



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of)
)
DENNIS J. MALOUF,)
)
Respondent.)
)
_____)

ADMINISTRATIVE PROCEEDING
File No. 3-15918

**RESPONDENT DENNIS J. MALOUF'S
ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW Respondent, Dennis J. Malouf (“**Malouf**” or “**Respondent**”), by and through his undersigned counsel, and hereby answers the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b), 15C(c) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, and Notice of Hearing (the “**Order**”) as follows:

INTRODUCTION

This action arises from an incidence of “self-reporting” to The Securities and Exchange Commission (the “**Commission**”) by UASNM, Inc. (“**UASNM**”). It was orchestrated by UASNM Chairman Joe Kopczynski (“**Kopczynski**”), and it was intended to harm Malouf’s business and personal reputation. The action stems from animosity Kopczynski holds towards Malouf due to a highly charged personal dispute. By

orchestrating the events leading to this action, Kopczynski has rewarded himself with substantial financial gains and has exacted retribution on Malouf.

UASNM has reported that Malouf had a “secret oral agreement” to improperly receive commissions from bond transactions executed on behalf of UASNM customers. The Commission alleges that this agreement, and the resulting conflict of interest, were not properly disclosed to UASNM clients in Forms ADV or on UASNM’s website. The Commission also claims that Malouf neglected best execution obligations as a result of the agreement, and that the receipt of any payments was improper because Malouf was not registered as a broker during the relevant time. In reality, what UASNM has self-reported to the Commission is a carefully spun, but incorrect version of the facts intended to benefit Kopczynski at Malouf’s expense.

To support the notion of a “secret oral agreement,” Kopczynski has pleaded ignorance regarding Malouf’s business with UASNM. But Kopczynski and Malouf worked closely together for thirteen years, and Kopczynski was his father-in-law for twelve years. Malouf came to work for Kopczynski’s registered investment adviser firm Universal Advisory Services, Inc. (“UAS”) in 1998. In 1999, Malouf married Kopczynski’s daughter. In the same year he became simultaneously employed by and opened a branch office of a broker-dealer (“**Broker-Dealer**”). Malouf appointed Kopczynski as the registered principal and branch manager of that office for a period of time. The branch later shared office space with UASNM that it subleased.

Kirk Hudson (“**Hudson**”) became the Chief Financial Officer of UAS in 2000. Then, in 2004, Malouf and Hudson founded UASNM as a registered investment adviser firm, purchased the assets of UAS from Kopczynski for \$2.14 million, and took over its

business. Ownership was split between Malouf and Hudson, Malouf owned a majority interest, and Kopczynski was given a 1% interest. Malouf served as CEO and President, and Hudson served as Vice President and CFO. Kopczynski served as Chairman and, because he had previously served as Chief Compliance Officer for UAS and had experience, he became the CCO for UASNM. Kopczynski is also an Accredited Investment Fiduciary, a designation that is indicative of his thorough knowledge of and ability to implement proper investment policies and procedures. Although Malouf's marriage to Kopczynski's daughter had become somewhat strained in 2004, Malouf believed his relationship with Kopczynski was sound. Malouf, Hudson, and Kopczynski worked at UASNM without issue from 2004 to mid-2011. They retained ACA Compliance Group ("ACA") in 2003 to assist Kopczynski in his duties as CCO by providing compliance consulting and auditing services. Despite numerous compliance reviews and audits, neither Kopczynski nor ACA raised any notable compliance issues from 2004 to mid-2011.

The genesis for this action, according to what UASNM has reported in hind-sight, was the sale of Malouf's Broker-Dealer branch office at the end of 2007. Malouf sold the branch to then branch manager Maurice LaMonde ("**LaMonde**"), and terminated his registration with Broker-Dealer. LaMonde purchased the branch pursuant to an agreement requiring him to make a series of ongoing payments to Malouf based upon the branch's revenues. The sale of the branch was suggested to Malouf by Broker-Dealer who also provided the form of the agreement.

