

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84962 / December 26, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 5094 / December 26, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-17883

In the Matter of

WARREN D. NADEL,

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940**

I.

On March 16, 2017, the Securities and Exchange Commission (“Commission”) instituted public administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Warren D. Nadel (“Respondent” or “Nadel”). After an initial decision had issued in this matter, the Commission remanded the case to Chief Judge Murray for reassignment to a new Administrative Law Judge (“ALJ”) pursuant to the Supreme Court’s decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018).

II.

Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept in light of *Lucia v. SEC*. 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 him and the subject matter of these proceedings and the findings contained in paragraph III.2 below, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

Respondent and the Division recognize that, according to *Lucia v. SEC*, Respondent is entitled to a “new hearing” before “another ALJ (or the Commission itself).” 138 S. Ct. at 2055. Respondent knowingly and voluntarily waives any claim or entitlement to such a new hearing before another ALJ or the Commission itself. Respondent also knowingly and voluntarily waives any and all challenges to the administrative proceedings or any and all orders that were issued during or at the conclusion of those proceedings, whether before the ALJ, the Commission, or any court, based upon any alleged or actual defect in the appointment of ALJ Brenda Murray.

III.

On the basis of this order and Respondent’s Offer, the Commission finds that:

1. Nadel, age 68, is a resident of Upper Brookville, New York and from at least the beginning of 2007 through 2009 (the “Relevant Period”) controlled a broker-dealer then registered with FINRA, Warren D. Nadel & Co. (“WDNC”), and an investment adviser then registered with the Commission, Registered Investment Advisers, LLC (“RIA”). During the Relevant Period, Nadel was an investment adviser, held Series 1, 3, 7, 24 and 63 licenses, and was at all relevant times the president, chief executive officer and chief compliance officer of WDNC, and the president of RIA. The registrations of both WDNC and RIA were terminated in 2011.

2. On January 20, 2017 a final judgment was entered against Nadel, permanently enjoining him (1) from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(3) of the Advisers Act, and (2) from aiding and abetting any violations of Section 10(b) of the Exchange Act and Rule 10b-10 thereunder, in the civil action entitled Securities and Exchange Commission v. Warren D. Nadel, et al., Civil Action Number 2:11-CV-0215, in the United States District Court for the Eastern District of New York.

3. The Commission’s complaint alleged that during the Relevant Period, Nadel fraudulently induced clients of RIA to invest tens of millions of dollars in what he falsely represented as a liquid, cash management investment program in which RIA clients would buy and sell preferred utility securities in the open market and hold them for short periods of time in order to generate either dividend income or capital appreciation (the “Strategy”). In reality, however, and contrary to Nadel’s representations to clients, the Complaint alleged, the vast majority of the transactions in the Strategy consisted of cross-trades Nadel made between the advisory client accounts he controlled, at inflated prices Nadel made up himself. The Complaint alleged that through this fraudulent conduct, Nadel created the false impression that there was a liquid market for these securities and that the market prices for the securities were consistent with the inflated values that Nadel reported to RIA clients. The Complaint also alleged that in addition to the foregoing misrepresentations, Nadel also induced investors to join and stay in the Strategy by deliberately and materially overstating the amount of assets that RIA had under management. Through this fraudulent conduct, the Complaint alleged, Nadel obtained more than \$8 million in commissions and advisory fees in the Relevant Period alone – and his clients, meanwhile, suffered substantial losses on what Nadel had falsely represented to be a liquid cash management program.

4. On March 31, 2015, the Court granted the Commission's motion for partial summary judgment against Nadel, WDNC and RIA on its claims that they violated Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-10 thereunder, Section 17(a) of the Securities Act, and Sections 206(1), 206(2) and 206(3) of the Advisers Act, and referred the question of remedies to the Magistrate Judge. On February 11, 2016, the Magistrate Judge, after having held a four-day hearing in July 2015, issued a Report and Recommendation recommending that (1) the Court order permanent injunctive relief against Nadel, WDNC and RIA; (2) the Court award disgorgement against them in the amount of \$10,776,687.62, jointly and severally; (3) the the Court impose a third-tier civil penalty in the amount of \$1,000,000 against Nadel; and (4) the Commission submit a revised prejudgment interest calculation. On September 9, 2016, the Court, over Defendants' objections, adopted the Magistrate Judge's Report and Recommendation. After approving the Commission's revised prejudgment interest calculation on September 23, 2016, the Court entered final judgments against Nadel, WDNC and RIA on January 20, 2017. In addition to the permanent injunctive relief described above in paragraph 2, *supra*, the Court also ordered: (1) a third-tier civil monetary penalty in the amount of \$1,000,000 against Nadel; and (2) disgorgement against Nadel, WDNC and RIA, jointly and severally, in the amount of \$10,776,687.62, plus prejudgment interest in the amount of \$2,293,701.57, for a total of \$13,070,389.19.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Nadel be, and hereby is barred from association with any broker, dealer or investment adviser with the right to apply for reentry after two years to the appropriate self-regulatory organization, or if there is none, to the Commission.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary