UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
	)	
DENNIS J. MALOUF,	)	ADMINISTRATIVE PROCEEDING
	)	File No. 3-15918
Respondent.	)	
	)	

RESPONDENT DENNIS MALOUF'S POST-HEARING BRIEF

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I. OVERVIEW

Malouf has been unfairly singled out for alleged violations for which others are responsible. Any regulatory issues at UASNM were the result of institutional weaknesses and attributable to the conduct, representations, and negligence of others. Recognizing this, the SEC's Division of Enforcement ("**Division**") brought claims against UASNM arising from the same purported conduct. Those claims have been settled, and Malouf's funds have been used to satisfy the terms of that settlement. UASNM is in the midst of taking more of Malouf's personal funds to cover additional costs. Malouf has borne the full financial brunt of UASNM's penalties while other responsible parties escape unscathed. Though the claims against UASNM have been resolved -- using Malouf's funds -- the SEC now seeks to single out Malouf for the same claims.

The Division charges violations of: Exchange Act § 15(a)(1) and § 15C(a)(1)(A); Advisers Act § 206(1) and (2); Securities Act § 17(a)(1) and (3); Exchange Act § 10(b) and Rules 10b-5(a) and (c); Advisers Act § 207; and aiding and abetting UASNM in violations of Advisers Act § 206 and § 207 and related rules. The claims are based on three specific events or activities: (1) Malouf's receipt of payments for the sale of a Raymond James Financial Services ("**RJFS**") branch office ("**Branch 4GE**") to Maurice LaMonde; (2) Malouf's participation in UASNM's bond trading activities; and (3) disclosures UASNM made in its regulatory filings and on its website. The sale of Branch 4GE, purportedly by a "secret oral agreement" related to Malouf's compensation for the sale, is the fulcrum for the Division's claims.

Many of the issues for which the Division seeks to punish Malouf arose during Joe Kopczynski's tenure as CCO of UASNM. Even after Kopczynski sold UASNM to Malouf, he exerted significant influence and de facto control over the company. Malouf, who admits he is not detail oriented, delegated the compliance responsibilities to Kopczynksi and felt assured they

were in good hands. Malouf reasonably believed Kopczynski was well qualified to be CCO and attentive to his duties.

When Malouf filed to divorce Aubrey Kopczynski in 2011 he provoked extreme animosity in Kopczynski, who exerted his de facto control to remove Malouf and set about ruining his personal and professional life. Kopczynski's plan culminated with a self-report to the Division blaming Malouf for misconduct at UASNM. During the ensuing investigation Kopczynski minimized his own culpability by claiming Malouf misrepresented or withheld information. He enlisted others to support his claims who fell in line because they faced culpability otherwise, and because in many cases they were financially beholden to Kopczynski.

The focus and tenor of the Division's resulting investigation were heavily influenced by the self-report and self-serving information provided by Kopczynski and Hudson. The Division adopted Kopczynski's claims and analysis as its own. It focused on finding information tending to support Kopczynski's claims rather than investigating the circumstances, and it turned a blind eye to obvious violations by Kopczynski and Hudson. As a consequence, Kopczynski has successfully scapegoated Malouf for every purported transgression by UASNM. Meanwhile Kopczynski and Hudson are the beneficiaries of a clean slate at UASNM, at no cost to them.

The version of events told by Kopczynski, Hudson, and others during the SEC investigation was challenged for the first time at the hearing. The result was evidence contradicting what the Division had previously "learned" and relied upon. Most importantly, the evidence showed Malouf had not concealed or misrepresented information to others. This was contrary to the prior allegations by Kopczynski, Hudson, and – in blind reliance on these individuals – the Division. It also showed that any role Malouf played was lacking bad intent or malice towards UASNM, its customers, or regulators. Finally, the evidence showed that any

oversights were a product of Malouf's reliance on other officers at UASNM and ACA.

What the evidence showed is consistent with Malouf's clean record during 31 years in the industry. It is consistent with numerous examples of Malouf's efforts to bolster UASNM's compliance program and his proactive approach to remedying problems at UASNM, particularly when he assumed the position of CCO. In stark contrast, despite his admitted failings as CCO, the Division has never charged Kopczynski with any violation of the securities laws. As CCO Kopczynski was directly responsible for developing and implementing compliance policies and procedures, including those relating to best execution, conflicts of interest, and disclosures on Forms ADV and in marketing materials, and for supervising those activities.

The Division bears the burden of proving the violations it has alleged. Based upon the testimony and evidence presented at the hearing the Division has failed to satisfy its burden. Even if the Division had sufficient evidence to establish its claims by a preponderance, which it does not, this proceeding has improperly and unfairly singled out Malouf for cumulative punishment based on allegations that equally encompass the conduct of Kopczyinski, Hudson, and others. Remedial and punitive measures have already been taken against UASNM for the purported conduct at issue, and Malouf has paid 100% of the penalties and forfeitures against UASNM. Regardless, Kopczynski's vendetta has been largely successful, resulting in Malouf's financial ruin and depriving him of the ability to pay even if a forfeiture or penalty were to be assessed. For these reasons, the claims against Malouf should be denied.

II. FACTUAL SUMMARY

Malouf registered as a securities broker in 1983. Kopczynski founded Universal Advisory Services ("**UAS**") in 1985. Malouf started working at UAS in 1998. Malouf began working for Raymond James Financial Services ("**RJFS**") and opened Branch 4GE in 1999, the

same year he married Kopczynski's daughter (Findings of Fact 14, 293). Malouf was dually registered as an investment adviser and registered representative (FOF 3). In 2002, UAS retained Adviser Compliance Associates, LLC ("**ACA**") (FOF 303). ACA agreed to, among other things: (1) conduct annual mock SEC compliance audits; (2) review and submit annual Form ADV filings; (3) create Form ADV Pt II; (4) prepare a compliance manual; (5) conduct a periodic and systematic evaluation of the execution quality of client trades; and (6) review marketing materials to ensure compliance with relevant rules (FOF 93, 94, 304, 346). This agreement was signed by Kopczynski (Proposed Finding Of Fact 2).

Under Kopczynski's ownership and direction, between 1999 and 2004 UAS directed trades customer trades through Branch 4GE. Malouf and other UAS employees who also placed trades through RJFS could receive commissions for those trades, so long as appropriate disclosures of potential conflicts of interest were disclosed (FOF 345). The potential conflicts were in fact disclosed to UAS customers in UAS' Form ADV (PFOF 103). The SEC conducted a routine examination of UAS in 2002 and did not raise any issues with respect to trades UAS placed through Branch 4GE, the disclosures on UAS' Form ADV, or any commissions Malouf received (PFOF 54). ACA was also conducting annual mock SEC audits of UAS from 2002 to 2004, and was actively involved in reviewing UAS' trading activity and preparing UAS' Forms ADV (FOF 93, 94, 304, 346). In 2004, Malouf and Hudson formed UASNM and purchased the assets of UAS for $2.139 million (FOF 3). Malouf was the majority owner, president, and CEO of UASNM from September 4, 2004, through May 13, 2011 (FOF 14). Kopczynski became CCO of UASNM, a position he previously held at UAS, and "Chairman of the Board" (FOF 16).

UASNM continued to operate in substantially the same manner as UAS, and it continued to place certain trades through Branch 4GE from 2004 through 2007 (FOF 345, PFOF 56).

Malouf and other UASNM employees registered with RJFS who placed trades through RJFS could and did receive commissions for those trades (FOF 345). This was disclosed to UAS customers in UASNM's Forms ADV (PFOF 104). The SEC conducted a routine examination of UAS in 2006 and did not raise any issues with respect to trades UASNM placed through Branch 4GE, the disclosures on UASNM's Form ADV, or any commissions Malouf received (PFOF 54). ACA continued to conduct annual mock SEC audits of UASNM, reviewed UAS' trading activity and prepared Forms ADV (FOF 35, 93, 94, 304).

In 2007, RJFS asked Malouf to choose between associating with UASNM or RJFS (FOF 19). Malouf decided to sell Branch 4GE to branch manager Maurice LaMonde (FOF 293). Branch 4GE was sold to LaMonde on January 1, 2008 (FOF 19, 293). As part of the sale, Malouf transferred certain customers to UASNM and others were transferred to LaMonde (FOF 5, 69, 70). RJFS executed this transfer, pursuant to a list, on or around December 31, 2007 (FOF 69, 70). Malouf voluntarily terminated his registration with RJFS on the same day (FOF 5, 19).

Malouf sold Branch 4GE to LaMonde pursuant to a purchase of practice agreement ("**PPA**") (FOF 26). Malouf and LaMonde obtained a template for the PPA from RJFS (FOF 389). The fact such templates were available is evidence that sales like Malouf's were common (PFOF 105). In addition to the PPA, certain oral agreements and understandings existed between Malouf and LaMonde (PFOF 106). Specifically, Malouf and LaMonde understood the total purchase price for Branch 4GE to be $1.1 million (based upon a multiple of trailing revenues like that used when Malouf and Hudson bought UASNM) and that LaMonde could pre-pay towards the purchase price without penalty (PFOF 106). The PPA contemplated that LaMonde would pay for Branch 4GE using a portion of its revenues (PFOF 107). Malouf received periodic payments from LaMonde for the purchase of the branch from 2008 to 2011 (FOF 294).