The branch office continued to sublease and share office space with UASNM, and as a result, Malouf, Kopczynski, Hudson, LaMonde, and the other employees of UASNM

worked together in close quarters. LaMonde openly made payments to Malouf related to his purchase of the branch office from 2008 to 2011. He often gave the payments to the UASNM bookkeeper to deposit on Malouf's behalf. Kopczynski and Hudson were well aware Malouf sold the branch to LaMonde, and they would have been aware of the nature of the sale and the ongoing payments.

At the beginning of 2011, Malouf's marriage to Kopczynski's daughter became strained to the point of breaking. Around the same time Kopczynski resigned as CCO of UASNM, but he retained his 1% ownership interest and his position as Chairman. Kopczynski met privately with Malouf in May 2011, telling him candidly that there would be "problems" if Malouf divorced his daughter. Malouf filed for divorce and within days Kopczynski ordered a directors' meeting where he and Hudson voted to terminate Malouf. They locked Malouf out of the UASNM offices and when Malouf contested the termination they instituted a lawsuit which led them to fortuitously "discover" the "secret oral agreement" with LaMonde for the very first time.

Malouf ultimately resigned from UASNM and surrendered his ownership interest. Consequently, Kopczynski's ownership of UASNM increased from 1% to 47% and his annual compensation more than doubled. Hudson's ownership interest in UASNM also increased as a result of Malouf surrendering his interest. Kopczynski had sold UAS to Malouf, profited handsomely, and then ousted him and taken a controlling interest in the successor entity when Malouf divorced his daughter. As if this was not enough, Kopczynski then spun his own version of past events, self-reported them, and threw UASNM to the mercy of the Commission while pointing a finger at Malouf. The result was a settlement between UASNM and the Commission that amounted to a slap on the

wrist in exchange for cooperation against Malouf. The finishing touch was for UASNM to use escrowed money owed to Malouf from the buyout of his UASNM interest to pay the negotiated civil penalty and compensation to clients.

The alleged conduct UASNM reported to the Commission has been carefully crafted in hindsight to benefit Kopczynski and sink Malouf. But there was no “secret oral agreement” for Malouf to receive commissions from LaMonde through the branch office. Instead, there was a very visible agreement for the sale of the branch office in exchange for a portion of revenues. The agreement was suggested by Broker-Dealer, and it was known to Kopczynski, Hudson, and ACA. Further, the payments Malouf received were permissible and appropriate under FINRA rules and guidance. Any inadvertent omissions from Forms ADV or UASNM’s website regarding the sale were either not misleading or not material. Regardless, Kopczynski and ACA, who knew about the sale and who prepared the Forms ADV and amendments thereto had accepted primary responsibility for ensuring adequate disclosure on Forms ADV and the website. When necessary, transactions executed for UASNM customers through Broker-Dealer were carried out pursuant to prime brokerage agreements whereby they acknowledged and consented to the fact that such transactions could take place. Customers were also aware of relationships that existed between certain UASNM employees and Broker-Dealer. And, Malouf satisfied best execution obligations independent from the sale of his branch office to LaMonde.

The Commission seeks a cease-and-desist order against Malouf and further seeks disgorgement and civil penalties. There is no basis to seek these remedies, and they are inappropriate and unnecessary. Further, as the Commission has failed to specify the

amount of disgorgement sought, it is impossible for Malouf to adequately respond to these allegations. Malouf should not be sanctioned for purported misconduct which has been created out of thin air by an individual with deep-seated financial and personal motives to ruin Malouf's business and reputation. Malouf acted reasonably and in good faith at all times, and he never sought, either intentionally or unintentionally, to inflict any harm on UASNM customers for his own benefit. In short, there is no basis for any action against Malouf, and certainly no grounds for the relief sought by the Commission.

A. SUMMARY

1. Except as so admitted herein, the allegations contained in paragraph 1 are denied.

Malouf is the former chief executive officer and a former majority owner of UASNM, a registered investment adviser. Malouf is also the former owner of a branch office of Broker-Dealer. Malouf sold the branch office of the Broker-Dealer to LaMonde, the manager of that branch, at or around the end of 2007. The branch office was valued based upon annual revenue, and Malouf and LaMonde entered an agreement whereby LaMonde would pay for the branch through a series of payments. Certain bond trades were executed through the branch office on behalf of UASNM clients both before and after LaMonde purchased it.

