld by both an administrative law judge and the superior court.⁵⁸

The Supreme Court, however, reversed, holding that the opinion letter was not a proxy solicitation under the Division’s regulations. The Court noted that the regulations provide that a proxy is “a written authorization or consent, or a written revocation of an authorization or consent, for someone to vote a shareholder’s shares;” and a proxy solicitation is “a request to execute or not to execute, or to revoke a proxy,” or “ a communication to shareholders ... reasonably calculated to result in the procurement, withholding, or revocation of a proxy.”⁵⁹ The Court emphasized that in analyzing the Division’s decision that Mr. Ahmasuk’s letter was a solicitation, “context is key;” the context in this instance was a “longstanding corporate governance debate” about Sitnasuak’s discretionary cumulative proxy voting policy.⁶⁰ The Court then posed a series of questions:

⁵⁴ *Gas Natural Inc.* 624 Fed.Appx. at 950 (6th Cir. Ct. App. 2015)(internal citations omitted).

⁵⁵ *Securities and Exchange Commission v. Okin*, 132 F.2d 784 (2nd Cir. 1943) (letters to shareholders were a “step in a campaign ... to pave the way for an out-and-out solicitation later” and therefore were proxy solicitations, even though (a) they did not advocate for or against a candidate or issue, and (b) no future solicitation ever occurred).

⁵⁶ *See Meidinger v. Koniag*, 31 P.3d 77 (Alaska 2001); *Rude v. Cook Inlet Region, Inc.*, 294 P.3d 76 (Alaska 2012).

⁵⁷ Slip Opinion No. 7498 (January 8, 2021).

⁵⁸ *Id.* at 2.

⁵⁹ *Id.* at 17.

⁶⁰ *Id.* at 22.

How are shareholders supposed to debate the issue without what the Division contends is a “communication to shareholders . . . reasonably calculated to result in . . . withholding” some future proxy? For example, how could a group of Sitnasuak shareholders even have prepared and submitted a petition for a corporate charter change eliminating discretionary cumulative voting for directors without coming within the Division’s broad interpretation of its solicitation definition? To avoid penalties, must such petition communications and related statements asking shareholders to use direct and not discretionary proxy forms be filed with the Division as a proxy solicitation, along with other burdensome requirements? Surely not.^[61]

The Court expressed the concern that “the Division’s broad regulatory interpretation contravenes the proxy regulations’ purposes and stifles corporate governance debate,” potentially “go[ing] beyond valid regulation and into free speech infringement.”⁶² The Court also considered that Mr. Ahmasuk had written his letter to the editor of the local newspaper well before the corporation’s 2017 director election, and that he was “neither running as a director candidate nor asking to be a proxyholder.”⁶³ Talking all of these factors into account, the Court held that “[t]he Division’s interpretation and application of its proxy solicitation regulation are unreasonable on the facts of this case” (impliedly finding that the Mr. Ahmasuk’s opinion letter was not a proxy solicitation). The Court therefore reversed the sanction against Mr. Ahmasuk (while explicitly not reaching his constitutional arguments).⁶⁴

B. Mr. Salvato’s Facebook posts are proxy solicitations

As previously noted, the administrative law judge requested briefing from the parties on the *Ahmasuk* decision’s impact on the issues in this case. While Mr. Salvato did not file a responsive brief, the Division filed a short supplemental brief, asserting that *Ahmasuk* “is a limited decision that does not change the impact of this case.”⁶⁵ The Division argues that the *Ahmasuk* holding is limited to the specific context of that case, and that the facts in *Ahmasuk* (a single letter to the editor) are distinguishable from those presented by Mr. Salvato’s series of 23 Facebook posts aimed at Sealaska shareholders.⁶⁶ The Division contends that *Ahmasuk* “is not so broad that Mr. Salvato’s statements identifying a particular candidate must be viewed in isolation from the

⁶¹ *Id.* (internal citation omitted).

⁶² *Id.* at 26-27.