UASNM continued directing certain trades through Branch 4GE after the sale. Bond trades were directed to LaMonde by Hudson, Malouf, and Matthew Keller from 2008 to 2011 (FOF 297). ACA continued conducting mock SEC audits of UASNM, reviewed UAS' trading activity and marketing materials, conducted periodic and systematic evaluations of the execution quality of UASNM's trades, and prepared UASNM's Forms ADV (FOF 35, PFOF 2). Kopczynski and Hudson were ACA's primary contacts at UASNM through 2011 (PFOF 28).

RJFS also conducted annual examinations of Branch 4GE including a review of the corporate checking account (PFOF 108). From 2008 through 2011 the Branch 4GE corporate checking account reflected payments LaMonde was periodically making to Malouf (PFOF 109). RJFS also actively reviewed commissions charged on bond trades placed through Branch 4GE to ensure they were fair and reasonable (PFOF 110). If a commission exceeded the limits set forth by RJFS that trade would get rejected (PFOF 19). Part of the reason RJFS reviewed commissions and rejected trades where the commission was too high was to ensure its customers were getting best execution (PFOF 20). From 2008 to 2011 there are only two known instances where RJFS questioned the amount of a commission charged on a trade at Branch 4GE, and only one known instance of RJFS reducing a commission on a trade at Branch 4GE (FOF 266).

In January 2011 Kopczynski resigned as CCO of UASNM (FOF 16). His daughter and Malouf separated around that time. Malouf took over as CCO on an interim basis (FOF 16). In or around April 2011, Malouf advised Kopczynski he was going to divorce his daughter and on May 2, 2011, he did (PFOF 111). On May 13, 2011, Kopczynski and Hudson called a board meeting and voted to terminate Malouf (FOF 309). Malouf left to seek legal counsel, and when he returned found he had been locked out of the office (FOF 309). On May 27, 2011, UASNM filed suit in state court against Malouf to remove him from UASNM (FOF 310). In September

2011, Malouf settled with UASNM, Kopczynski, and Hudson, whereby Malouf would be paid $1.1 million for his interest in UASNM (FOF 371). Kopczynski and Hudson then self-reported to the SEC and blamed Malouf for all of the conduct now at issue (PFOF 112).

On or around May 14, 2014, the Division reached a settlement with UASNM (FOF 311). Neither Kopczynski nor Hudson were charged with wrongdoing or subject to any terms of the settlement. (PFOF 113). Under the settlement UASNM agreed to pay $506,083.74 to customers for purportedly excessive commissions, and a $100,000 civil money penalty (PFOF 114). The money paid back to customers and the civil money penalty were both paid with funds owed to Malouf by UASNM (FOF 371). This proceeding was instituted on June 9, 2014 (FOF 312).

III. ARGUMENTS AND AUTHORITIES

A. Summary of the Argument

The Division has failed to prove the claims asserted by a preponderance of the evidence. The claims rely substantially upon a purported "secret oral agreement" between Malouf and LaMonde. Testimony and documents show no such agreement existed. Malouf neither concealed nor misrepresented the actual agreement with LaMonde. The Division failed to prove Malouf acted as an unregistered broker because it has not shown by a preponderance that he received transaction-based compensation or engaged in other broker activity. The Division has failed to prove Malouf is responsible for breaching a fiduciary duty owed to UASNM clients because it has not shown by a preponderance that Malouf was responsible for UASNM purportedly not achieving best execution on the bond trades at issue. Similarly, the Division has failed to show by a preponderance that Malouf is responsible for any fraudulent representations to customers or the SEC, or that he aided and abetted UASNM in such conduct.

The evidence shows any problems that existed at UASNM were systemic and cannot fairly be attributed to one person. Malouf has personally shouldered 100% of UASNM's burden

from its settlement with the Division. To the extent Malouf bears any responsibility, he has already been penalized. It would also be punitive to order disgorgement because the funds Malouf received were not commissions but payment for fair value of Branch 4GE, and to which Malouf was entitled. In any event, the applicable statute of limitations bars the imposition of any civil fine, penalty, or forfeiture related to conduct prior to June 9, 2009. Finally, under SEC Rule of Practice 630 "Inability to Pay Disgorgement, Interest, or Penalties," it is not in the public interest to order disgorgement, interest, or a penalty due to Malouf's inability to pay.

B. Standard of Proof

The Division bears the burden of proving each and every element of its claims by a preponderance of the evidence. *Steadman v. S.E.C.*, 450 U.S. 91 (1981). Each of the claims asserted requires proof of essential elements that have specific definitions and meanings in the context of the securities laws. As discussed herein, the Division has failed to meet its burden.

C. The Division's "Secret Oral Agreement" Theory Fails

The keystone of the Division's claims is a purported "secret oral agreement" with LaMonde. The Division claims LaMonde agreed to pass back to Malouf all commissions from UASNM bond trades placed through Branch 4GE. The Division's "proof" of the agreement is limited to self-interested information provided by Kopczynski and Hudson, unreliable *ex parte* testimony of LaMonde given under duress (and not subject to any cross-examination), and the similarity between the total commissions on bond trades through Branch 4GE and the total amount paid to Malouf at the end of three years. The purported agreement underpins all of the Division's claims against Malouf, but evidence at the hearing discredits its existence. Without evidence of the alleged secret agreement, the claims that rest upon it must fail.

a. There Were No Secrets About the Sale, the Payments, or Bond Trading

The most fundamental deficiency with the Division's theory is that the alleged secrets did

not exist. Malouf sold Branch 4GE to LaMonde at the beginning of 2008 (FOF 293), which everyone at UASNM and ACA knew almost contemporaneously (FOF 50, 305). Kirk Bell, an assistant regional director at RJFS who oversaw Branch 4GE, is the only one who has denied knowing about the sale. But he admitted that as of April 21, 2008, he was aware that LaMonde owned the branch and Malouf did not (FOF 391). A change of ownership is indicative of a sale, especially coupled with the transfer of accounts which Bell testified was a typical occurrence in connection with a sale (FOF 390; PFOF 115). Bell also described the typical process for selling a branch, which closely resembled the process followed by Malouf and LaMonde. (PFOF 116).

The sale agreement requiring LaMonde to make periodic payments for the purchase of the branch was substantially memorialized in the PPA, which was signed sometime between December 2007 and June 2010 (PFOF 117, 118). The existence of an actual agreement, regardless of when it was reduced to writing, is evidenced by the fact that LaMonde took ownership of Branch 4GE and began making periodic payments to Malouf (FOF 294). Most witnesses admit to knowing about the payments or assuming they were occurring. Hudson knew about the payments in 2008 and that the payments were not a secret (FOF 347). Calhoun, UASNM's bookkeeper, admits knowing about the payments because she often received and deposited the checks that LaMonde paid to Malouf (FOF 258). Keller admitted he probably knew that Malouf was being paid for sale of the branch by LaMonde in January 2008 (PFOF 57). Kopczynski and Ciambor admit knowing no later than 2010 (FOF 150, 205, 306), and claim not to have asked about the payments despite knowing UASNM was paid for over time (PFOF 119).

The payments were not a secret and no efforts were made to keep them secret (FOF 347). LaMonde and Malouf openly exchanged, discussed, and argued about the payments in the office (PFOF 75). Malouf freely told people about the payments when asked, such as Ciambor and

Kopczynski in 2010 (FOF 36) and Keller in 2008 (PFOF 57). And, if LaMonde and Malouf wanted to keep payments secret they would not have used the Branch 4GE checking account because they knew RJFS reviewed the account annually for irregularities (PFOF 120). The evidence indicates that RJFS actually reviewed the checking account records by September 2, 2008, and would have known about the payments at that time (PFOF 16). RJFS would have also seen evidence of additional payments while reviewing the checking accounts in each of the following years (PFOF 108). Nobody testified that Malouf ever lied about or concealed payments. In fact, Hudson told the Division during its investigation that the payments were a good thing because Malouf would borrow less from UASNM. (PFOF 121).

The fact that UASNM was simultaneously directing bond trades through Branch 4GE was also not a secret (PFOF 122). Like UAS, UASNM placed bond trades through Branch 4GE from 2004 to 2007 and Hudson, Kopczynski, and Ciambor were well aware (FOF 345). This continued through 2011, with Hudson, Keller, and Malouf all directing bond trades to Branch 4GE (FOF 297). Ciambor was aware that a significant number of trades were being sent to Branch 4GE during that time (FOF 275). Hudson, Kopczynski, and Ciambor had all the information they needed to ensure UASNM's Forms ADV and marketing materials adequately disclosed UASNM's trading through RJFS while Malouf received payments. (PCOL 63).

b. The Purported Secret Agreement Defies Logic and Common Sense

The Division's "secret oral agreement" theory is also flawed because it assumes LaMonde is irrational and acted against his own financial interest. To accept that LaMonde was secretly passing all the commissions earned on UASNM trades to Malouf one must believe LaMonde would take on the extra burden and risk of operating Branch 4GE for no personal benefit. This defies common sense. LaMonde purchased Branch 4GE, not to pass commissions

along to Malouf, but expecting to benefit from future income once the purchase price was paid. It is most unlikely that he agreed risk his career simply to pay Malouf improper commissions.

