UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-16223

In the Matter of

Sands Brothers Asset Management, LLC, Martin Sands, Steven Sands and Christopher Kelly

Respondents,

CHRISTOPHER KELLY'S REPLY ("REPLY") TO KAPLAN'S RESPONSE TO THE ALJ'S ORDER TO SHOW CAUSE ("KAPLAN'S RESPONSE")

Introduction

This Reply will address a limited number of points raised by Kaplan's Response as Mr. Kelly has limited resources representing himself. Mr. Kelly reserves all rights.

For ease of reference, certain defined terms herein will correspond to defined terms in Mr. Kelly's Opposition.

Discussion

The situation at hand is presumably an unusual situation and it is not clear that there are any cases that are exactly on point. As Mr. Kaplan readily discloses it was he who terminated the engagement, not Mr. Kelly, so it is Mr. Kaplan who has caused the present situation. As a

sophisticated attorney he presumably understood that there was a strong likelihood that the ALJ would question his representation of SBAM once the ALJ learned that Mr. Kaplan had previously represented Mr. Kelly. While Mr. Kelly has not been able to ascertain exact data, it is likely that it is a rare occurrence for an attorney to end up on the other side of a case from his former client ("other side" in the sense that the Gusrae Firm is projecting certain financial responsibilities onto Mr. Kelly as part of its defense).

This situation did not of course arise in a vacuum. While as previously disclosed the actions of the Staff (in particular Wendy Tepperman) played a role in Mr. Kelly's engagement of the Gusrae Firm, Mr. Kelly discussed the matter with Mr. Kaplan prior to the engagement in early March 2014 and Mr. Kaplan promised Mr. Kelly that he would represent Mr. Kelly's interests. It is unclear whether that was the truth at that point based on the current revelation of Mr. Kaplan's strategy in this matter to project financial duties onto Mr. Kelly. Mr. Kelly had no reason to believe there might be a conflict based on Mr. Kaplan's representations and the fact that Mr. Kelly had served almost six years with SBAM in a CCO/COO role, not a CFO-type role.

It is notable that the Gusrae Firm represented SBAM during SBAM's transition from in-house financial function capacity to outsourced financial function capacity. When Mr. Kelly arrived at SBAM in 2008 SBAM used in-house financial personnel to handle financial matters. Mr. Kelly believes it was in 2009 (Mr. Kelly does not have access to the records) that Martin Sands and Steven Sands decided to use an outsourced contractor to handle financial matters. In connection with that decision SBAM and each of the SBAM Funds retained Greenwich Fund Services. Mr. Kaplan provided advice on this financial function transition matter, and thus has

been fully knowledgeable of how the financial function has been handled at SBAM since well before this matter arose.

Given Mr. Kaplan's first-hand knowledge of SBAM's in-house and outsourced financial function, and his representations to Mr. Kelly about no conflict, it is a surprise that Mr. Kaplan is now spearheading a defense that involves projecting the financial function onto Mr. Kelly. Mr. Kelly certainly did not contemplate that that strategy would be utilized when he agreed to engage the Gusrae Firm. It is very possible, however, that Mr. Kaplan had that strategy in mind even as he was agreeing to represent the interests of Mr. Kelly.

The swiftness with which he terminated Mr. Kelly once Mr. Kaplan was provided the voicemails is telling. As previously noted, Mr. Kelly was prompted to contact the SEC by a comment from Martin Sands. To his credit, Martin Sands explained in his April 25, 2014 call with Mr. Kelly that he had been sensitive to Mr. Kelly's right to consider how to handle the SEC matter as to himself. Even though Mr. Kelly's calls to the SEC had been prompted by Mr. Sands, Mr. Kaplan terminated his representation of Mr. Kelly without even speaking with Mr. Kelly.

Mr. Kelly had called the SEC to determine the status of the matter as to him, and to give the SEC basic facts about Mr. Kelly's status at SBAM. He did not have representation at the time, Martin Sands had prompted him to call, he had the right to find out what was going on as to himself, and he had the right to explain to the SEC his role at SBAM. Mr. Kelly had not had any communication with the SEC to that point, all of it having been handled by the Gusrae Firm, and it was only fair to give him a chance to explain things to the SEC. There was no reason why explaining his role at SBAM to the SEC would raise a conflict, but apparently it did, as Mr. Kelly was terminated as a Gusrae Firm client immediately upon the release of the voicemails.

Apparently something happened in the Gusrae Firm's thinking between the time the firm advised Mr. Kelly it would represent his interests and the receipt of the voicemails. The Gusrae Firm, however, did not tell Mr. Kelly about this evolution in thinking, even though he was the firm's client during this period. This raises the question whether the Gusrae Firm had its current strategy in mind even before it took on Mr. Kelly as a client. In any case it appears the strategy was in place during the period of Mr. Kelly's representation from early March 2014 to April 25, 2014, as the strategy certainly did not appear out of nowhere the moment the Gusrae Firm received the voicemails.

