

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5620 / October 26, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20139

In the Matter of
MOHAMMED ALI RASHID,
Respondent.

ANSWER TO ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF
THE INVESTMENT ADVISERS ACT OF
1940 AND NOTICE OF HEARING

Mohammed Ali Rashid (“Respondent” or “Mr. Rashid”), by his attorneys, Genovese Joblove & Battista, P.A. and Selendy & Gay PLLC, as and for his Answer to the Order Institute Proceedings (“OIP”) filed by the Securities and Exchange Commission (“Commission”), alleges, upon information and belief, as follows:

PRELIMINARY STATEMENT

This matter relates to reimbursement requests submitted by Respondent during a limited period when he was employed by Apollo Management L.P. (“Apollo”), including at times as a Partner and Senior Partner. Respondent has long agreed that he was, on several occasions, negligent in submitting reimbursement requests or documentation (collectively referred to as “business expenses”) and, as more often was the case, in supervising his assistants in performing these tasks. Respondent acknowledges that these negligent failures resulted in improper reporting of these business expenses to his employer, Apollo. Like others at Apollo, Respondent was unaware that Apollo was passing these costs to the funds through to its various Management Companies who

operated the various investment funds. At all times, Respondent believed any reimbursements would be paid by Apollo and not by its investors.

This practice of passing through business expenses expressly violated the funds Limited Partnership Agreements and differed from the expectations of Apollo employees, including employees who worked in Apollo's accounting functions.

Despite having this information, including the Limited Partnership Agreements available to it, on October 27, 2017 the Commission initiated an action against Respondent in federal court, alleging Respondent's reimbursement requests violated, and aided and abetted violations of, Sections 206(1) and 206(2) of the Investment Advisors Act (the "IAA"). After a nine-day bench trial, the trial court rejected the Commission's lead 206(1) claim, finding the Commission had failed to prove Respondent acted with the requisite scienter necessary to sustain a Section 206(1) violation. As explained by the court, "Apollo's procedures in its Accounts Receivable Department, and specifically its practice of seeking reimbursement from funds based on an employee's entry of portfolio company research codes, deserve significant blame for the fact that Rashid's expenses were ultimately paid by the funds." *Sec. & Exch. Comm'n v. Rashid*, No. 17-CV-8223 (PKC), 2020 WL 5658665, at *24 (S.D.N.Y. Sept. 23, 2020). Indeed, the court noted that the Commission's own witnesses appeared to share Respondent's "misapprehension that certain expenses were borne by Apollo management companies, when, in fact, they were paid by private-equity funds." *Id.* at *22. As for Mr. Rashid specifically, the court concluded that "[t]he SEC failed to prove that Rashid knew the source of reimbursement for his expenses, and therefore failed to prove that he knowingly and intentionally sought reimbursement from the funds he advised." *Id.* at *24. In short, the Court found no intentional misconduct on Respondent's part that supported a § 206(1) finding. It thus rejected the SEC's claim on that score.

With regards to the Section 206(2) charge, the trial court found that Respondent acted recklessly and/or negligently by submitting incorrect reimbursement requests to Apollo in the first place and thus had violated Section 206(2) of the IAA.¹ In its final judgment, the trial court imposed monetary penalties against Respondent and enjoined Respondent from future violations of Section 206(2).

Relying on the trial court's injunction, the Commission now seeks relief under Section 203(f) of the IAA. Although the OIP does not provide notice of the relief sought, the Commission indicated in post-trial briefing that it would pursue an industry bar if it procured a permanent injunction. The Commission, however, took this position *before* the trial court rejected its theory that Respondent acted with scienter.

Follow-on sanctions pursuant to Section 203(f) of the IAA are unnecessary, unfair and unwarranted. As the trial court concluded, Respondent did not act with scienter or with any intent to defraud the investing public. Respondent has also already paid, and continues to pay, a heavy price for his negligence. Respondent lost his job at Apollo, paid even disputed reimbursements back, cooperated fully with Apollo's investigation and has not worked in the securities industry since that time, effectively serving over a seven-year industry bar. Respondent has also been subject to extensive public humiliation over the same lengthy period because of the SEC's allegations of intentional fraud, which it was ultimately unable to prove and which were, as a result, soundly rejected by the Court. Put simply, the reputational and personal damage that has resulted from Commission's litigation has been disproportionately severe, if perhaps unintended, and there is zero evidence in the record that Respondent poses a risk of repeating his negligence going forward.

