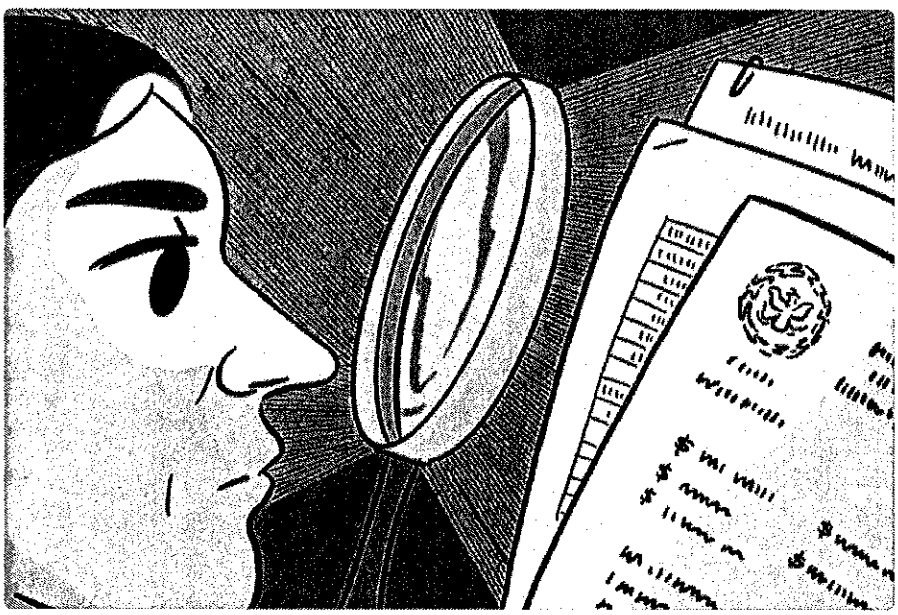
LOCAL GOVERNMENT

Several Pa. pension systems kept working with financial adviser after SEC settlement

by Ed Mahon of Spotlight PA | Oct. 17, 2023



LEISE HOOK / FOR SPOTLIGHT PA

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HARRISBURG — Leaders of several public pension systems in Pennsylvania continued to work with an investment adviser, his company, or a company for which he consults after he settled allegations of violating antifraud laws, a Spotlight PA investigation has found.

That includes three counties and at least two municipal systems that received payments from the adviser as result of the federal settlement.

The SEC case and the lack of transparency from local government agencies afterward highlights how these systems make crucial decisions about people's finances and retirement funds, but often face little public scrutiny.

The U.S. Securities and Exchange Commission alleged William Vescio caused clients to invest in a class of mutual fund shares with higher fees, most of which he received, instead of a lower-cost option. For some clients, federal authorities alleged William Vescio negligently failed to disclose information and those "inaccurate disclosures gave the misleading impression that the overall fees were lower than they actually were."

The Allegheny County adviser settled with the agency in 2020, agreeing to be censured and pay $275,000 in disgorgement, $40,000 in civil penalties, and interest. In the settlement, he did not admit or deny the commission's findings. A new release from the agency said he "agreed to distribute the funds to harmed investors." He made final payments as recently as June of this year, records obtained by Spotlight PA show.

The commission's order did not accuse anyone else or any specific business entities of wrongdoing. The agency's order and accompanying news release announcing the settlement did not identify specific clients who the commission alleged were harmed.

But records obtained by Spotlight PA through dozens of requests under the state's Right-to-Know Law show employee retirement funds for Somerset, Tioga, and Wyoming counties all received payments from William Vescio as a result of the settlement.

At the time of the 2020 settlement, William Vescio was the sole owner and president of Vescio Asset Management, according to the order, and the commission said his company provided services to municipal and county pension and employee benefit plans in Pennsylvania and West Virginia.

The commission's allegations focused on his practices for disclosing fees. Its order stated that for most clients, William Vescio did not disclose his receipt of compensation from selecting a certain class of shares.

For two clients who explicitly requested he disclose the fees charged, the order alleged he negligently failed to disclose information about a type of compensation known as 12b-1 fees. The agency alleged William Vescio "excluded 12b-1 fees from all reports for a number of months" for a client that required quarterly fee reports. For another client, he "reported a purported total fee amount that failed to include 12b-1 fees," the agency's order said.

The agency said 12b-1 fees vary by share class. Its order alleged he placed clients in a class of shares with higher 12b-1 fees and did not provide them the option of investing in a different class.

In a written statement to Spotlight PA, William Vescio defended his practices and referred to the issue as an "Administrative oversight." He said clients' assets were held on a brokerage platform with a choice in how fees were structured, and each prospective client was sent a "proposal showing the fee calculations for both procedures."

William Vescio said, at the time of an SEC enforcement initiative, he believed the agency considered the following a violation: brokerage firms charging an upfront management fee while also having investments with additional 12b-1 fees.

"Since that was not the case with my clients, I had no concern that I was in violation of any SEC orders," he said. The agency's order said his compensation consisted exclusively of 12b-1 fees, and he did not receive commissions for trades or investment advisory fees from clients.