The more logical and plausible explanation is that Malouf sold Branch 4GE to LaMonde, in exchange for a series of payments (FOF 293, 294). LaMonde could not afford to purchase Branch 4GE outright, and agreed to pay over time using revenues from the branch (PFOF 123). The nature of the business requires branch revenues be generated from commissions on transactions. But upon initial receipt by the branch, the funds stop being commissions and LaMonde was free to pay business expenses with them, whether goods, services, or the particular form of financing agreed to with Malouf (PCOL 67). Their arrangement was no different than LaMonde repaying a bank loan using the revenues from Branch 4GE.

c. The Purported Agreement is Not Supported by Evidence

Another flaw in the Division's theory stems from the false correlation drawn between the total commissions generated and the total payments to Malouf. The Division tries to prove LaMonde agreed to pay 100% of the commissions generated to Malouf by relying on the fact that the total payments to Malouf and the total commission generated were only $6,370 apart at the end of the third year of the four-year agreement. However, the Division's argument ignores that on a quarterly basis there are significant variances between the commissions and payments. These variances are inconsistent with an agreement to pay 100% of commissions (PFOF 124).

From 2008 through the beginning of 2011 (12 quarters) there are only two quarters during which the payments made by LaMonde to Malouf are within 5% of the commissions earned, and the average variance over the entire time frame is almost 30% (PFOF 125). *See* Exhibit A, Percentage Variance Between Commissions and Payments. These significant and repeated variances demonstrate that the similarity between the total commissions and total

payments, upon which the Division relies, is more likely a coincidence than the product of a secret agreement (PFOF 126). If LaMonde had agreed to pay Malouf 100% of the commissions he could have easily calculated that amount (PFOF 127). To accept the Division's argument one must accept that the random quarterly variances were actually carefully tracked and calculated by LaMonde to assure that the end result was that Malouf was paid 100% of the commissions.

The more likely explanation is that LaMonde was making payments to Malouf for the purchase of Branch 4GE when and as he could afford to do so (PFOF 128). LaMonde and Malouf both testified that LaMonde wished to pay off the amount owed early (Tr: 1049:11-20, 1599:22-1600:5). This testimony is supported by the much larger payments made from 1Q 2008 to 2Q 2009, and smaller payments thereafter as Lamonde sought to true up the accounting. *See* Exhibit A. Payments during that time significantly exceeded the commissions earned on bond trades. The Division questions why LaMonde would voluntarily make advance payments given his apparent financial troubles in May 2009. But the amount of the payments evidences that LaMonde reduced them at a time when he was experiencing financial troubles. In May 2009 (2Q 2009) LaMonde's wife complained about their financial situation. Immediately afterwards the amount of the payments decreased drastically. *Id.* Payments after 2Q 2009 were significantly below the amount of commissions. It is reasonable to conclude that LaMonde was indeed trying to pre-pay Malouf for the branch until his financial situation no longer allowed it. Conversely, it cannot reasonably be concluded from the quarterly payment amounts that LaMonde had agreed to pay Malouf 100% of the commissions (PCOL 68). The evidence also supports a finding that LaMonde and Malouf agreed to a purchase price of approximately $1.1 million, that the purchase price was paid off early – in three years instead of four, and that extrapolating payments versus commissions over a fourth year approximates the 40% of branch revenue in the PPA (PCOL 69).

d. The Existence of the Agreement is Based Upon Unreliable Sources

Besides being contradicted by testimony and evidence, the Division's theory suffers from a patchwork of information of questionable accuracy obtained from unreliable sources. The notion of a "secret agreement" arose from the state court litigation and self-report by UASNM. Kopczynski claimed Malouf and LaMonde had a secret agreement to shift blame for UASNM's purported regulatory issues to Malouf (PFOF 129). Kopczynski did this because, as Malouf alleged and Kopczynski admitted, Malouf is "not high on [his] favorites list." (PFOF 130). Kopczynski has also tried to justify his numerous failings as CCO with the secret agreement theory, i.e. he would have done a better job if only Malouf had not misrepresented or concealed information (information, it should be noted, which was known by everyone except him).

Hudson and Ciambor are similarly motivated, though lacking Kopczynski's personal animus. They know that to admit knowledge of the payments would subject them to potential liability for their role in preparing UASNM's Forms ADV and marketing materials, and for reviewing UASNM's trading practices. Though they did not explicitly recant their prior testimony, Kopczynski, Hudson, and Ciambor did offer testimony that contradicted their prior claims and indicated that they knew about Malouf's agreement with LaMonde (FOF 50, 51, 53). And, when witnesses were asked how they learned that Malouf was purportedly engaged in wrongdoing, the source was Kopczynski or Hudson in every instance (*See e.g.* PFOF 63).

The Division relies heavily upon LaMonde's purported "admission" to a secret oral agreement during its investigation. *See* Division's Pre-Hearing Brief, Section III.B.1. The problematic circumstances of LaMonde's testimony have been identified several times during this proceeding. However, it bears repeating that LaMonde was unrepresented by counsel, was never cross-examined, and admitted to the purported agreement under threat of perjury charges.

It is a stretch to say that LaMonde "admitted" to the agreement when much of his testimony was contradictory, and his "admission" was merely agreement with a series of leading questions which amounted to the Division testifying on his behalf. Given his malleability and shifting testimony, it is fair to assume that upon further cross-examination by Malouf's counsel his testimony would have changed again, or been severely discredited. Given Lamonde's extreme self-contradictions, his testimony is unreliable and should be disregarded in its entirety.

D. The Division Has Failed to Prove Malouf Acted as an Unregistered Broker

The Division claims Malouf acted as an unregistered broker between 2008 and 2011 because he was not registered but was allegedly "involved in virtually every aspect of effecting bond transactions on behalf of UASNM clients." *See* Divisions Pre-Hearing Brief, § III.B.6. This claim is brought under Sections 15(a)(1) and 15C(a)(1)(A) of the Exchange Act. The Division must show Malouf acted as a "broker," which is "any person engaged in the business of effecting transactions in securities for the account of others." The Exchange Act does not define "effecting transactions," and various factors determine whether a person is a "broker." *S.E.C. v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011). The Division has failed to meet its burden to prove that Malouf engaged in conduct that made him an unregistered broker.

a. Malouf Did Not Receive Transaction-Based Compensation

A number of factors may be considered to determine if a person is acting as a "broker," but the hallmark is whether they receive commissions or transaction-based compensation. *Id.* Transaction-based compensation is "compensation tied to the successful completion of a securities transaction."[1] The purpose of requiring individuals earning transaction-based

1 Order Exempting the Federal Reserve Bank of New York, Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008-1 from Broker-Dealer Registration, Exchange Act Release No. 61884 (Apr. 9, 2010), 98 SEC Docket 27276, 27278-79.

compensation to be registered lies in the SEC's concerns that transaction-based compensation can induce high pressure sales tactics and other problems of investor protection which necessitate broker registration under the Exchange Act.[2] Concerns about registration and regulatory oversight to protect the investing public are not at issue here because UASNM is a registered investment advisor subject to oversight by the SEC, and LaMonde was registered and associated with a broker-dealer.[3] The thrust of the Division's 15(a) claims against Malouf is that he received commissions. However, evidence from the hearing shows that: (1) payments to Malouf were tied to the purchase of Branch 4GE and its revenues, not particular transactions; (2) the payments cannot be attributed to any trades specifically directed by Malouf; (3) the payments do not correspond to commissions generated on trades; and (4) payments to Malouf were made pursuant to NASD Rule 2420 and are not indicative that he was acting as a broker.

i. Payments to Malouf Were Tied to the Purchase of Branch 4GE Not the Successful Completion of Any Particular Securities Transactions

Malouf did not receive payments fitting the definition of transaction-based compensation. It is undisputed that Malouf sold Branch 4GE to LaMonde and that the series of payments by LaMonde to Malouf were for the RJFS branch (FOF 293, 294). Malouf and LaMonde intended the amount of the payments to be based upon a portion of revenues earned by Branch 4GE (PFOF 74).[4] Because the payments made were based upon branch revenues without regard for

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[2] *See* Persons Deemed Not To Be Brokers, Exchange Act Release No. 22172 (June 27, 1985), 33 SEC Docket 685, 687.

[3] There was no risk of "high pressure sales tactics" here because UASNM had discretionary authority over its clients' accounts. Investor protection is afforded by the SEC's oversight of registered investment advisers and the application of a fiduciary standard.