2. Malouf denies the allegations contained in paragraph 2.

B. RESPONDENT

3. Except as so admitted herein, the allegations contained in paragraph 3 are denied.

Malouf is 54 years old and is a resident of Albuquerque, New Mexico. He was the chief executive officer and a majority owner of UASNM from September 2004 until September 2011. On May 13, 2011, Hudson and Kopczynski unexpectedly voted to terminate Malouf as an officer, director, and employee of UASNM at a director's meeting. Malouf contested the vote and left the office to seek legal counsel. Kopczynski locked Malouf out of the office and has denied Malouf access to both personal and UASNM files and records held at the UASNM office ever since. The contested termination resulted in a lawsuit between Malouf and UASNM. It was resolved in September 2011 when UASNM paid Malouf to resign as an officer, director, and employee of UASNM and to surrender his ownership interest. UASNM has since reorganized and, as a result, Kopczynski has increased his ownership interest in UASNM from 1% to 47%. Malouf is currently the sole owner and president of an investment adviser registered with the State of New Mexico.

C. OTHER RELEVANT ENTITY

4. Malouf denies the misconduct described in the Order and in the related SEC administrative proceeding in which UASNM is named as a respondent. Otherwise, the allegations contained in paragraph 4 are admitted.

D. FACTS

Relationship between UASNM and a Branch Office of Broker-Dealer

5-7. Except as so admitted herein, Malouf denies the allegations contained in paragraphs 5, 6, and 7.

Malouf purchased his majority interest in UASNM from Kopczynski in 2004. At the time, he was also associated as a registered representative and owned a branch office

of Broker-Dealer. UASNM was registered with the Commission as an investment advisor in September 2004. UASNM sub-leased and shared office space with Malouf's Broker-Dealer branch office.

Malouf is without sufficient information to admit or deny the specific reason(s) why Broker-Dealer asked him to choose between associating with UASNM or Broker-Dealer, but admits that Broker-Dealer asked him to choose. As a result, in 2007 Malouf decided to continue working for UASNM and to terminate his association as a registered representative and owner of a branch office of Broker-Dealer.

Malouf terminated his registration with Broker-Dealer at the end of 2007 and sold his interest in the branch office to LaMonde. In connection with the sale, certain of Malouf's Broker-Dealer customers transferred their accounts to UASNM. Those that did not transfer to UASNM remained customers of Broker-Dealer. It was contemplated and understood between Malouf, LaMonde, and Broker-Dealer that LaMonde would service the accounts of Malouf's customers that remained with Broker-Dealer. Kopczynski, Hudson, and Broker-Dealer were aware of the nature of the branch office sale between Malouf and LaMonde. The branch office continued to operate out of office space shared with UASNM following the sale by Malouf to LaMonde. Malouf is without sufficient information to admit or deny whether or why UASNM required LaMonde to locate a new office in June 2011.

The Branch Manager Secretly Paid Malouf All of the Commissions Earned on UASNM Bond Trades

8-10. Except as so admitted herein, Malouf denies the allegations contained in paragraphs 8, 9, and 10.

Malouf has 30 years of experience investing in bonds. When it was determined that bonds should be purchased for UASNM customers, Malouf was primarily the person at UASNM who identified which bonds should be purchased. Malouf relied upon Mr. Hudson's evaluation of the customers' Investment Policy Statements as well as information, guidance, and requirements communicated to him by Hudson and other employees of UASNM when determining what type of bonds should be purchased. Generally speaking, transactions on behalf of UASNM customers involved U.S. Treasury Notes, federal agency bonds, or municipal bonds. The considerations when purchasing government bonds are substantially different than those for equities because government bonds are not bought and sold in the same way as equities, and the marketplace for bonds is substantially different than the equity market. To identify specific bonds to purchase and to determine which broker-dealer should execute a desired transaction, Malouf considered price, availability, volatility, liquidity, the size of the desired transaction, and available transaction terms and conditions, among other things. Based upon these considerations, a number of bond transactions were executed through Broker-Dealer on behalf of UASNM customers from as early as 1999 through 2011. However, bond transactions were also executed through several other broker-dealers on behalf of UASNM customers during the same time period. Malouf also relied upon the broker-dealers that executed the transactions to achieve best execution. Malouf is without sufficient knowledge to admit or deny the specific number, size, value, or relative percentage of transactions that Broker-Dealer executed on behalf of UASNM and its customers. Malouf is also without sufficient knowledge to admit or deny the amount of any payments LaMonde earned from bond transactions executed on behalf of UASNM.