"In my experience over forty years managing public pension plans, my clients were not being charged more than industry standards in that the total fund fees covered custodial, trading and investment consulting costs," Vescio wrote.

William Vescio said he agreed to the 2020 settlement after years of discussions and at the advice of his attorneys because of his age. In describing the settlement terms, he noted multiple items that were favorable to him. He emphasized that he neither admitted nor denied guilt in the settlement. He also described the agreement as providing that "No intentional fraud charges will be alleged" and that the alleged charges would be "negligence-based only." The order also didn't bar or suspend him from working as an investment adviser.

An attorney for William Vescio, John Caputo, told Spotlight PA that his client was not in a category of financial representatives who were "double dipping" by, for instance, receiving both 12b-1 fees and management fees for investments.

"Mr. Vescio never admitted liability in the settlement and never had liability that could have been proven," Caputo said in an email. "To avoid the expense of legal fees and time, he agreed to the settlement based on legal advice, always having a reasonable belief that he would have prevailed and not been fined had he contested the SEC allegations."

As part of the order, the commission stated that William Vescio ended the practice of receiving or benefiting "from 12b-1 fees in or about April 2019, resulting in generally lower costs for the Clients."

In his statement, William Vescio highlighted his company's relationship to the commission after the 2020 order, saying the settlement in "no way" interfered with the 2021 SEC registration process for Vescio Asset Management. He said he was the sole owner of the firm from 2011 until April 2021.

William Vescio, 70, said he's retired now, that his son, Bryan Vescio, is the sole owner of a separate company, VAM Group. William Vescio said that while he does "do some consulting" for VAM Group, he has "no investment or management relationship with the firm."

At least two letters obtained by Spotlight PA to VAM Group reference William Vescio in connection with that company, and VAM Group has used the same mailing address, email domain, website, and at least one phone number that Vescio Asset Management used, public records obtained by Spotlight PA show.

In his statement, William Vescio said, since Bryan Vescio "inherited some of my clients that I have known for over twenty plus years, they still occasionally incorrectly refer inquiries and information to me in correspondence."

Bryan Vescio previously worked at Vescio Asset Management, SEC records show. He has never been the subject of an SEC court action or administrative proceeding, agency records show. He also wasn't mentioned in the SEC's 2020 order against his father. He declined to comment for this story.

Following the Payments

As part of a 2020 settlement with the federal Securities and Exchange Commission, an investment adviser from Allegheny County was ordered to make payments to government retirement funds in Pennsylvania within three years. The systems received the latest payments in June of this year.

	Payments Received
Center Township (Beaver County)	$3,065
Monongahela city	$3,424
Economy borough	$7,845
Wyoming County	$27,745
Tioga County	$115,492
Somerset County	$147,140

Payment amounts are rounded and are based on copies of letters, financial statements, checks, and other documents that Spotlight PA obtained through requests under Pennsylvania's Right-to-Know Law. For Economy, one record indicated the total payments received was $7,426.92. We included $7,845 in the chart as that figure matches a detailed summary to the borough in June from William Vescio.

Chart: Ed Mahon / Spotlight PA • Get the data • Created with Datawrapper

Business as usual

In Somerset County, officials acknowledged continuing to work directly with William Vescio after the SEC sanctions, but said they did so "not without concern." They also said that they didn't inform the public about the county's relationship to the federal order and the payments. In response to an open records request for related notifications to retirees, employees, and others, the county replied that it had no such documents.

Tony DeLuca, elected as the county's treasurer in 2021, criticized the county's lack of transparency and the county's failure to notify the public back when the SEC first issued the order.

"They're hiding it from the retirees," DeLuca told Spotlight PA. "... That is their money."

Since the SEC order, Somerset County officials have changed how they manage oversight of their retirement fund. In a statement provided by Commissioner Pamela Tokar-Ickes, the county said its retirement board revoked William Vescio's investment privileges in January 2021 and later hired an outside firm to oversee the fund's investment managers. Records provided by the county showed no contracts with Vescio Asset Management or VAM Group in the years that followed.

Officials in Tioga County in north-central Pennsylvania signed a new contract with Vescio Asset Management in February 2021. They then signed a contract with VAM Group in December 2022. Meeting minutes from as recently as July show Tioga County's retirement board approving a payment for VAM Group. Through an attorney, Tioga County officials refused to be interviewed or answer questions for this story.

In northeastern Pennsylvania, Wyoming County officials signed a contract with VAM Group in December 2022. Richard Wilbur, chair of the Wyoming County Board of Commissioners, told Spotlight PA in a July email that "we have handled the problem in a fiduciary manner and other than that, we have no comment."

Spotlight PA first requested records from the county related to William Vescio on May 8, and sent a detailed list of findings and questions to Wyoming County officials July 5. A letter obtained through a Right-to-Know request and dated July 13 shows county retirement officials voted to terminate the relationship with VAM Group. The letter — addressed to William Vescio at VAM Group and reading "Dear Bill and Associates" — did not state a reason.