[4] The Division argues that permissible payments to Malouf were limited to commissions generated from certain accounts transferred from Malouf to LaMonde. No such limitation appears in the PPA. The plain language of the PPA states that payment was based upon the entire branch's revenues: "Buyer agrees to pay seller 40% of all commissions and securities related fees received by Buyer during the production period . . . ." Ex. 57 (emphasis added).

any specific transactions, the payments were not tied to the successful completion of any specific transactions (PFOF 131). The payments were merely a form of financing tied to Malouf's ability to pay, and they did not meet the definition of transaction-based compensation (PCOL 70). Also, commissions are traditionally treated as ordinary income for tax purposes. Malouf and UASNM's CPA determined they should not be treated as ordinary income because they were not commissions, but rather are capital gains from the sale of a business (PFOF 132, 133).

ii. There is Insufficient Evidence to Tie Any Payments to Malouf to Any Trades He Directed

The Division has failed to present sufficient evidence to tie a particular payment made to Malouf to a specific trade he was involved in or directed. Payment for participation in a trade is the essence of a commission (PCOL 71). Because the Division cannot identify any specific trades that Malouf participated in or directed, it cannot show he received any payments as a result. The best the Division has been able to do is elicit conflicting estimates of the percentage of trades that people believe Malouf participated in.[5] These conflicting speculations do not establish, by a preponderance, that Malouf received compensation as a direct result of any particular trade, and therefore the Division cannot prove Malouf received commissions.

iii. There is Insufficient Evidence that Payments to Malouf Correspond to Commissions Generated by Bond Trades at Branch 4GE

The Division has also not presented evidence to prove by a preponderance that commissions were routed through Branch 4GE to conceal Malouf's purported broker conduct. As discussed above, the Division tries to prove that Malouf received 100% of the commissions based upon the similarity between the total payments and the total commission generated at the

[5] The bases for these estimates, if they exist, are unknown. Hudson's belief regarding the total amount of bond trading was inaccurate (Tr: 150:6-13). Similarly, Keller knew of no document that would identify trades done by each adviser (Tr. 1187:19-20).

end of three years. However, measured quarterly the payments to Malouf vary significantly from the commissions generated. The wide variances do not support a *quid pro quo* arrangement, and no inference can be drawn that the payments are tied to the commissions (PCOL 72).

iv. Payments to Malouf Were Made Pursuant to NASD Rule 2420

Even if the Division presented sufficient evidence that the payments met the definition of "commissions," they are not a hallmark of broker activity because they are not tied to broker activity by Malouf (PCOL 73). They were paid to him as an ex-broker for the sale of his branch (PFOF 134), and are a hallmark of LaMonde's broker conduct, not Malouf's. The payments were made pursuant to NASD IM 2420-2 ("**NASD 2420**"). NASD 2420 contemplates the permissible payment of commissions to an individual after they cease being a broker. It permits FINRA members to pay commissions to former brokers if: (1) a "bona fide contract" calls for such payment; (2) selling broker does not undertake any "solicitation of new business or the opening of new accounts;" and (3) no payments are made to anyone ineligible for FINRA membership or anyone disqualified from being associated with a member. *See* NASD IM 2420-2.

Malouf was advised by RJFS that he could sell Branch 4GE to LaMonde pursuant to NASD 2420 (PFOF 51). Malouf read information regarding NASD 2420 on the RJFS intranet, and he reviewed the plain language of the rule on the FINRA website (PFOF 135). Based upon this information, and without the assistance of counsel, Malouf relied on NASD 2420 when selling Branch 4GE to LaMonde (PFOF 136). If commissions were paid to Malouf, they were permissible under NASD 2420 and were not paid to him as a broker (PCOL 74).

1. A Bona Fide Contract Existed

The Division argues Malouf and LaMonde did not satisfy the "bona fide contract" requirement of NASD 2420. The Division claims the PPA is a sham because there is uncertainty

regarding the date it was executed and a document titled "Exhibit A" has not been located. Malouf has asserted that Branch 4GE was a valuable asset that he wanted to protect (FOF 387), and he would not give it up without an agreement to receive compensation. As of January 2008 ownership of Branch 4GE had changed from Malouf to LaMonde (FOF 48-2. 50, 293), accounts had been transferred from Malouf to LaMonde pursuant to a list (FOF 69), and LaMonde started making payments to Malouf for the branch (FOF 294). These events in and of themselves are conclusive evidence that a bona fide agreement for the sale of Branch 4GE existed as of January 2008 (PCOL 75). This is supported by Bell's testimony that it would be unusual for a buy-sell agreement to be entered more than a year after accounts had been transferred (PFOF 137).

The date the agreement was reduced to writing is irrelevant because, as expert and formed NASD regulator Alan Wolper testified, NASD 2420 requires only that the agreement be "bona fide," not that it be written. *See* NASD 2420 (PCOL 66). It is also irrelevant if LaMonde did not precisely follow the written terms by choosing to pre-pay additional amounts. Departures from the written terms of a contract do not nullify it *ab initio* or render it a sham (PCOL 64).[6] Contracts are often modified by non-conforming conduct by one party if the other party accepts the non-conforming performance (PCOL 65). The agreement is also no less bona fide because "Exhibit A" cannot be located. There is no proof that the exhibit did not exist, just that it cannot be found. In fact, evidence was presented that Exhibit A (or a document not explicitly titled "Exhibit A" but which served the same function) existed and was relied upon by RJFS to transfer accounts in connection with the sale of Branch 4GE. (Tr: 680:5-682:2)

2. Malouf Did Not Solicit New Business or Open New Accounts

[6] New Mexico adheres to the general rule that "a written contract may be modified, rescinded or discharged by subsequent oral agreement." Medina v. Sunstate Realty, Inc., 889 P.2d 171, 174 (N.M. 1995) (parties to a written contract may modify that contract by express or implied agreement as shown by the words and conduct)

The Division has not presented any evidence that Malouf solicited new business or opened accounts for Branch 4GE after 2007, after which he was limited to investment advisory work at UASNM (PFOF 138, 139). Nothing in the plain language of NASD 2420 requires retirement from the securities industry (PCOL 44). Malouf's work as an investment adviser for UASNM complied with the language of NASD 2420 (PCOL 76). The Division argues Malouf has not complied with NASD 2420 because he was participating in the securities industry as an investment advisor. The Division relies, not upon language from NASD 2420, but an SEC no-action letter issued in November 2008. The no-action letter cited is not decisive (PCOL 77).

No-action letters are issued by members of SEC staff, not the SEC, and they do not constitute binding rules, regulations, or interpretations of any rule or regulation (PCOL 77). No-action letters are informal and advisory rather than official and definitive. The letter relied upon states "[t]his staff position concerns enforcement action only and does not represent a legal conclusion regarding the applicability of the statutory or regulatory provisions of the federal securities laws."[7] The letter also only applies to a specific set of circumstances and the SEC staff member states that ". . . any different facts or circumstances might require a different response." Accordingly, the evidence shows Malouf substantially complied with NASD 2420.

3. Malouf Was Eligible for FINRA Membership and Was Not a Disqualified Person

Malouf has a clean record in over 31 years in the industry (PFOF 3). He voluntarily surrendered his registration with RJFS on December 31, 2007, and could have transferred to any other broker-dealer and continued doing business as a broker, but chose not to so he could focus his efforts on UASNM (FOF 5; PFOF 140). He could receive payments pursuant to NASD 2420

[7] Request for No-Action Relief Relating to NYSE Rule 353(b) and NASD IM-2420-2, November 20, 2008.

because he was eligible for FINRA membership and was not a disqualified person (PCOL 78).

b. Malouf Did Not Engage in Any Other Broker Conduct

Recognizing the dearth of evidence showing commissions were paid, the Division asserts Malouf was involved in other broker activity to support its Section 15(a) claims. The Division has cited *In re Bandimere* for the proposition that a respondent can be found to have acted as an unregistered broker even without transaction-based compensation. The Division's reliance on *Bandimere* is misplaced as the facts, discussed below, are drastically different from this matter.

Factors which may evidence "broker conduct" include whether the person: (1) works as an employee of the issuer; (2) sells or earlier sold the securities of another issuer; (3) participates in negotiations between the issuer and an investor; (4) provides either advice or a valuation as to the merit of an investment; and (5) actively (rather than passively) finds investors. *Kramer*, 778 F. Supp. 2d at 1334. The Division attempts to conflate Malouf's conduct as an investment adviser with broker conduct. Specifically, the Division claims Malouf was "engaged in significant aspects of the business of effecting transaction in securities" and that he engaged in: (1) soliciting and meeting with clients; (2) making investment recommendations; (3) sitting on UASNM's investment committee which evaluated client's investment options; and (4) making decisions regarding specific client bond transactions under UASNM's discretionary authority. *See* Division's Pre-Hearing Brief, Sections III.B.6 and IV.A.1.

The Division's contentions do not support the conclusion that Malouf engaged in "broker conduct." Rather, if proven, Malouf's actions are entirely consistent and typical with those of a registered investor adviser (PFOF 141). Indeed, an investment adviser is "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or

selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities." 15 U.S.C. 80b-2(11). Thus, while the Division makes much ado about Malouf "providing advice to investors as to the merits of securities," it plainly ignores the fact that Malouf was permitted to do so as an investment adviser; indeed, that fact completely undermines the Division's claim.

Unlike Malouf, Bandimere was engaged in direct selling of unregistered investments related to two Ponzi schemes. Bandimere participated in the chain of distribution for several investments by recruiting investors through stories of his own success with the same investments, handling the paperwork necessary for people to make a direct investment, obtaining signatures from investors, taking money to be invested and transferring it directly to the companies' accounts, and sending out or coordinating returns. Malouf's investment advisory conduct, which involved managing client portfolios, recommending investments, and utilizing a broker to effect transactions in customer accounts, was nothing like Bandimere's. The Division's reliance on *Bandimere* is unavailing.