⁶³ *Id.* at 28.

⁶⁴ *Id.* at 30.

⁶⁵ Division’s Supplemental Brief, January 25, 2021, at 1.

⁶⁶ *Id.* at 2.

totality of his statements.”⁶⁷ The Division argues that the Facebook posts at issue here “form a series of communications reasonably intended to result in the granting of a proxy in favor of a particular candidate in an upcoming election,” and that Mr. Salvato “made clear that his repeated statements throughout 2019 were part of a sustained effort to get proxies granted for his preferred candidate.”⁶⁸

The Division is correct that the Alaska Supreme Court cautioned that its holding in *Ahmasuk* “should not be read to automatically extend beyond this context and these facts.”⁶⁹ The Division is also correct that given the Court’s cautionary language, it is important to acknowledge that Mr. Ahmasuk’s single opinion letter is clearly distinguishable from Mr. Salvato’s long series of Facebook posts in this case. However, the principles applied by the Court in *Ahmasuk* cannot be simply ignored. In addition, the Division’s characterization of Mr. Salvato’s intentions paints him with too broad of a brush. Certainly many of his posts advocated for shareholders to grant proxies to his favored candidate; but he also used his posts to complain about SC election procedures and to voice his views regarding SC management.

Applying *Ahmasuk* to Mr. Salvato, one must ask if the Division’s interpretation and application of the regulatory definition of “proxy solicitation” is overbroad in this case, under the undisputed facts presented here. Do Mr. Salvato’s Facebook posts primarily consist of debate and discourse about corporate issues of importance to shareholders? Or are they primarily aimed at electoral aims, “reasonably calculated to result in the procurement, withholding, or revocation of a proxy”?

The record reflects that over the course of about one month in February and March, 2019, Mr. Salvato published 23 posts; in 13 of them he specifically named his preferred candidate; in one post he published a photo of the candidate; and in six others he referred to the election or campaign procedures. Only three of the posts exclusively consisted of criticism of SC management. The Division is correct that this series of communications is far removed from *Ahmasuk*’s isolated communication regarding a corporate policy that flowed out of an ongoing debate. Mr. Salvato’s series of posts is reasonably construed as furthering his electoral aims, calculated to result in shareholders granting proxies to his preferred candidate or to withhold them from management’s candidates. Therefore, the Division’s

⁶⁷ *Id.* at 2.

⁶⁸ *Id.* at 2-3.

⁶⁹ *Ahmasuk*, Op. No. 7498, at 31, n. 67.

conclusion that Mr. Salvato's posts constitute solicitations under the definition at 3 AAC 08.365(16) is not overbroad.

C. As solicitations, the Facebook posts violated Division regulations

Mr. Salvato readily admitted that he did not file his posts with the Administrator of Securities when he published them. This was a violation of 3 AAC 08.307. It is also undisputed that he did not make the disclosures to the Department required under 3 AAC 08.355 at that time, thus violating this regulation as well.

Mr. Salvato also admitted facts that supported the conclusion that his Facebook posts included misstatements regarding SC and its management. While clearly he feels that SC's practice of offering a proxy incentive to shareholders is an improper use of corporate funds; at the hearing he could provide no support for his assertion in his posts that the incentives are an "illegal dividend" or were paid in lieu of a dividend, rather than being a corporate expense commonly incurred by ANCSA corporations and designed to encourage shareholder participation in corporate elections. Nor could he provide any support for his allegations of corporate mismanagement, including his characterization of the SC board as a "corrupt bunch of cowards" with "skeletons in its closet." When offered the opportunity to provide backup for his assertion that the board chair had been "caught in a lie," Mr. Salvato failed to respond and instead reiterated his history of "call[ing] them corrupt and liars hundreds of times." He also readily admitted under oath to the falsity of his assertion that SSU had conducted a survey regarding election procedures; his only rebuttal was to argue that this was an attempt at a joke and thus not really a misrepresentation. Similarly, he could provide no support for his assertion in a Facebook post that SSU had promulgated a new rule for SC's upcoming Board election; his only response was to suggest that this was hyperbole.

