July 15, 2020

MOTION TO VACATE Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203€, 203(f), and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) of the Investment Company Act of 1940.

In the Matter of Securities and Exchange Commission vs Calhoun Asset Management, LLC and

Krista Lynn Ward fka Krista Lynn Karnezis

July 9, 2012

The purpose of this Motion is to request that the Securities and Exchange Commission vacate the "Order Making Findings and Imposing Remedial Sanction and a Cease-and-Desist Order" entered into on July 9, 2012 between the SEC and Calhoun Asset Management, and me, Krista L. Ward.

I realize that the Commission has historically only vacated orders by applying facts and circumstances test stressing—primarily by reviewing the nature of the underlying misconduct and the length of time since entry of the Commission's bar. In addition, it would appear that it likes to see a track record of compliance, after a series of incremental grants of relief. I strongly believe, however, that none of that is relevant to my case. My Order should be vacated for three independent reasons: 1. A subsequent civil suit, based on the same exact allegations the SEC made against me (which was initiated by a complaint made by the same plaintiff), was found in my favor on all counts, 2. The perceived damage to the clients based on the alleged misconduct was not only non-existent, but our performance, in fact, protected our clients, and 3. the entire investigative proceedings were an overreach and handled in an unconstitutional manner. I will address reason 1 and2 in this request to vacate and will address reason 3 in a court of law, should I need to proceed in that manner.

Background

Probably not coincidence, but within weeks of my having filed for divorce, the SEC alerted my firm that they'd like to discuss our/my behavior and investigate the firm, based on the allegations of my soon-to-be husband's friend and current investor of mine. I hired an attorney when I learned that the SEC wanted to conduct depositions. After the depositions, in approximately September of 2011, the Chicago branch of the SEC told my attorney that if I paid a fee of $25,000 that that would be sufficient, or something to that extent, and everything would go away. My attorney claimed that in all the years he had been practicing securities law, he had never heard of such a thing without any proceedings or formal allegations and told them no. In December of 2011, the SEC instituted formal proceedings against me and my firm, Calhoun Asset Management.

I was unable to fight the allegations the SEC brought against me because I was spending all of my time in court [redacted] Therefore, I consented to the Order, against every fiber of my being, because I did not have the time or energy to fight both simultaneously. I had already exited the investment industry (a career in which I had spent 15 successful years), beat a long bout with [redacted] and was several years into a new career in the food industry. I regrettably consented to the Order and paid a civil money fine to the SEC of $50,000, despite my knowing that I did not do the things they alleged. Soon after I signed this Consent Decree, the allegations became public and my reputation was completely damaged. It was even used against me in my divorce and [redacted] hearings, despite the fact that the allegations were not true. The consequences of consenting to the Order, while not unexpected, were devastating to my ability to raise money for our food company, prevented me from sitting on Board of Directors of both non-profit and for -rofit entities, and even affected my personal life in that my name was associated with fraud all over the internet.

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In Section IV D of that Consent Decree, I was barred from association with any broker, dealer, investment adviser, etc. and was prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser, etc. I was granted the right to apply for reentry after five years to "the self-regulatory organization, or if there is none, to the Commission." While the five years expired in 2017, I did not apply for reentry, since I was no longer in the industry. However, it was recently brought to my attention, that I could request to have the Order vacated, especially in light of the win in civil court.

The Civil Case that Exonerated Me

In 2013, a short time after I settled with the SEC, the investor of mine, who was a friend of my ex-husband and who had initiated the SEC investigation, decided to sue me, basing his complaint on the same ***exact*** allegations the SEC listed against me. This time, I was finished with my divorce and had time to fight these wrongful allegations, as I wish I had done in the first place. Several of the counts were dismissed upon the initial filing. A few more were dismissed several years later on Summary Judgment, and finally, the remainder were found to be unfounded at trial and I was found not guilty. I was finally vindicated after six and a half years (although the public damage had already been done, so not much celebration there). For reference, the case is David Meyer v Krista Ward and Calhoun Asset Management, Case # 13 C3303 Magistrate Judge Mary M. Rowland.

Here is an outline of the substantive findings in the civil proceedings:

1. June 2014: Defendant's Motion to Dismiss Complaint pursuant to Rules 12(B)(6) and 9(B)(25) was granted in part. Plaintiff's claim of breach of fiduciary duty and breach of contract were dismissed.
2. December 2014: both the Judge and plaintiff's attorney strongly suggested I settle the case. I refused because I did not commit fraud, misrepresent facts, or embellish our record.

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3. September 27, 2016: Defendant's motion for summary judgment was granted in part. It was granted as to Counts II and V.

4. January 27, 2017: trial date is set.

5. April 2017: bench trial occurs; both plaintiff and defendant testify.

6. Dec 18, 2017: Honorable Mary M. Rowland issued the Memorandum Opinion and Order. "The remaining claims were Counts I (Violation of Section 12 of the Securities Act of 1933), III (violation of the Illinois Securities Law of 1953), VII (Rescission), and VIII (Unjust Enrichment). After considering all testimony, exhibits admitted at trial, and the parties' pre-trial and post-trial submissions, defendants were found to be entitled to judgement on all remaining claims." It was ordered and adjudged that FINAL JUDGEMENT was entered in favor of Defendants Calhoun Asset Management & Krista Ward, against Plaintiff David Meyer.

The Opinion elaborated on the Judge's observations and findings of fact regarding the marketing documents, track record, due diligence process, etc. The "Violative Conduct" that the SEC alleged, and Meyer copied virtually verbatim, for his lawsuit, included:

- exaggeration of assets under management,
- scattered and disorganized documentation to support track record,
- misrepresentations about performance returns,
- false and misleading statements regarding due diligence, and
- false and misleading statements on Form ADV.

While this is all included in the trial depositions, testimony, and exhibits, I reiterate here in this petition, my innocence as to fraud, false and misleading statements, and exaggeration of assets. I admit to my personal records being scattered and disorganized during the SEC investigation because

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as I explained, the main documents were stored (after exiting the industry) and there was a flood that ruined those said documents. However, as I told the SEC representatives, KPMG audited our funds, and Transcontinental Fund Administration, a third-party administrator, administrated the accounting and reporting for the funds. Both companies are globally recognized firms and have been in existence for decades, and are still in business today. The SEC did NOT contact these entities or verify the information, nor, as the Honorable Judge Rowland stated, did they conclude that the assets, returns, or historical track record were false. In addition, while we hired an outside firm to assist in due diligence as we grew, those same professionals with PhDs and other significant quantitative qualifications, met with the Orizon Group (who employed David Meyer, complainant and plaintiff) and our other clients, as part of our team. It was not a secret that we retained the services of this firm to help with due diligence. The one thing I was guilty of was making an inadvertent false statement on a form ADV, not with the intent of attracting more clients, but rather to register as an RIA to illustrate heightened regulatory scrutiny to our clients. Finally, and most importantly, our Funds did exactly what they were supposed to do in 2008—protect our clients in a down market by hedging their risk. While all of the worldwide markets were down by over 50% in 2008, our clients lost less than 25%, which was proven in the civil case by investigating the KPMG audits and other client records.

For all of these reasons, as well as how the proceedings were conducted, I ask that the Commission vacate the Order of July 9, 2012.

Thank you for your consideration.

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