E. The Division Has Failed to Prove Malouf Violated Sections 206(1) and (2) of the Advisors Act

The Division claims Malouf violated Sections 206(1) and 206(2) of the Investment Advisors Act by failing to disclose the "secret agreement" on UASNM's website and in Forms ADV. While the Division characterizes its claim as a failure to disclose a "secret agreement," the evidence establishes the agreement was not secret. The essence of the Division's argument is an alleged failure to disclose the potential conflict of interest arising from Malouf's receipt of payments from LaMonde while UASNM was directing bond trades to Branch 4GE. This conflict had been disclosed in UASNM's Forms ADV dating back several years before Malouf sold the branch. The Division claims that Malouf also violated Section 206 by failing to seek

best execution or conducting best execution review. *See* Division's Pre-Hearing Brief, Section IV.B. § 206(1) requires the Division to establish "scienter" or "an intent to deceive, manipulate, or defraud." *S.E.C. v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992). Scienter may include "severe recklessness" or "extreme recklessness," which is limited to highly unreasonable omissions or misrepresentations constituting an extreme departure from standards of ordinary care. *S.E.C. v. Huff*, 758 F.Supp.2d 1288, 1351-1352 (S.D.Fla. 2010); *Steadman*, 967 F.2d at 641. *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977). § 206(2) requires proof Malouf acted negligently. *Steadman*, 967 F.2d at 643 n.5.

a. Malouf is Not Responsible For Any Failure to Disclose

The Division failed to prove Malouf is responsible for intentionally or negligently failing to disclose a potential conflict of interest on UASNM's website or in its Forms ADV. Malouf delegated the compliance function to Kopczynski and responsibility for Forms ADV to Hudson (PCOL 79; see Wolper's Rebuttal report). It was Hudson and Kopczynski's duty to ensure the accuracy and completeness of UASNM's disclosures. Further, Malouf reasonably relied upon them, and compliance consultants at ACA, to ensure the information contained in UASNM's marketing materials and regulatory filings was complete and accurate (FOF 99). Hudson admits being aware Malouf was receiving payments from LaMonde at the same time UASNM was directing trades to Branch 4GE, and also admits knowing that would be a disclosable conflict of interest. He was unable to explain why he signed Forms ADV that lacked this disclosure.

Kopczynski was aware or should have been aware of the nature of the sale of Branch 4GE. He sold his UASNM business to Malouf and Hudson in 2004 utilizing payments over time, and understood businesses are frequently sold under such terms. Yet as CCO, knowing UASNM continued to direct bond trades to Branch 4GE, he failed to ask Malouf or otherwise inform himself about the terms of the sale. The same is true for Ciambor given his paid position.

Kopczynksi has admitted that, to the extent he did not fully know the terms of Malouf's agreement with LaMonde, he should have asked (FOF 142). Hudson, on the other hand, has attempted to shirk his responsibility by claiming that the agreement between Malouf and LaMonde was not any of his business (FOF 143), even though he ultimately admitted his knowledge of both the payments and Malouf's directing bond trades to Branch 4GE. It was indisputably Kopczynski's duty as CCO to review and approve the content posted on UASNM's website and to ensure the accuracy of the Forms ADV (Conclusions of Law 19, 20). Even the Division's own witness, Mr. McGinnis, testified that the CCO should have reviewed drafts of a website before it was published and review the website to ensure what was approved actually made it on the screen (PFOF 144). Hudson also had his own duty to ensure the accuracy and completeness of UASNM's Forms ADV because he attested to their accuracy and completeness when he signed them or allowed others to sign them on his behalf (PCOL 80).

ACA had a responsibility as UASNM's compliance consultant to properly advise UASNM regarding disclosures in its marketing materials and regulatory filings (PCOL 81) ACA specifically agreed to undertake that task in exchange for substantial compensation, and Malouf reasonably believed ACA was doing its job (PCOL 82). Given the knowledge Kopczynski, Hudson, and Ciambor had, and the duties they had been delegated or were paid to undertake, any failure to disclose in violation of Section 206 is primarily attributable to their conduct. Malouf was not negligent in relying upon them to properly carry out their duties. *See* Wolper Rebuttal Report No. 7. Malouf reasonably believed that they were all sufficiently experienced and qualified for their positions and the attendant duties (PFOF 145).

b. The Division Has Failed to Establish that Malouf is Responsible for Failing to Seek Best Execution or Conduct Best Execution Review

The Division argues Malouf is responsible for failing to achieve best execution because he selected RJFS to execute bond trades, he purportedly did not seek competing bids, and

because UASNM clients purportedly paid commissions that "were significantly higher than industry norms." The Division's best execution claims fail for several reasons, including the Divisions' inability to show a single specific trade that Malouf was responsible for where best execution was not achieved. The Division also failed to show that best execution was not actually achieved on the trades at issue or that a best execution review was not conducted.

i. The Division Has Not Offered Sufficient Evidence That Malouf Conducted Trades Where Best Execution Was Not Achieved

As discussed throughout this proceeding, and in Section III.D.a.ii above, the Division has been unable to prove the specific trades Malouf directed, only that he did a "majority" of UASNM's bond trades. But to establish that Malouf intentionally or negligently violated Section 206 the Division must prove that Malouf was actually responsible for trades where best execution was in fact not achieved. Malouf does not dispute that he directed or was involved in a majority – estimated to be 60 to 70% – of UASNM's total bond trades. But unless the Division can prove by a preponderance that best execution was not achieved on at least some trades that Malouf actually did, then its claim must fail.

The Division failed to present sufficient evidence that Malouf did not achieve best execution on any particular trade, or in the alternative, that best execution was not achieved on a large enough portion of the transactions such that Malouf must have directed at least some of them. The Division's expert, Gibbons, analyzed 81 bond trades which are at issue.[8] Of those, 31 (approx. 40%) had commissions below 70 basis points, i.e. within the range of commissions that Dr. Gibbons has opined would be reasonable. *See* Gibbons Report Figure A5-11. Only 24% of the trades analyzed had commissions exceeding 100bps, the highest commission Malouf told

[8] Gibbons admits in his Report that he refers to the trades as "Malouf's trades" despite seeing no evidence to indicate which trades were in fact Malouf's. *See* Gibbons' Report p.3.

LaMonde he would agree to pay on any trade (FOF 43). *Id.* These are the trades upon which the Division primarily relies to establish a failure to achieve best execution.

Without further proof regarding which trades Malouf was involved in it is just as likely as any other conclusion that Malouf's trades were comprised of municipal bond trades not at issue and trades with commissions of less than 70 bps. Given the small number of trades with commissions over 100bps, it is also as likely as any other conclusion that Malouf was not involved with any of them, especially since Malouf had the most experience trading bonds and had explicitly told LaMonde he would not pay more than 100bps. In other words, it is reasonable to assume that Hudson and Keller were responsible for the trades with higher commissions because they were less experienced and there is no evidence they had an agreement with LaMonde to pay no more than 100bp commission on trades.

ii. The Division Has Not Offered Sufficient Evidence That Best Execution Was Not In Fact Achieved

Even if the Division could prove Malouf directed the trades at issue, it has failed to prove best execution was not actually achieved on any particular trade. "Best execution" is not defined in federal securities laws or regulations (PCOL 83). The Commission has stated that best execution involves "execut[ing] securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction is the most favorable under the circumstances."[9] Meeting this standard requires "consider[ing] the full range and quality of a broker's services . . . including, among other things, the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness . . . ." Best execution "is ***not*** [determined by] the lowest possible commission cost . . ." Id. (emphasis added). None of the experts who testified dispute that best execution does not require the

[9] Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Release No. 23,170 (Apr. 23, 1986).

commissions to have been the lowest possible. However, in contradiction of its own guidance, the Division largely ignores the various best execution considerations set forth in Release No. 23,170, and focuses almost exclusively on the amount of commissions charged.

To prove best execution was not achieved requires showing better execution could have been achieved through the same broker-dealer or elsewhere. The Division has failed to provide evidence that UASNM could have achieved better execution through RJFS or any other broker-dealer on any particular trade. At best, the evidence showed that from time to time another broker-dealer offered a better price and the trade was done at that broker-dealer, or RJFS offered to match the price (PFOF 146). The Division has not offered evidence of any trade placed at RJFS when a better price was available at the time from another broker-dealer (PFOF 147).

The Division claims that paying a higher price to a broker-dealer without receiving any additional benefit over another broker-dealer is evidence best execution was not achieved. On the contrary, the good relationship UASNM had with RJFS, the responsiveness of Branch 4GE, the familiarity with the types of transactions typically done by UASNM, and the valuable information made available through BondDesk were all benefits to UASNM when it traded through RJFS. Yet the Division continues to cling stubbornly to the notion that best execution is not achieved unless the lowest possible commission has been obtained. Its argument is completely contradicted by Release No. 23,170.

Malouf and others have given evidence demonstrating efforts undertaken to achieve best execution. Malouf periodically spot checked prices on bonds (PFOF 49), he reviewed the condition of bond markets generally each morning (PFOF 148), he received and reviewed countless emails from dealers offering bonds, and when he reviewed BondDesk information provided by LaMonde he knew it reflected data from 160 or more different broker-dealers and

that he was being shown the 5 best prices/bid/ask on a particular bond (PFOF 149). From 2002, when ACA first conducted its annual mock SEC compliance audit, it never identified any issues regarding UASNM's best execution (FOF 100). Malouf reasonably relied upon ACA's clean "best execution" reports as evidence that UASNM was satisfying its best execution obligations. ACA never advised anyone its best execution review did not account for bond trades.