All of the above-described posts were misrepresentations. Are these misrepresentations "material" pursuant to 3 AAC 08.315? The materiality requirement is met if there is "substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote."⁷⁰ In the specific context of this case, it is important to note:

A series of statements or omissions that are objectively false or misleading, but which might not be material misrepresentations if considered separately, might be

⁷⁰ 3 AAC 08.315 (a).

material misrepresentations if there is a substantial likelihood that a reasonable shareholder would consider the series important in deciding how to vote.[⁷¹]

Mr. Salvato's misrepresentations in his series of Facebook posts are material under this standard. If made in isolated posts, unconnected to election posturing, these misrepresentations might be deemed unimportant and immaterial. But by including them in a series of posts along with repeated urgings to vote for his preferred candidate, he made it substantially likely that a reasonable shareholder could consider them important in making a voting decision. Mr. Salvato's Facebook posts, therefore, violated 3 AAC 08.315.

Mr. Salvato made it clear in his statements to Division investigators, and in his sworn testimony at the hearing, that his goal in publishing his Facebook posts, in addition to urging election of his preferred candidate, was to "agitate," to undermine SC management, and to invite litigation with SC. Throughout this proceeding, he repeatedly expressed his fervent belief that SC management had unfairly treated him by banning him from SC's official Facebook page, and that the corporation unfairly treats shareholders through manipulation of the proxy incentive payments and other election procedures. By agitating through his Facebook posts, Mr. Salvato apparently hoped to gain a forum for resolving these disputes or at least airing his grievances with the corporation. He was repeatedly advised, however, that the administrative law judge had no authority in this administrative hearing to address his disputes with Sealaska. Unfortunately, Mr. Salvato only succeeded in inviting litigation with the Division, and did not accomplish his apparent goal of gaining a forum for addressing his disputes with the corporation.

D. The appropriate sanction

Very little discussion was devoted to the Division's \$1500 fine during the hearing or in the parties' written filings. Mr. Haugen testified that the fine was comprised of \$500 each for Mr. Salvato's three violations of the above-cited regulations, and that this was "how the Division traditionally has approached that [issue]." He also testified that the Division viewed Mr. Salvato's material misrepresentations as the more serious violation in this case, and that traditionally a violation of the two cited filing requirements, absent a misrepresentation claim, would likely result in simply a warning letter. Mr. Salvato offered no testimony or argument as to the fines at all.

⁷¹ *Id.*

I agree with Mr. Haugen's testimony that Mr. Salvato's filing requirement violations are less egregious than his misrepresentation violations. Therefore, a reduction in the Division's sanction is appropriate. The \$500 fine for violating 3 AAC 08.315 shall remain in effect; the fines for violating 3 AAC 08.307 and 3 AAC 08.355 are each reduced to \$250. In addition, it is appropriate to suspend half of the total fine, to incentivize Mr. Salvato's future compliance with the proxy solicitation regulations.

IV. Conclusion and Order

The Division's conclusions listed below are affirmed.

Mr. Salvato's Facebook posts are proxy solicitations, communicated to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. Mr. Salvato violated 3 AAC 08.315 by including material misrepresentations within the Facebook posts. He also violated 3 AAC 08.307 by failing to file his proxy solicitations concurrently with the Administrator when he published them to shareholders, and he violated 3 AAC 08.355 by failing to file required disclosures with the Administrator.

Mr. Salvato is assessed a civil penalty of \$1,000, with \$500 suspended, on the condition that he not violate the Alaska Securities Act, or regulations adopted under the Act, for a period of five years. Payment is due 60 days after this decision becomes final, or after the expiration of all appeal rights, or upon a final decision that Mr. Salvato violated the regulations referenced herein.

Dated this 24th day of February, 2021.

Signed _____

Andrew M. Lebo

Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]