After a value was agreed upon, the sale of Malouf's branch office to LaMonde was made pursuant to an agreement between Malouf and LaMonde that was entered into on January 2, 2008. The agreement was memorialized in a written Purchase of Practice Agreement ("PPA") that was notarized in June 2010 at the request of Broker-Dealer during an annual branch audit. The form of the PPA was suggested and provided to Malouf and LaMonde by Broker-Dealer. The agreement, which was made pursuant to the rules and regulations of the Financial Industry Regulatory Authority ("FINRA"), contemplated that Branch Manager would make payments to Malouf based upon 40% of the commissions and securities related fees received by the branch office for a four year period. Although payments made to Malouf by LaMonde exceeded the periodic payments contemplated by the agreement, nothing in the agreement prevented LaMonde from making pre-payments towards the agreed purchase value of the branch office.

Malouf Failed to Disclose and Caused UASNM to Fail to Disclose His Receipt of Commissions From Branch Manager and the Resulting Conflicts of Interest

11-16. Except as so admitted herein, Malouf denies the allegations contained in paragraphs 11, 12, 13, 14, 15, and 16.

Kopczynski served as UASNM's Chief Compliance Officer from 2004 through the beginning of 2011. Though Malouf reviewed some Forms ADV, Kopczynski accepted ultimate responsibility for changes made to UASNM's Forms ADV during the time that he was CCO. Kopczynski and Hudson collaborated with ACA, an investment adviser compliance consultant retained by UASNM, to periodically review and discuss the disclosures contained in UASNM's Forms ADV as well as any recommended changes thereto. Kopczynski was aware of Malouf's relationship with Broker-Dealer as well as the nature of the sale of the branch office to Branch Manager. Malouf relied upon

Kopczynski and ACA's compliance expertise with respect to the adequacy of disclosures on UASNM's Forms ADV. Furthermore, Malouf did not sign any of the Forms ADV that the Commission has taken issue with, Hudson did. Malouf did not take over as CCO of UASNM until January 2011.

Item 12.B on UASNM's Form ADV Part II dated April 12, 2010, accurately disclosed factors related to UASNM's best execution process and the factors that UASNM considered in selecting a broker to execute transactions for its customers. It stated that:

Clients wishing to implement UAS's advice are free to select any broker and/or dealer that they wish and are so informed. Those Clients who wish UAS to recommend a broker will receive a recommendation based on the broker's cost, skill, reputation, dependability, and compatibility with Clients, and not upon any arrangement between the recommended broker and UAS.

The entity that is recommended by UAS is dependent upon a number of factors, including the following: trade execution, custodial services, trust services, record keeping, and research, and/or ability to access a wide variety of securities. UAS reviews on a periodic and systematic basis its third-party relationships to ensure that it is fulfilling its fiduciary duty to seek best execution on Client transactions.

Item 12.B also accurately stated that "[e]mployees of UAS are not registered representatives of . . . [Broker-Dealer] . . . and do not receive any commissions or fees from recommending these services." At that time, Malouf was not a registered representative of Broker-Dealer and he did not receive commissions or fees from Broker-Dealer for recommending its services.

UASNM's March 2011 Form ADV, which was submitted after Malouf had assumed the role of CCO from Kopczynski, did contain disclosures regarding the sale of the branch office by Malouf to LaMonde in exchange for a series of payments. It also

disclosed that, as a result, an incentive may exist for UASNM to execute transactions through the branch office as it would generate revenues that may be used to fulfill payments owed to Malouf. Although this disclosure was new to UASNM's Form ADV, Malouf denies that any disclosures or omissions on UASNM's Forms ADV overseen by Kopczynski and ACA and signed by Hudson were materially misleading or deficient.