There was also testimony that, although there is no regulatory requirement for an investment adviser to obtain multiple bids on bond transactions (PCOL 84), a multi-bid process was employed at UASNM. Ciambor testified as having seen evidence during ACA's annual mock SEC audits that Malouf had in fact obtained multiple bids for certain bond trades (PFOF 24). Keller also testified Malouf sought multiple bids on every trade they did together, and that Malouf taught Keller to get multiple bids when Keller was learning about bond trading (PFOF 61, 62). A lack of documentation of a multi-bid process in every instance is not proof that such a process did not occur, or that best execution was not achieved (PCOL 85). Regardless, Dr. Gibbons conceded that multiple bids need not sought on every single trade to achieve best execution, and that the number of bids that should be sought for any given bond trade is case-specific depending upon the type of bond and the broker-dealers who are trading it (PFOF 61).

The only specific SEC requirement for ensuring compliance with best execution is "periodic and systematic review" of the procedures employed for best execution[10] A trade-by-trade real time comparison is not necessary (PCOL 86). Malouf and others at UASNM reasonably believed that ACA was conducting such a periodic and systematic review of its bond trade execution (FOF 99, 100) and that ACA would advise them if UASNM was not meeting its execution obligations. Malouf reasonably relied upon the clean best execution reports ACA

[10] Exchange Act Release No. 23,170 (Apr. 23, 1986).

repeatedly provided as a validation of the propriety of his bond trading activity. Malouf was also reassured that he was achieving best execution, in part, because RJFS had its own best execution obligation which he believed it was satisfying, and indeed it was.

The Division argues that the mere volume of trades placed through RJFS is proof that best execution was not achieved. On the contrary, it is more likely that the opposite is true. With time and experience an investment adviser would be expected to identify those broker-dealers that provide the best execution, and then use those broker-dealers more often than others. Gibbons admitted that some broker dealers are simply better than others at transacting certain kinds of securities (PFOF 150). The Division has failed to show that is not the case here.

iii. The Division Has Failed to Establish Excessive Markups

The Division relies heavily on the claim that the markups or commissions on certain trades were excessive to try to prove best execution was not achieved. The Division has failed to sufficiently establish a reliable and consistent metric to determine excessiveness. All the expert witnesses agreed there are no published standards which set forth the reasonable range of markups or commissions on Treasury and agency bond trades. The only written standard is a "5% Policy" mentioned in NASD IM-2440-1 "Mark-Up Policy." This standard does not apply because neither UASNM nor Malouf were registered with FINRA and were not subject to its rules. In any event, the commissions at issue are nowhere near the 5% limit.

Because there are no published standards the Division relies primarily upon the opinion of Gibbons, who has in turn relied in part upon Steven McGinnis. McGinnis and Gibbons both opined as to ranges of what they believe are reasonable commissions. Their ranges differ materially, however, which reveals the arbitrary nature of creating such a range. Gibbons has testified that his range is not absolute (PFOF 99), and both Gibbons and McGinnis have

acknowledged that reasonable minds could differ as to what a reasonable range is (COL 16). Therefore, their subjective ranges are not useful to prove by a preponderance that the commissions charged were excessive. Gibbons has attempted to support his ranges with citations to various studies, however the studies cited do not bear on retail commissions in situations like this one (Tr. 537:9-13; PFOF 7). Gibbons could not find any study which considered reasonable or acceptable ranges of commissions in situations such as this (PFOF 9).

The difference between the highest commission Gibbons believes is reasonable and the average commission charged on the bond trades at issue (approximately 81 bps) is just 6 bps. If Gibbons' range is not absolute and reasonable minds could differ as to an appropriate range, it follows that average commissions of 81bp might well be reasonable. The Division has not and cannot cite to any administrative decision where commissions similar to those at issue in this case have been found to be excessive or unreasonable. A more reliable and objective metric than Gibbons' arbitrary ranges is the commission grid developed and used extensively by RJFS to ensure that the commissions it charges are fair and reasonable. These grids are integral to RJFS' policies and procedures to ensure it met its best execution obligations (PFOF 151). RJFS determined that the standard commission schedules provide a good indication of what is reasonable compensation and did not permit the commission on trades to exceed the firm's published standard commissions (PFOF 19). RJFS actively monitored trades placed through Branch 4GE and enforced its commission grid where appropriate to ensure excessive commissions were not being charged. Malouf's familiarity with this procedure reassured him that the commissions LaMonde was charging were being monitored and were not excessive.

F. The Division Failed to Prove Violations of 17(a) of the Securities Act, Section 10(b) of the Exchange Act, or Rule 10b-5

To establish a violation of § 17(a)(1) § 10(b), or Rule 10b-5, the Division must prove (1)

a material misrepresentation or materially misleading omission, (2) in the offer or sale of a security, (3) made with scienter. *S.E.C. v. Morgan Keegan & Co., Inc.*, 678 F.3d 1233, 1244 (11th Cir. 2012); *S.E.C. v. Radius Capital Corp.*, 2012 WL 695668, *4 n.5 (M.D. Fla. 2012). Scienter requires proof that a defendant acted with an "intent to deceive, manipulate, or defraud." *Steadman*, 967 F.2d at 641. Scienter may also be proven by showing an "extreme departure from the standards of ordinary care . . . ." *Id.* quoting *Sundstrand*, 553 F.2d at 1045. Reliance on professional advice may preclude a finding of scienter where the professional "blesses" the purported fraudulent work and is not a participant. *Huff*, 758 F.Supp.2d at 1351-52. The Division must also establish that the misrepresentations or omissions were "material." *Id.* To be "material," a substantial likelihood must exist that the true, disclosed fact would have been viewed by a reasonable investor as having significantly altered the total mix of information available. *See Basic Inc. v. Levinson,* 485 U.S. 224, 239-40 (1988). A violation of § 17(a)(3) requires negligence rather than scienter. *Morgan Keegan & Co.*, 678 F.3d at 1244.

The Division has failed meet its burden to prove that Malouf is responsible for intentionally or negligently misrepresenting or failing to disclose information on UASNM's website or in its Forms ADV. Notably, the Division has not offered sufficient evidence to establish whether the Forms ADV introduced at the hearing were final or were drafts that were never filed with the SEC or disseminated to clients. Kopczynski was unable to tell which were drafts and which were final, and Malouf had no specific recollection as to which versions of the Form ADV were filed (PFOF 152) Malouf cannot be held responsible for disclosures on Forms ADV that were never filed or disseminated.

Malouf delegated the compliance responsibilities of UASNM to Kopczynski, who in turn relied on ACA. It was Kopczynski's duty as CCO to review and approve the content posted on

UASNM's website and to ensure the accuracy of the Forms ADV (Conclusions of Law 19, 20). Kopczynski claims he did so. (PFOF 153) ACA was obligated to perform mock SEC audits and to advise UASNM with respect to any compliance issues it identified, such as those related to UASNM's advertising and Forms ADV. ACA was also obligated to provide changes to the Forms ADV when necessary, submit them to Kopczynski for approval, and ensure they were filed (PFOF 154). As the person signing Forms ADV, Hudson had a duty to ensure the accuracy and completeness of the information contained therein. By signing, or authorizing others to sign on his behalf, he attested to the accuracy and completeness of the Forms (PCOL 27).

Though Kopczynski, Hudson, and Ciambor would now like to blame Malouf for the disclosures at issue on the website and Forms ADV by claiming he withheld information from them, the evidences show that not to be true. Language from the UASNM website regarding being "free of conflicts of interest" was on the website long before Malouf sold Branch 4GE, as early as April 2005.[11] Kopczynski was CCO in 2005, had the same duties, and was well aware Malouf was permissibly receiving commissions from Branch 4GE. Had he or Ciambor satisfied their duties, they would have identified the problematic disclosure in 2005 and removed it. This failing cannot be attributed to a claim Malouf withheld information.

Further evidence of Kopczynski's failing lies in his claim that he reviewed the UASNM website and believed it to be accurate in 2008 (PFOF 155). On the contrary, Kopczynski knew the website was inaccurate when he reviewed it in 2008 because he knew of conflicts with respect to Secured Partners and NATC. This failing also cannot be attributed to any claim

[11] Pages from the UASNM website with this disclosure can be found from April 2005 on the Internet Archive, or "Wayback Machine," utilized by the SEC to recover historical versions of UASNM's website. The Division presented versions to show how it purportedly appeared during 2008 to 2010, but omitted evidence showing how far back the disclosure appeared.

Malouf withheld information. Even more damning is the fact ACA specifically advised Hudson to change the disclosure on the UASNM website in September 2007, and again in 2009, and he did nothing to correct it (PFOF 156). Nor did Kopczynski, for that matter, though he testified to having reviewed all ACA reports (PFOF 156). Kopczynski and ACA also did not identify these issue and bring them to Malouf's attention in 2005 or 2008, and Hudson did not implement changes recommended by ACA in 2007. The inequity of attempting to single out Malouf and hold him solely responsible for the disclosure from 2008 to 2011 is disturbing, and wrong.

Hudson, Kopczynski, and Ciambor were also fully informed and capable of ensuring that adequate disclosures appeared in UASNM's Forms ADV. For example, in October 2009 Kopczynski, Hudson, and Ciambor knew that UASNM was directing trades through RJFS, but they did nothing to ensure disclosure on UASNM's Form ADV that RJFS was a broker-dealer through which UASNM did business (PFOF 157). Hudson was aware that Malouf was receiving payments from LaMonde since 2008 and should have ensured that adequate disclosures appeared on the Forms ADV, especially given that he signed and submitted the Forms. Kopczynski assumed payments were being made, and if he did not know the nature of the payments it was his duty as CCO to find out and ensure that proper disclosures were made. Likewise, Ciambor knew about the sale and failed to inquire about any payment terms. These failings are attributable to the culpable negligence of others, not concealment by Malouf (PCOL 87).