In response to questions from Spotlight PA, officials in Tioga and Wyoming declined to say whether they ever informed the public about their connection to the SEC order or the payments from William Vescio. Tioga and Wyoming counties responded to open records requests for related notifications to retirees, employees, and others by saying they didn't have any such documents.

Monongahela, a city in Washington County, handed over pension records to Spotlight PA only after twice being ordered to produce them by the state Office of Open Records following the news organization's public records requests.

The documents included a letter in which William Vescio described making payments to the city's police pension fund as part of an agreement with the SEC. James McGraw, the attorney who provided the records and represents Monongahela City Council, also wrote that some records "were no longer available for certain time periods."

It's not clear if Monongahela worked with William Vescio, Vescio Asset Management, or VAM Group after the SEC order. McGraw said he doesn't directly represent the police pension board, but had looked into the issue and the board changed its fund manager at some point after learning of "the SEC matter." He said he didn't know when that occurred or the reason for the change.

Officials in Beaver County's Center Township signed a contract with VAM Group in December 2022. Through an attorney, township officials declined to answer questions for this story.

In Economy borough, also in Beaver County, officials signed a contract with Vescio Asset Management in February 2021 and one with VAM Group in December 2022.

But in a letter dated July 27, Borough Manager Travis Cavanaugh said the borough decided to terminate the relationship after "reviewing the administrative proceedings with the Securities Exchange Commission." The letter was addressed to VAM Group and Bryan Vescio. In it, Cavanaugh stated, "This written confirmation will confirm the conversation our solicitor had with Mr. William Vescio yesterday evening." The action followed open records requests from Spotlight PA, which the borough acknowledged receiving in early July.

The letter didn't explain why borough officials were citing actions by the SEC more than three years after the agency issued its order against William Vescio. The records provided by the borough included a 2022 letter in which William Vescio described the SEC settlement and making payments as part of it in prior years, along with a copy of a 2022 check.

An attorney for the borough, Joseph Askar, declined to elaborate on the reasoning. In emails, he told Spotlight PA that council members "moved on from the Vescios" and decided to "go in a different direction."

A National Outlier

Pennsylvania has more public pension systems than any other state in the country. These local systems often operate with little public scrutiny.

State and Local Pensions

1 1,572

Data cover the fiscal year that ended in June 2022 and refer to defined benefit plans.

Map: Ed Mahon / Spotlight PA • Source: U.S. Census • Get the data • Embed • Created with Datawrapper

A debate over enforcement

In recent years, the SEC has disciplined many investment advisers over alleged failures to adequately disclose information related to fees. The agency has said, “investor harm involving this lack of disclosure may be widespread.” A self-reporting initiative ultimately led the SEC to order nearly 100 investment advisory firms to return more than $139 million to investors, according to a 2020 report.

Advocates for the financial services industry and their allies have pushed back on the commission’s enforcement efforts, writing in a petition formally asking the SEC to implement a rule to end the “back door” regulation of the actions and describing them as an overreach of the commission’s authority. The petition argued that the SEC unfairly “proclaimed that virtually every investment adviser had been violating federal law, presumably for decades" based on the enforcement division's opinion of what disclosures should contain.

The petition was filed prior to the SEC's order against William Vescio and doesn't make any reference to him. But the petition deals with similar alleged disclosure violations, and it described the enforcement efforts as an "unfair surprise."

While also not commenting on William Vescio's case, a representative for the Consumer Federation of America countered that the SEC's efforts on this topic were "laudable," and said the agency "has simply been engaged in enforcing well-established and long-recognized fiduciary obligations ... including the obligations to act in the best interests of the client."

David Chase, a former SEC attorney who practices in Florida, said if the alleged conduct occurred as the SEC described it in William Vescio's case, then "it's not exemplary conduct" and "it shouldn't have happened."

But Chase — who now represents whistleblowers and people facing SEC investigations — told Spotlight PA the allegations are "not earth-shattering" and that there are "many, many other reputable firms who had the same issue." Still, he said, this case offers lessons for counties and local governments, and it highlights the need for them to remain vigilant.

"You need to have periodic check-ins ... and not be shy about second-guessing or at least asking some tough questions," said Chase.

Micah Hauptman, director of investor protection at the Consumer Federation of America, said the William Vescio settlement was somewhat unusual in that it involved county and municipal retirement systems as opposed to individual, retail investors.

Hauptman said officials overseeing pensions "should have a high level of sophistication to know what investments they are being sold, and they should know what questions to ask to make sure that they are getting the best deal."

The William Vescio case raises questions of whether local officials lived up to their responsibilities to protect participants in the plans, he said.

Across the state, many other local officials have similar responsibilities. Pennsylvania has more than 1,500 local public pension systems, more than any other state in the country.

"Often there's a price to pay by trying to provide all these individualized, often very small services," said Christopher Borick, a political science professor at Muhlenberg College in Lehigh County. "It provides many more opportunities for mismanagement, potential fraud, and problems."

"They do fly under the radar," he added.

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Ed Mahon
Investigative Reporter

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