Malouf Aided and Abetted and Caused UASNM to Make Misleading Claims on Its Website

17-19. Except as so admitted herein, Malouf denies the allegations contained in paragraphs 17, 18, and 19.

Malouf was the CEO and majority owner of UASNM from 2004 to 2011 and was generally familiar with the contents of the firm's website during that period. Kopczynski, as CCO, had accepted specific responsibility for reviewing the firm's website prior to it being launched. Kopczynski also reviewed the website subsequent to its launch to ensure that it was appropriate in light of the compliance policies of the firm. At no time until after Malouf divorced Kopczynski's daughter did Kopczynski notify Malouf regarding any information he believed to be irregular. Malouf is without sufficient knowledge and is therefore unable to admit or deny whether any specific statements were made on UASNM's website from 2008 to 2011. Malouf denies that the UASNM website contained any representations that were materially false or misleading or that he caused any such representations to be made.

Malouf Failed to Seek Best Execution on Bond Trades

20-21. Except as so admitted herein, Malouf denies the allegations contained in paragraphs 20 and 21.

From 2008 to 2011, Malouf used reasonable diligence to ascertain the best market for bonds on behalf of UASNM customers such that the resultant price was as favorable as possible under prevailing market conditions. One tool that Malouf employed in the course of his reasonable diligence was BondDesk, an electronic trading platform that connects almost 200 broker-dealers to a centralized “marketplace.” BondDesk users have access to the details of many thousand bond offerings at any given time. In addition, BondDesk has the ability to screen and identify bonds based upon various criteria, such as yield, price, and maturity, among others. By providing access to information regarding a broad array of bond products and price points, BondDesk lends to greater transparency and liquidity in bond transactions.

Based upon the reasonable diligence Malouf undertook, which at times included accessing and reviewing information through BondDesk, certain bond transactions were executed through Broker-Dealer on behalf of UASNM customers from 2008 through 2011. Transactions based upon similar reasonable diligence were also executed through Broker-Dealer on behalf of UASNM customers long before Malouf sold the branch office, as far back as 1999. Malouf also executed bond transactions on behalf of UASNM customers through other broker-dealers during the same extensive time period, from 1999 to 2011. Ultimately, Malouf’s reasonable diligence satisfied the best execution obligations under the circumstances, and UASNM customers paid reasonable prices on the bond transactions executed for their accounts. No UASNM customers have complained about any bond transactions in their accounts, either with respect to bond prices, or the performance of the bonds they have invested in.

Malouf Acted as an Unregistered Broker and Government Securities Broker

22. Except as so admitted herein, Malouf denies the allegations contained in paragraph 22.

From 2008 to 2011, Malouf was not registered with the Commission as a broker or dealer and he was not associated with a broker or dealer. Malouf was also not registered with the Commission as a government securities broker. However, Malouf has been registered with the Commission as an Investment Adviser Representative since 2003. From 2008 to 2011, Malouf provided advice regarding investments on behalf of UASNM customers. Transactions were carried out on behalf of UASNM customers pursuant to Malouf's advice. Malouf did not receive commissions for investment advice that he provided on behalf of UASNM customers. Any compensation paid to Malouf by the branch office or LaMonde was in consideration of the purchase of the branch office by LaMonde, and was not commission from any securities transaction.

E. VIOLATIONS

- 23. Malouf denies the allegations contained in paragraph 23.
- 24. Malouf denies the allegations contained in paragraph 24.
- 25. Malouf denies the allegations contained in paragraph 25.
- 26. Malouf denies the allegations contained in paragraph 26.
- 27. Malouf denies the allegations contained in paragraph 27.
- 28. Malouf denies the allegations contained in paragraph 28.
- 29. Malouf denies the allegations contained in paragraph 29.

Malouf denies that it is necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted of that any penalties or disgorgement are appropriate.

AFFIRMATIVE DEFENSES

The foregoing matters do not support the relief sought by the Commission against Malouf. In addition, the following affirmative defenses nullify any potential liability.