Malouf delegated these responsibilities to Kopczynski, Hudson, and Ciambor and relied on them to carry out their duties, and it was reasonable for him to believe they were doing so. It was also reasonable for Malouf to believe that they were all sufficiently experienced and qualified to meet the duties attendant to their positions. Malouf's delegation of responsibility and reliance was reasonable, and negates any finding of scienter or negligence (PCOL 88).

The Division has also failed to provide sufficient evidence that the disclosures at issue were material. Disclosures about a relationship between RJFS and various employees of UASNM appeared throughout the majority of the time period at issue. These disclosures were sufficient to place a reasonable investor on notice of potential conflicts of interest with respect to UASNM's relationship with the RJFS branch. It is highly unlikely that additional or more specific information would have significantly altered the total mix of information made available to clients. Regardless, Malouf's ownership interest in Branch 4GE was openly disclosed on UASNM Form ADV's through August 2008 and any clients who joined UASNM prior to that date had notice of that fact and chose to do business anyway. The Division did not provide testimony from any client who did not have access to information regarding Malouf's ownership of Branch 4GE. Moriarty had been a client since Kopczynski owned UAS and had numerous Forms ADV made available to him in which it was disclosed that Malouf owned Branch 4GE and may earn commissions. Owens acknowledged receipt of the February 2008 Form ADV which disclosed Malouf's prior ownership of Branch 4GE. Both clients did business with UASNM anyway. For years, customers did business with UASNM, and there is no indication anyone ever raised any questions or concerns about a potential conflicts of interest with RJFS.

G. The Division Failed to Prove A Violation of Section 207 of the Advisers Act

Section 207 of the Advisers Act of 1940 makes it unlawful to willfully make an untrue statement of material fact in a registration application or report filed with the Commission, or to willfully omit to state a material fact which is required to be stated therein. To establish "willfulness" the Division much show Malouf intended to engage in the action alleged regardless of his knowledge that the act constituted a violation of the securities law. *S.E.C. v. Moran*, 922 F. Supp. 867, 900 (S.D.N.Y. 1996). If a statement or omission is made on a Form ADV based upon reasonable reliance on an external evaluation, the requisite mental state to establish a

violation of Section 207 cannot be established and the Division cannot meet its burden. *S.E.C. v. Slocum, Gordon & Co.*, 334 F. Supp. 2d 144, 181-82 (D.R.I. 2004) (a defendant did not act willfully when he relied on outside compliance and SEC guidance). The Division's Section 207 claim fails because Malouf did not make any statements or omissions, and the Division cannot provide sufficient evidence of the requisite mental state.

All UASNM Forms ADV were signed by Hudson, who attested to their accuracy and truthfulness. Malouf did not sign the Forms ADV or attest to their accuracy, and he should not be held responsible for Hudson's failings. Hudson had sufficient information to make proper disclosures on the Forms ADV and Malouf reasonably relied upon Hudson to make adequate, complete, and accurate disclosures with assistance from ACA, the compliance professionals whom UASNM paid specifically to help it avoid such deficiencies.

Malouf also reasonably relied upon Kopczynski. The Commission requires registered investment advisers to designate a chief compliance officer to be responsible for administering the compliance policies and procedures. *See Compliance Programs of Investment Companies and Investment Advisers*, 81 SEC Docket 3447, 68 Fed. Reg. 74714 (Dec. 24, 2003). Kopczynski was the designated CCO for the vast majority of the time period at issue here (FOF 16). The UASNM Compliance Manual, drafted by ACA, provides that the CCO is responsible for ensuring the Forms ADV are properly maintained, and that he will periodically review them to ensure they are accurate and complete (FOF 55, 56). Kopczynski claims to have reasonably relied on ACA to evaluate what information should be disclosed on UASNM's Forms ADV. Malouf similarly relied upon Kopczynski and ACA, which was both reasonable and permissible.

Kopczynski cannot blame his failings on Malouf for purportedly concealing information from him because even after the point in time that Kopczynski admits he knew about the ongoing

payments from LaMonde, he did not perceive a conflict of interest and did not advise Malouf or UASNM as to any additional necessary disclosures. Kopczynski did not advise UASNM to disclose a conflict even after he knew about the payments, and he would not have advised it to do so if he had known earlier. Therefore, responsibility lies with him, not Malouf.

H. The Division Has Failed to Prove Malouf Aided or Abetted Any Violations

The Division alleges Malouf aided and abetted various Advisers Act violations by UASNM. The Division must show: (1) a primary or independent securities law violation by an independent violator; (2) the aider and abettor's knowing and substantial assistance to the primary securities law violator; and (3) awareness or knowledge by the aider and abettor that his role was part of an activity that was improper. *Slocum, Gordon & Co.*, 334 F. Supp. 2d at 184. The Division must also establish conscious involvement in impropriety by Malouf. *See Id.* (quoting *Monsen v. Consolidated Dressed Beef Co.*, 579 F.2d 793, 799 (3d Cir.1978).

The element of substantial assistance is met when, based upon all surrounding circumstances, a defendant's actions are a 'substantial causal factor' in bringing about the primary violation. *S.E.C. v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2007). The awareness requirement can be satisfied by extreme recklessness, highly unreasonable conduct which represents an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978); *Monetta Fin. Servs., Inc. v. S.E.C.*, 390 F.3d 952, 956 (7th Cir. 2004) (finding president did not aid and abet firm's violation of Section 206(2) since SEC failed to provide evidence he was aware that disclosure of IPO allocations was required). The Division failed to put forth evidence of substantial assistance by Malouf or awareness that his role was part of improper activity.

Malouf's individual conduct is not a substantial causal factor in bringing about any primary violation. If the Division succeeds in proving a primary violation, which Malouf does not believe it has done, it has still not offered sufficient evidence to single out Malouf as the substantial causal factor. The evidence and testimony show that whatever failings existed at UASNM were systemic and causally attributable to Kopczynski, Hudson, Ciambor, and others.

I. The Remedies Sought Are Inappropriate

a. All Affected by the Purported Misconduct Have Been Made Whole

All investors allegedly affected by the purported misconduct were compensated by Malouf. As part of a settlement with UASNM, $850,000 owed to Malouf was escrowed. UASNM customers received $506,083.74 of this money to make them whole for alleged "excessive" commissions. Thus, any alleged harm to investors has been rectified (PCOL 89).

b. UASNM Has Already Been Penalized for the Conduct at Issue

UASNM entered into a consent order with the SEC to resolve any claims against it. As part of that settlement, USANM consented to pay a civil penalty of $100,000. The monies used to pay the civil penalty, however, came from the same account that was funded with the monies that were repaid to investors. In other words, even though the express terms of the settlement with the SEC prohibited UASNM from seeking indemnification for this payment, the monies paid to the SEC were obtained from the funds owed to Malouf for his interest in UASNM.

c. Disgorgement Would Constitute an Improper Penalty

The Division seeks disgorgement of the purported commissions that it claims Malouf improperly received as an unregistered broker from LaMonde. The primary purpose of disgorgement, however, is not to punish but to prevent unjust enrichment by depriving a wrongdoer of ill-gotten gains. *S.E.C. v. Bilzerian*, 814 F. Supp. 116, 120 (D.D.C. 1993), *aff'd*, 29 F.3d 689 (D.C. Cir. 1994); *Huff*, 758 F. Supp. 2d at 1358, *aff'd*, 455 Fed. Appx. 882 (11th

Cir. 2012) ("Because disgorgement is remedial and not punitive, a court's power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing.") (emphasis added).[12] Disgorgement is improper because (1) Malouf did not receive any ill-gotten gains; (2) disgorgement above and beyond those monies Malouf already paid to compensate investors would be punitive; and (3) Malouf would not be unjustly enriched if he is allowed to apply the reasonable value of branch 4GE as calculated by the Division.

Disgorgement would constitute an improper penalty because Malouf did not receive any ill-gotten gains. Malouf did not receive improper commissions from LaMonde, but rather payments for Branch 4GE. Any disgorgement order would not be designed "to prevent unjust enrichment by depriving a wrongdoer of ill-gotten gains" but rather to punish Malouf for selling his branch. Accordingly, the Division's request for disgorgement should be denied. In the event it is determined that Malouf should disgorge monies, it should be limited to the alleged harm incurred by investors, which Malouf has already paid. If Malouf is forced to disgorge all monies he received from LaMonde, he will have received nothing for the sale of Branch 4GE, and disgorgement beyond that already paid would be punitive. If, however, disgorgement is limited to alleged investor harm, the alleged ill-gotten gains derived at investor expense will have been repaid, but Malouf is not punished in connection with the sale of Branch 4GE.