¹ Respondent is planning to appeal the trial court's ruling on the Commission's 206(2) claim.

The Commission's request for additional punishment under Section 203(f) should therefore be denied.

SPECIFIC RESPONSES TO ALLEGATIONS OF THE OIP

1. Rashid was employed at Apollo Management, L.P. ("Apollo") from 2004 until February 2014, during which time he was promoted to the job titles of partner and senior partner. Apollo was and is a private equity firm registered as an investment adviser with the SEC. Rashid was a member of Apollo's private equity group and advised Apollo's private equity funds. Specifically, Rashid evaluated and recommended investments to Apollo's private equity funds monitored investment performances, and received compensation for his services. Rashid, age 44, currently resides in Miami Beach, Florida.

Respondent's Answer:

Respondent admits the allegations set forth in paragraph 1, except insofar as it suggests that Mr. Rashid directly advised the funds. Rather, Mr. Rashid advised the Management Committee who, in turn, provided advice to the Funds. Mr. Rashid admits that his residential address is in Miami Beach, Florida, however owing to flooding as a result of Hurricane ETA, his physical residence is yet to be determined but will remain in Miami-Dade County, Florida during the restoration process.

2. On October 14, 2020, a final judgment was entered against Rashid, permanently enjoining him from future violations of Section 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Mohammed Ali Rashid, Civil Action Number 17-cv-8223 (PKC) in the United States District Court for the Southern District of New York.

Respondent's Answer:

Respondent admits the allegations set forth in paragraph 2 and notes that the District Court found no intentional misconduct or violation of §206(1) by Respondent.

3. The Commission's complaint alleged that, from at least January 2010 until June 2013, Rashid violated Section 206(1) and 206(2) of the Advisers Act by fraudulently claiming that his personal expenses were legitimate business expenses, and those expenses were

thereafter paid by private equity funds advised by Apollo and Rashid. The Commission further alleged that Rashid was reimbursed for approximately \$290,000 in personal expenses fraudulently disguised as legitimate business expenses, including a New Year's trip to Brazil, a friend's bachelor party and wedding, a flight to the Super Bowl, and numerous dinners with friends and family at high-end Manhattan restaurants.

Respondent's Answer:

Respondent admits the allegations set forth in paragraph 3 are characterizations of the allegations raised by the Commission in its complaint, and notes that the District Court found no intentional misconduct or violation of §206(1) by Respondent.

4. On September 23, 2020, after a nine-day bench trial at which 33 witnesses testified, the district court issued Findings of Fact and Conclusions of Law which found that Rashid had violated Section 206(2) of the Adviser Act by virtue of: (1) Rashid knowingly, repeatedly and falsely claiming that personal expenses were business expenses; (2) Rashid, as a senior partner of Apollo, acting with reckless indifference in failing to ensure that none of these false business expenses were charged to the funds he advised; and (3) the false business expenses, in fact, were charged to the funds, thereby operating as a fraud upon them. The court's October 14, 2020 judgment enjoined Rashid from committing future violations of Section 206(2) of the Advisers Act, and ordered him to pay a civil penalty in the amount of \$240,000. The Commission had not sought disgorgement because Rashid had already repaid Apollo for his ill-gotten gains, and Apollo had already reimbursed the affected funds.

Respondent's Answer:

Respondent admits the allegations set forth in paragraph 4 are characterizations of portions of the district court's findings of facts and conclusions of law, and notes that the District Court found no intentional misconduct and violation of §206(1) by Respondent.

DEFENSES

Further answering the OIP, Respondent asserts the following defenses, without assuming the burden of proof when such burden would otherwise be on the SEC, and without waiving any other defenses that might be available to him:

- (i) The OIP and the relief sought does not serve the public interest. The OIP and relief sought is impermissibly and unfairly punitive, and is not merited given that the District Court found that Mr. Rashid did not act with scienter and thus did not violate Section 206(1).
- (ii) The OIP is time barred under 28 U.S.C. §2462's five-year statute of limitations.

WHEREFORE, Respondent requests a hearing on the allegations of the OIP and that judgment be entered finding no additional punishment pursuant to Section 203(f) is warranted and granting such other and further relief as is appropriate.

Date: November 16, 2020

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