During the period prior to Mr. Kelly engaging the Gusrae Firm the Staff was under the impression that the Gusrae Firm was representing Mr. Kelly. In this period Mr. Kaplan was in contact with the SEC, with the Staff discussing the matter with him with respect to SBAM and Mr. Kelly. Mr. Kaplan received information about the case as to Mr. Kelly that was not shared with Mr. Kelly. It would be an odd situation indeed for the attorney now opposing Mr. Kelly to have more knowledge of the proceedings vis a vis Mr. Kelly than Mr. Kelly himself, who was not, and continues not to be, privy to any of the communications between the Staff and Mr. Kaplan.

Kaplan's Response refers to Mr. Kelly as "erratic." (See 1st full paragraph of page 3 of Kaplan's Response) Mr. Kelly disputes that calling the SEC under the circumstances related above is "erratic." Mr. Kelly learned for the first time that his name had come up in this matter in early February 2014, and he had every right to find out what was going on. Mr. Kelly suggests that it is much more erratic for a well-known law firm (i) to convince the SEC that it was representing Mr. Kelly when it wasn't, (ii) to receive a settlement offer from the SEC that implicated Mr. Kelly, and to not tell the SEC at that point that the firm did not represent Mr.

Kelly, (iii) to pass on the details of that settlement offer to Mr. Kelly only nine months later, (iv) to terminate Mr. Kelly as a client without speaking to him, and (v) to terminate Mr. Kelly for a "conflict" that somehow didn't exist six weeks before.

On page 5 of Kaplan's Response, Mr. Kaplan notes that a conflict waiver is not given with respect to "opposite sides of the same litigation." Mr. Kaplan's current defense strategy clearly puts Mr. Kelly on the "opposite side" as the defense strategy is aimed squarely at Mr. Kelly. Mr. Kaplan refers to Mr. Kelly giving the "waiver" at a time the parties were not on opposite sides, but as recounted above it does not appear credible that the Gusrae Firm did not have its current strategy in mind even as it was signing up Mr. Kelly. (As noted below the engagement letter actually does not contain a conflict waiver.)

It is unclear what Mr. Kaplan is saying at Item 12 of his Affirmation. Mr. Kelly had spoken with Martin Sands and Steven Sands many times about this matter, and had also spoken to Mr. Kaplan, prior to Mr. Kelly engaging the Gusrae Firm. Mr. Kelly does not recollect any conversation where the SBAM compliance program or Mr. Kelly's actions were criticized. If that had taken place, that would have been a red flag for a possible conflict. Mr. Kelly was unaware at the time he engaged the Gusrae Firm that the firm would come up with the particular defense the Gusrae Firm is now pursuing on behalf of SBAM. As Mr. Kaplan says in Item 39 of his Affirmation, the failure to meet the 120-day deadline "was the result of a good faith belief that the delay in distribution was appropriate."

As for Mr. Kaplan's first point in Item 12 of the Affirmation, presumably relating to the 2010 SEC Order, it was Mr. Kaplan who handled and negotiated that matter, not Mr. Kelly.

In Item 24 of the Affirmation, Mr. Kaplan claims that his firm's disqualification would result in "substantial harm" to SBAM. Given the number of other qualified law firms available

to SBAM, and the nature of this matter, it is unlikely there would substantial harm to SBAM. It is noteworthy that Martin Sands and Steven Sands just recently changed attorneys after more than 2 1/2 years of being represented by the Gusrae Firm in this matter. If that change did not result in substantial harm, it is doubtful that SBAM's change in attorneys would result in substantial harm.

In Item 25 of the Affirmation, Mr. Kaplan states that "simultaneous with my representation of SBAM, Kelly directly submitted responsive documentation to the Commission staff." Mr. Kelly is unclear what this refers to. The voicemails are of course well-known, but telephone calls are not documentation. Mr. Kelly has no idea what other "responsive documentation" Mr. Kaplan is referring to. If such documentation had been submitted, presumably the Staff would have provided it to Mr. Kaplan. Mr. Kelly has recently made legal filings, with exhibits, but those filings were filed with the ALJ and copied to the Gusrae Firm. Even in the case of the "responsive documentation" that was submitted, the only such documentation Mr. Kelly is aware of was passed on to the Gusrae Firm from Douglas Bisio and John Lanser at GFS, who had control of financial records. The Gusrae Firm then passed on the documentation to the Staff. (It is possible Mr. Kelly passed on some documentation directly to the Gusrae Firm, which he would have received mostly or entirely from GFS, but Mr. Kelly does not have access to those records.)

Item 28 of the Affirmation refers to the filing of the "OIP" on October 29, 2014, and Item 29 states that at that time all respondents had a unified defense. It is unclear what is meant by this as the Gusrae Firm had terminated Mr. Kelly as a client on April 25, 2014, well before October 29, 2014.