Alternatively, Malouf should be entitled to retain 40% of the commissions as was contemplated by the PPA. Again, it is undisputed that Malouf sold the branch to LaMonde and therefore should be entitled to the reasonable value of Branch 4GE. The SEC determined that

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[12] The Commission bears the burden of establishing that its calculated disgorgement reasonably approximates the defendant's unjust enrichment. *S.E.C. v. Rosenfeld*, 2001 WL 118612, *2 (S.D.N.Y. 2001); *First Jersey Sec., Inc.*, 101 F.3d at 1475 (The amount of disgorgement should be a "reasonable approximation of the profits casually connected to the violation.") (internal citation and quotation omitted). The burden then shifts to the defendant to show that the approximation is not reasonable. *Huff*, 758 F. Supp. 2d at 1358

Malouf would have been entitled to $641,290 for the branch under the PPA. *See* Exhibit 208. When this amount is applied to the amount sought by the SEC ($1,174,048), taking into consideration the offset for monies already returned to investors ($506,083.74), the remaining balance is $26,674.26. If any disgorgement is ordered, it should be limited to this amount.

d. Malouf is Unable to Pay Disgorgement or Any Civil Money Penalty

Under the SEC Rules of Practice and Rules on Fair Fund and Disgorgement Plans it is within the hearing officer's discretion to consider evidence concerning a respondent's ability to pay. Specifically, Rule 630 "Inability to Pay Disgorgement, Interest or Penalties" states that:

> (a) **Generally**. In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

With respect to a civil penalty, one of the factors courts consider is "the defendants' demonstrated current and future financial condition." *S.E.C. v. U.S. Pension Trust Corp.*, 2010 WL 3894082 (S.D. Fla. 2010) (citing *S.E.C. v. Opulentica*, LLC, 479 F. Supp. 2d 319 (S.D.N.Y. 2007)). In fact, a "defendant's net worth and corresponding ability to pay has proven to be one of the most important factors that district courts consider when determining how much of a civil penalty to assess." *S.E.C. v. Gunn*, 2010 WL 3359465, at *10 (N.D. Tex. 2010); *see also S.E.C. v. Svoboda*, 409 F. Supp. 2d 331, 347-49 (S.D.N.Y. 2006) (rejecting request to impose maximum penalty where defendants "perpetrated a fraud involving repeated securities law violations, considerable profits, and a high degree of scienter" because the maximum penalty "would be inappropriate given each defendant's financial situation"); *S.E.C. v. Mohn*, 2005 WL 2179340, *9 (E.D. Mich. 2005) (waiving civil penalties against defendant where the court found it unlikely the Commission could collect any civil penalties given defendant's net worth and his speculative

and uncertain future income potential); *S.E.C. v. Rubin*, 1993 WL 405428, *7 (S.D.N.Y. 1993) (imposing $1,000 penalty against impecunious defendant due to "the distinction between an ordinary debt that arises from a particular and definable liability, and a penalty that is designed to punish and is imposed based on an exercise of discretion").

Malouf's divorce, his termination from and lawsuit against UASNM, Kopczynski's vendetta, and the negative impact these events have had on his career have been financially ruinous. Malouf's liabilities exceed his assets by approximately $1 million, and his approximate annual income is $36,000 before accounting for his court ordered alimony and child support obligations. See Affidavit of Malouf, Exhibit B. His house is in the process of being foreclosed and he is potentially facing upwards of $285,000 owed in federal taxes once his tax returns have been finalized. Id. Malouf fervently defends his conduct and believes the Division has failed to meet its burden. However, in the event the hearing officer views the evidence differently, Malouf's inability to pay disgorgement, interest, or any civil penalty is clear. At 55 years old, any injunctive relief which prevents Malouf from working for an extended period in the only industry he has ever known will negatively impact his financial condition even further.

IV. Statute of Limitations

SEC enforcement actions brought pursuant to the Securities Act, the Exchange Act, or the Advisers Act are subject to a five year statute of limitations. *See* 28 U.S.C.A. § 2462; *Huff*, 758 F.Supp.2d at 1351-1352, *Gabelli v. S.E.C.*, 133 Ct. 1216, 1219-23 (2013). 28 U.S.C. § 2462 states in part that:

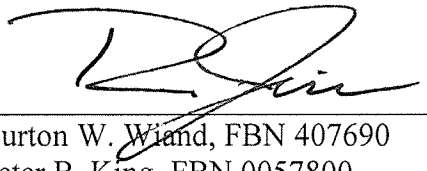
> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . .

The statute runs from the date of the conduct, and there is no applicable "fraud discovery rule."

Gabelli, 133 S. Ct. at 1222-24. This proceeding was instituted June 9, 2014, and therefore all claims, fines, penalties, or forfeitures are limited to conduct that occurred after June 9, 2009.

Although courts have not often applied the statute of limitations to disgorgement and injunctive relief, the Southern District of Florida recently took a common sense approach in *SEC v. Graham*, 2014 WL 1891418 (S.D. Fla. 2014) and rejected the SEC's argument that the five-year statute of limitations did not apply to disgorgement or injunctions. In *Graham* the Southern District of Florida stated that the long-held policies and practices underpinning the U.S. Supreme Court's unanimous opinion in *Gabelli*, as well as the plain language of 28 USC 2462, required the court to conclude that 2462 reaches ***all*** forms of relief. The *Graham* court found that injunctive relief barring a defendant from future violations of the federal securities laws can be regarded as nothing short of a penalty that is intended to punish and therefore falls under the purview of § 2462. With respect to disgorgement, the court stated that disgorgement of ill-gotten gains realized from alleged violations of the securities laws can truly be regarded as nothing other than a forfeiture (both pecuniary and otherwise) which is expressly covered by § 2462. The court also astutely noted that if it held otherwise, then the door was open for government plaintiffs to avoid the statute of limitations by coming up with new terms for the relief being sought and claiming that it is not expressly enumerated in § 2462. In the event the hearing officer deems it proper to impose injunctive relief or to order disgorgement in this matter, any purported conduct or funds received prior to June 9, 2009, should be excluded from consideration because any related claims are barred by the statute of limitations.

Respectfully submitted,



Burton W. Wiand, FBN 407690
Peter B. King, FBN 0057800
Robert K. Jamieson, FBN 0072018
[redacted]
ATTORNEYS FOR RESPONDENT
DENNIS J. MALOUF

EXHIBIT A

EXHIBIT A

Quarter	Variance Between Commissions and Payments[1]
1Q 2008	+5%
2Q 2008	+1.1%
3Q 2008	+45%
4Q 2008	+27%
1Q 2009	+41%
2Q 2009	+41%
3Q 2009	+17%
4Q 2009	-25%
1Q 2010	-7%
2Q 2010	-32%
3Q 2010	-55%
4Q 2010	-11%
1Q 2011	-62%

[1] Percentages calculated from data contained in Exhibit 203 which was prepared by the Division.

EXHIBIT B

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
	)	
DENNIS J. MALOUF,	)	ADMINISTRATIVE PROCEEDING
	)	File No. 3-15918
Respondent.	)	
	)	

AFFIDAVIT OF DENNIS MALOUF

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

BEFORE ME, the undersigned authority, appeared Dennis J. Malouf, who, first being duly sworn, deposes and says:

1. I am over the age of eighteen and am competent to testify about the matters herein. This affidavit is based upon information personally known to me.

2. A true and correct accounting of my assets and liabilities is attached to this affidavit as Exhibit A.

3. I am currently employed at NM Wealth Management LLC and have been since September 2011. I make approximately $3,000 per month from my employment at NM Wealth Management.

4. I am not receiving unemployment benefits or another any other form of compensation.

5. I am currently divorced with two children, both age 12.

6. I currently have court ordered alimony and child support obligations of $550 per month.

7. My house is currently being foreclosed upon and is scheduled to be auctioned on January 14, 2015. I do not have any equity in the house.

8. Upon filing my currently outstanding federal tax returns I expect to have an unpaid tax liability due in excess of $285,545.

FURTHER AFFIANT SAYETH NAUGHT.

Dennis J. Malouf

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 12 day of January, ~~2014,~~ 2015 by Dennis J. Malouf, who ☐ is personally known to me, or ☒ has produced NM Drivers License as identification.

Notary Public, ~~State of Florida~~ New Mexico

Printed Name: Ashley Romero

My Commission Expires: 1/27/18

OFFICIAL SEAL
Ashley Romero
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 1/27/18

STATEMENT OF FINANCIAL CONDITION OF
Dennis J. Malouf

I. Statement of Assets and Liabilities as of ____1-9-14___:

A. Assets:

1.	Cash	___1300__
2.	Cash Surrender Value of Insurance	__0___
3.	Accounts Receivable	__0__
4.	Loans or Notes Receivable	_ 0
5.	Real Estate	__0__
6.	Furniture and Household Goods	__15000___
7.	Automobiles	__10000__
8.	Securities	__0__
9.	Partnership Interests	__0__
10.	Net Value of Ownership Interest in Business	__0_
11.	Individual Retirement Accounts (IRAs)	__0_
12.	Keogh Accounts or Plans	__0__
13.	401(k) Accounts or Plans	__0__
14.	Other Pension Assets	__0___
15.	Annuities	__0
16.	Prepaid Expenses or Liabilities	__0__
17.	Credit Balances on Credit Cards	__0_
18.	Other (Itemize)	_____
19.	_____	_____
20.	_____	_____
	Total Assets	**30000**

B. **Liabilities:**

1.	Mortgages	450,000
2.	Auto Loans	0
3.	Credit Card Debt	34000
4.	Loans on Insurance Policies	0
5.	Installment Loans	15000
6.	Other Loans or Notes Payable	15000
7.	Accrued Real Estate Taxes	_____
8.	Judgments/Settlements Owed	500,000
9.	Other (Itemize):	_____
10.	___CPA_____ATTY_____	50000
	Total Liabilities	**1064000**

C. **Net Worth (Assets Minus Liabilities)** **-1,061,000**