First Affirmative Defense

Malouf did not receive any illegal or improper commissions and no disgorgement can be ordered. The Commission has failed to allege the amount it seeks to disgorge from Malouf and the basis for any such amount. Without such allegations, Malouf is unable to properly respond to and defend against the disgorgement claim. Even if the Commission could allege the receipt by Malouf of any illegal commissions, Malouf is entitled to an apportionment of that amount to reflect only those amounts it actually received. Since no amount of purported disgorgement has been specified, it is impossible to determine what to apportion. Any claim by the Commission for disgorgement of any amount more than what Malouf actually received in illegal commissions constitutes a penalty, in which case Malouf is entitled to a jury trial.

Second Affirmative Defense

There is no basis to support a cease-and-desist order against Malouf. There is no risk of a future violation of the federal securities laws to warrant such an imposition. Malouf is no longer an owner of or employed by UASNM. No remedial purpose exists that would be served by the imposition of a cease-and-desist order against Malouf.

Third Affirmative Defense

The Commission's claims and the remedial action sought are neither necessary nor appropriate, and they are not in the public interest.

Fourth Affirmative Defense

Malouf was not a culpable participant in any of the alleged misconduct.

Fifth Affirmative Defense

The Commission's allegations and any relief sought thereby are barred by the applicable statutes of limitations. No relief may be sought for any activity which forms the basis of the Commission's allegations that occurred more than five years prior to the institution of this proceeding on June 9, 2014.

Sixth Affirmative Defense

Malouf did not wilfully violate section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, or Rule 10b-5. Malouf had no intent to deceive, manipulate, or defraud in connection with the purchase or sale of securities.

Seventh Affirmative Defense

Malouf did not willfully violate Section 206 of the Advisers Act. Malouf had no intent to defraud or to engage in any transaction, practice, or course of business which operates as a fraud or deceit.

Eighth Affirmative Defense

Malouf did not willfully violate Section 207 of the Advisers Act. Malouf had no intent to make any untrue statement of a material fact or to omit to state any material fact required to be stated.

Ninth Affirmative Defense

Malouf did not willfully aid and abet any violations of Sections 206 or 207 of the Advisers Act or Rule 206. Malouf had no intent to aid or abet UASNM to publish, circulate, or distribute any advertisement that is false or misleading or contains any untrue statement of material fact.

Tenth Affirmative Defense

Malouf did not willfully violate Section 15 of the Exchange Act. Malouf had no intent to effect any transactions in, or to induce or to attempt to induce the purchase or sale of, any security.

Eleventh Affirmative Defense

Malouf did not willfully violate Section 15C of the Exchange Act. Malouf had no intent to effect any transactions in, or to induce or to attempt to induce the purchase or sale of, any government security.

Twelfth Affirmative Defense

Any misrepresentations or omissions which form the basis of the claims asserted by the Commission were inadvertent or not material.

Thirteenth Affirmative Defense

Any claims by customers of UASNM have already been fully resolved as a result of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order entered in the matter of UASNM, Inc. Administrative Proceeding No. 3-15917.

Fourteenth Affirmative Defense

Malouf did not act with the requisite scienter.

Fifteenth Affirmative Defense

Malouf did not employ a deceptive or manipulative device in connection with the purchase or sale of any security.

Sixteenth Affirmative Defense

Malouf is not responsible for many or all of the conduct alleged by the Commission as the firm reasonably delegated responsibility to others for the conduct about which the Commission complains. Specifically, Kopczynski, as Chief Compliance Officer of UASNM, was responsible for preparing and ensuring the accuracy and adequacy of Forms ADV and information that was published on UASNM's website.

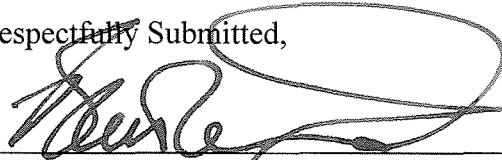
Seventeenth Affirmative Defense

The Commission cannot meet the applicable standards for any of the relief they are seeking in the Order.

Eighteenth Affirmative Defense

Malouf alleges such other affirmative defenses as may be determined to be applicable during discovery.

Respectfully Submitted,



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