



DAVID MONTANINO  
PRO SE



THURSDAY JULY 10, 2014

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street NE, Washington, DC 20549-2557  
Re: In the Matter of David J. Montanino  
Administrative Proceeding  
File NO. 3-15943

### SUMMARY

Montanino did not knowingly conduct or participate in any unlawful or fraudulent scheme with the late Timothy Sullivan. Montanino denies all substantive allegations of the OID as detailed below. If Sullivan violated any statutes, regulations, rules or industry customs, Sullivan did so without the knowledge of Montanino. Montanino had no reason to believe that Sullivan, APE and APF were not legitimate. There is no evidence available to the Commission that would show that Montanino knew that Sullivan was perpetrating a fraud. Information has become available to us that the Commission and perhaps others were investigating the late Timothy Sullivan for fraud at the time of his death. If Sullivan was a "fraudster" then Montanino was one of his biggest victims. Montanino left his experience with APE, APF and Calibourne penniless, with no means to make income in the field of his expertise and choosing. Additionally, now that these false allegations have been made public, Montanino will no doubt suffer a severely tarnished reputation that can never be undone, no matter what the outcome of these proceedings are.

#### A. RESPONDANT

1. Montanino agrees with the exception of Montanino was never a Senior Managing Director of APE in any legal or control capacity. Montanino agrees he was an authorized trader for APF.

B. RELATED ENTITIES

2. Cannot confirm or deny APE being formed in March 2005. Montanino lacks sufficient knowledge to do so. Deny the allegations Montanino operated APE.

3. Agree APF being formed in 11/2009. Deny the allegations Montanino ran APF.

4. Montanino agrees with this with the exception of control of Calibourne in 2005. Montanino believes that he controlled Calibourne as manager of the LLC himself in 2005 and APE was an investor in Calibourne.

C. BACKGROUND

5. Agree with following with these exceptions. Montanino cannot confirm nor deny when APE was formed because he lacks sufficient knowledge to do so. Deny that Montanino promoted APE to investors as a Calibourne Advised fund of other funds.. Deny Montanino abandoned his client.

6. Agree that Montanino began work as a registered representative at a brokerage firm in October 2005. Deny the assertion that Montanino's title was customer relationship representative.

7. Agree that in December 2009, Montanino did return to APE. Disagree with the position he was hired as. Agree Montanino helped launch APF. Agree the fund did collapse in May 2010. Montanino cannot confirm nor deny why the fund collapsed because he does not have sufficient knowledge to do so.

8. Deny that Montanino focused on soliciting investors for APE investors' funds. Agree in July 2010 Montanino filed an application to re-register Calibourne as a California Registered Investment Adviser. Montanino cannot confirm nor deny on between July 2010 and April 2011 on how much money Sullivan raised, as he lacks sufficient knowledge to do so. Montanino cannot confirm nor deny due to lacking sufficient knowledge to do so on how Sullivan appropriated funds that were invested in APE.

9. Agree Montanino did prepare marketing documents for APF and APE. Deny that that what he prepared was materially false.

D. MONTANINO'S APF-RELATED MISCONDUCT

10. Agree Montanino raised \$299000 from his only investor in February 2010. Deny Montanino exploited a pre-existing relationship. Agree that that Montanino met her at his former employer. Deny that he worked in role as customer relationship representative. Agree Montanino said he would manage account without placement fees and performance fees.

11. Deny the allegations that Montanino did not provide the offering Memorandum. Agree investor did select B for Moderate to Low Risk.

*Deceptive Conduct Concerning Assets and Account Management*

12. Deny all allegations with the exception that Montanino cannot confirm or deny if APE's bank account had \$2449 in it. Montanino does not have sufficient knowledge to do so.

13. Agree Montanino gave his oral assurance he would manage his clients investment. Agree Montanino was not able at the time to manage her account. Deny Montanino had no experience managing client assets. Agree Montanino had no access to APF bank accounts at that time or any other time. Montanino agrees he was granted trading authority on 03/19/2010. Montanino cannot confirm nor deny the account was leveraged at 104% by March 19, 2010 as he lacks sufficient knowledge to do so.

14. Deny the allegations that Montanino failed to act in the best interest of his client. Agree he was included in emails for a short period of time detailing margin calls, but deny he could have done anything to change the direction of the account and implement safeguards.

15. Deny the allegations that Montanino did not disclose that Sullivan was executing trades on the account until after the broker-dealer shut down the account. Deny Montanino falsely told the investor he generated positive returns.

16. Deny the allegations that Montanino engaged in a pattern of conduct inconsistent with that of a fiduciary.

17. Agree Montanino was asked by his client for performance figures on April 13, 2010. Deny Montanino had trading authority in the account for over a month. Agree Montanino did not explain margin to the client.

18. Agree Montanino did not provide his clients facts about the account.

19. Agree Sullivan emailed him a statement on March 19, 2010. Cannot confirm or deny at this time if document was delivered until May 5, as Montanino has not sufficient knowledge to do so.

20. Agree Montanino received email on May 5. Montanino cannot confirm or deny on when he responded to her because he lacks sufficient knowledge to do so at this time.

21. Montanino cannot confirm or deny any of these statements because he lacks sufficient knowledge to do so.

22. Montanino cannot confirm or deny when his client received statements because he has no knowledge to do so. Montanino cannot confirm or deny the fund's positions as he no knowledge to do so.

23. Deny the first time he told client he was not managing the account was then.

24. Agree Montanino or Sullivan did not disclose to the client the extent of losses in the account during the May 26 meeting. Agree Sullivan was unwilling to provide any details on the trades that led to her losses. Deny that either Montanino or Sullivan agreed to redeem her investment at that meeting. Agree Montanino told his client that the 10% fee would be credited back to them.