The timing set forth in Item 33 of the Affirmation is confusing. When Mr. Kelly called the SEC in February 2014 so that he could understand the status of the matter as to himself, he was not represented by the Gusrae Firm. Nothing Mr. Kelly told the SEC was unfamiliar to the Gusrae Firm as it has had first-hand experience with the financial function of SBAM, relating to its former in-house capability and its current outsourced arrangement, and of course the central role played by Martin Sands and Steven Sands. In any case there were no "issues or concerns" to raise with the Gusrae Firm at this point as it did not represent Mr. Kelly. (With Ms. Tepperman's insistence that Mr. Kelly deal with the Gusrae Firm) Mr. Kelly did want confirmation that the Gusrae Firm would represent Mr. Kelly's interests, and Mr. Kaplan provided that confirmation. From the time that Mr. Kelly submitted the engagement letter to the Gusrae Firm in early March 2014 until April 25, 2014 when he was terminated as a client, Mr. Kelly had no communication whatsoever with the SEC.

Conclusion

One fatal flaw in Kaplan's Response is that the engagement letter has no conflict waiver. There is of course discussion in the engagement letter about conflicts, including various actions that may be taken in the event of conflicts, but there is no waiver. Much of Kaplan's Response is founded on the existence of a waiver in the engagement letter but none exists, rendering the arguments founded on the presumed waiver irrelevant.

The arguments in Kaplan's Response also put a large dent in, if not totally eviscerate, SBAM's core defense. Kaplan's Response highlights in a number of places the fact that no conflict was present between SBAM and Mr. Kelly as of the time Mr. Kelly agreed to engage the Gusrae Firm. Just prior to Mr. Kelly engaging the Gusrae Firm Mr. Kaplan told Mr. Kelly there was no conflict in assuring him he would be well represented, and of course the engagement

letter clearly states that the Gusrae Firm had not as of the engagement "found any apparent conflict of interest." (See the third paragraph of the engagement letter.) Item 32 of the Affirmation further emphasizes that there was no conflict. The Gusrae Firm's stated position, in writing, is accordingly that no conflict existed as of early March 2014 when Mr. Kelly delivered the engagement letter to the Gusrae Firm.

Thus, it must be the case that anything known to the Gusrae Firm prior to or as of such time could not possibly be the basis for the conflict. The Gusrae Firm, as it makes clear in Kaplan's Response and the Affirmation, in multiple places, had served as SBAM counsel for many years, including years prior to Mr. Kelly's employment. The Gusrae Firm was fully aware, for example, that Martin Sands and Steven Sands managed SBAM as Co-Founders, Co-Chairmen, Co-Chief Executive Officers, and Co-Senior Portfolio Managers. The Gusrae Firm was well aware of the financial background of Martin Sands and Steven Sands. The Gusrae Firm handled the transition from SBAM's in-house financial function to its outsourced financial function.

If the Gusrae Firm had formulated its current core defense by the time of Mr. Kelly's engagement, then certainly the facts known to the Gusrae Firm would have suggested, if not screamed, conflict. While it is certainly possible the Gusrae Firm had the defense in mind at that time, but didn't let on to Mr. Kelly, taking the Gusrae Firm at its word that somehow the conflict arose after the engagement, the conclusion one must reach is that the core defense was made up after early March 2014. In other words the core defense must be a post hoc invention.

That the core defense is a post hoc invention is certainly consistent with the facts. Not once in the years after the SEC began its inquiry in mid-2012, until the core defense became known, did Martin Sands or Steven Sands ever point the finger at Mr. Kelly. It is unclear what

changed between the time of the engagement and the termination of Mr. Kelly as a client, other than the fact of the voicemails. But the voicemails did not change any facts about how Martin Sands and Steven Sands operated SBAM, or anything else that had happened during the relevant period, which ended long before the advent of the "conflict."

This brings up another flaw in Kaplan's Response. Other than to state that Mr. Kelly was terminated based on "concerns of conflicts" based on the voicemails (see the penultimate paragraph of Section II. A. of Kaplan's Response), Mr. Kaplan never explains exactly what the conflict is. "Concerns of conflicts" are not conflicts. What exactly was the conflict that appeared on April 25, 2014? Mr. Kaplan never says. Accordingly we have here an engagement letter that includes no conflict waiver. And we have no stated conflict. With those two elements missing, Mr. Kaplan's argument is vacant.

The fact of the Gusrae Firm's prior representation of Mr. Kelly, however, is incontrovertible, as is the Gusrae Firm's new-found defense pointing the finger at Mr. Kelly.

Dated: March 10, 2015

Respectfully submitted,

Christopher Kelly ([redacted]

[redacted]

[redacted]

Pro se