25. Agree Montanino emailed his client a redemption request on June 30, 2010. Deny Montanino was conducting a charade. Agree Sullivan failed to redeem any of her investment.

26. Agree Montanino did tell his client that their entire investment had been lost in Mid July 2010. Deny the allegations he shirked responsibility. Agree he claimed the losses occurred after Sullivan had transferred her account to an unrelated account.

27. Deny Montanino advised client to solicit "Ponzi-like" payment. Deny the conversation in question took place over the phone.

#### E. MONTANINO'S APE-RELATED MISCONDUCT

28. Deny Montanino raised \$485000 from five APE investors from July 2010-April 2011. Sullivan may have but Montanino lacks sufficient knowledge to confirm or deny. Deny APE invested only a nominal amount of money in Calibourne. Agree Montanino did prepare presentation materials for Calibourne and APE. Montanino cannot confirm nor deny if other investments were made during that period as he has no knowledge to do so. Deny that Calibourne teetered on collapse due to misappropriation. Agree that Calibourne had significant financial issues, but deny Montanino having knowledge of misappropriation.

#### *Use of Unsubstantiated Hypothetical Valuation Models*

29. Deny Montanino prepared documents that had no rational relationship to APE's present investment strategy. Montanino cannot confirm nor deny the past investment results of APE as positive or negative as he has no information to do so. Deny that documents claimed APE would manage \$300-\$400 million through Calibourne in 1 year. Agree Montanino prepared documents that projected if APE was to raise \$5 million that money could be used to acquire \$300-\$400 million in assets and if sold could yield a return of 7-10x.

30. Deny Montanino knew or recklessly disregarded facts about APE's past investment operations. Montanino cannot confirm or deny what APE's past results were as he has no knowledge to do so.. Agree Montanino knew APE was formed in 2005. Deny becoming a Senior Managing Director in 2009. Montanino cannot confirm or deny on how many active investments APE had in late 2009 as he lacks sufficient knowledge to do so.

31. Montanino denies that his plan did not support the hypothetical valuation

model. Montanino agrees he had not supervised investment professionals. Denies he had no experience successfully managing money.

32. Agree Montanino knew APE was in precarious financial position. Deny that would call into question if money would be used properly. Agree Montanino told graphic designer she could not be paid until more money came in. Agree Montanino told consultant to cash check right away.

33. Agree Sullivan wrote Montanino about this email. Disagree Sullivan was describing the APE Investor Presentation. Deny that the context of the email was about APE's desperate financial condition.

#### *Deceptive Conduct Concerning APE's Investment Strategy*

34. Agree the strategy was for APE to invest in Calibourne to recruit experienced financial professionals to Calibourne. Montanino cannot confirm or deny on how much money was raised by APE because he lacks knowledge to do so. Montanino cannot confirm nor deny the exact amount of capital that was transferred to Calibourne over that time frame because he lacks sufficient knowledge to do so.

35. Deny Montanino misled investors about APE's investment model. Agree Montanino told investor A in the Summer/Fall 2010 that a portion of the capital invested in Calibourne would be used to recruit financial advisors but denies ever saying that is all that money raised for Calibourne would be used to recruit advisors. Agree APE investor A made an additional \$100000 investment. Agree \$11000 was transferred to Calibourne. Agree Montanino transferred at least a percentage of that capital for his own use.

36. Montanino does not know who investor B is, but agrees he would have told any investor that a portion of the money raised by APE would go to fund Calibourne's recruiting efforts. Montanino cannot confirm nor deny what Sullivan did with investor B's capital because he lacks sufficient knowledge to do so.

37. Agree Sullivan's investors did contact Montanino after he died. Deny not telling them the truth.

38. Montanino agrees he wrote in an email dated May 10, 2011 that he assured one investor "C" there was no scam with APE's dealings with his company.

39. Deny all assertions.

#### *False and Misleading Statements About Montanino's Background*

40. Montanino denies that he falsely represented his 15 years of investment experience. Montanino agrees he did not receive the prestigious "Chariman's Circle of Excellence Award". He received the prestigious "Chairman's Club Award" in the first half of 2008 for his outstanding contributions. Deny it was Montanino's abysmal management that led to his client losing their investment.

*Looting of APE's Assets*

41. Deny that Montanino ever knowingly played any role in misappropriating funds at any time.

42. Montanino cannot confirm or deny the dollar amount invested in APE as he has no knowledge to do so. Montanino cannot confirm or deny the exact amount of financing that made its way directly to Calibourne's bank accounts.

43. Montanino denies ever misappropriating anything.

**VIOLATIONS**

44. Montanino denies all violations.

45. Montanino denies all violations.

46. Montanino denies all violations.

47. Montanino denies all violations.

48. Montanino denies all violations.

CONCLUSION

None of Montanino's conduct ever violated any of the statutes or rules cited. Mr. Montanino expressly reserves all rights and waives none, including the right to amend, alter, augment, reduce or change the statements set forth in this submission.

Montanino is asking that he be granted a postponement of the proceedings until 09/30/2014. Montanino has only been in possession of this order for roughly one week. Montanino is proceeding Pro Se with no law background and is learning everything as he goes. Montanino plans to subpoena both documents and witnesses and at this point does not even understand the process for doing that, let alone leaving him with enough time to carry out that process and prepare his defense.

Additionally, Montanino is requesting a change of venue to New York for the proceedings. Montanino cannot afford the expense of traveling to Washington and staying in a hotel. Montanino lives within a 1 hour train ride of NYC and it would truly helpful if these proceedings could be held in New York.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'David Montanino', is written over a large, faint circular stamp. To the right of the signature, the date '7/10/14' is handwritten in black ink.

David Montanino