

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DALE M. WALKER,

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission (“Commission”) files this Complaint and alleges as follows:

OVERVIEW

1. This case involves improper conduct by Dale M. Walker, the former county manager for Macon-Bibb County, Georgia. In 2014, Walker misled three Macon-Bibb County public pension fund boards in connection with their selection of an investment adviser to manage a cumulative \$402 million of pension fund assets.

2. Specifically, Walker had a personal conflict of interest which led him to provide a specific investment adviser (the “Adviser”) with an unfair competitive

advantage in the request for proposal process. Walker had an undisclosed personal relationship with an individual associated with the Adviser.

3. Walker undermined the integrity of the pension fund boards' selection process in several ways. Walker improperly allowed the Adviser to review the confidential proposals of other investment adviser candidates and asked the Adviser to draft a written analysis of the proposals and create a numeric ranking of all the applicants. The Adviser ranked itself first above all other applicants. Walker then attached the Adviser's analysis and ranking to his own memos to the pension fund boards in which he recommended the Adviser be selected as investment adviser for each of the pension funds. In his memos, Walker falsely represented to the boards that he had prepared the attached analysis and ranking.

4. The Adviser did not disclose its role in preparing the analysis and ranking to its prospective clients, the pension fund boards. Neither Adviser nor Walker disclosed the conflict of interest inherent in the Adviser's preparation of those materials for Walker's recommendation.

5. The three pension funds were given copies of all proposals submitted by all candidates, but were unaware of the Adviser's role in the recommendation process and the associated conflict of interest. Each of the three pension fund boards followed Walker's recommendation and selected the Adviser as the investment adviser for their respective pension funds.

VIOLATIONS

6. Through this conduct, the Adviser violated Section 206(2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(2)] (“Advisers Act”), and Walker aided and abetted such violations.

7. Unless restrained and enjoined by this Court, Walker will continue to engage in acts, practices, and courses of business that aid and abet such violations.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Section 214(a) the Advisers Act [15 U.S.C. § 80b-14(a)] to enjoin Defendant from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties, and for other equitable relief.

9. This Court has jurisdiction over this action pursuant to Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)].

10. Defendant, directly, and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

11. Venue lies in this Court because certain of the transactions, acts, practices, and courses of business constituting violations of the Advisers Act

occurred within the Middle District of Georgia, including but not limited to, Walker's misstatements and omissions.

DEFENDANT

12. Defendant Dale M. Walker is a resident of Lake Butler, Florida. Walker was employed as Macon-Bibb County, Georgia Manager from January 2014 to April 2017. As County Manager, Walker was a member of the Board of Directors of one of the three Macon-Bibb County pension funds. Walker served as Chief Administrative Officer for the City of Macon, Georgia from 2011 to 2013, prior to Macon's consolidation with Bibb County.

WALKER'S CONFLICT OF INTEREST

13. Walker has been employed as a municipal manager for most of his career. He was employed for 30 years at various times as a Deputy City Manager and Director of Finance for a municipality located in the Midwest United States. From 1987 to 2007, Walker was also on the board of the state retirement system that administered retirement plans for various municipalities, including his then-employer.

14. In or about 2007, Walker met an individual who also worked for the state retirement system ("Associate A"). Shortly thereafter, Walker developed a romantic interest in Associate A.

15. In 2011, after employment with other municipalities, Walker was hired as the Chief Administrative Officer for the City of Macon, Georgia and in 2014 was named Manager of Macon-Bibb County.

16. In late 2013, Walker learned that Associate A had become associated as a consultant with the Adviser, a Commission-registered investment adviser headquartered in the Southeast United States. Although Walker had not had contact with Associate A since approximately 2007, he reached out to Associate A and eventually discussed a potential business opportunity for the Adviser with the City of Macon, and, after its consolidation, with Macon-Bibb County.

17. During 2013 and continuing into 2015, Walker began regularly contacting Associate A repeatedly and expressing his romantic feelings for Associate A. During that time, Walker also sent numerous personal gifts to Associate A.

18. As Chief Administrative Officer for the City of Macon, and as County Manager for Macon-Bibb County, Walker had authority to hire an investment adviser to provide cash management services for certain non-pension fund related financial accounts of the City and the County. In late 2013, Walker selected the Adviser to provide these services to the City of Macon, and in early 2014, to Macon-Bibb County.

**WALKER OVERSEES THE PENSION FUNDS' SEARCH FOR AN
INVESTMENT ADVISER**

19. As County Manager for Macon-Bibb County, Walker was also responsible for providing administrative support to the three Macon-Bibb County Pension Funds' boards. He was also a member of one of those boards.

20. In June 2014, the Pension Funds began searching for new investment advisers to provide investment advice for the Pension Funds' assets because the Pension Funds' then-current consultant was exiting that line of business. The boards for each of the three Pension Funds directed Walker to create and issue a Request for Proposal ("RFP").

21. The RFPs were used to solicit potential investment advisers to provide investment advisory services to the Pension Funds. Each interested investment adviser was required to provide a written proposal summarizing the adviser's experience, investment performance history, cost structure and other information required by the RFP.

22. The Macon-Bibb County's Procurement Office ("Procurement Office") formally issued an RFP for each of the three Pension Funds on July 15, 2014.

23. By the August 8, 2014 RFP Response deadline, seven investment advisers, including the Adviser, submitted responses to the RFPs that were accepted by the Procurement Office ("RFP Responses").

24. The Pension Funds had a strong interest in the integrity of their selection process for an investment adviser. Among other things, improper considerations in the selection process could negatively affect the quality and cost of the advisory services which are provided to the Pension Funds and could negatively impact their beneficiaries.

25. The Pension Funds had procedures and controls designed to identify any potential conflicts in its procurement of those services. As part of the County's procurement process, Walker signed the required Conflict of Interest Statement before he could receive and review copies of the RFP Responses. In signing the statement, Walker also agreed that each RFP Response must be "given fair and equal consideration" and that any "actual, potential, or perceived conflict of interest" must be reported to the Procurement Office. Walker also agreed to maintain the confidentiality of the RFP evaluation process.

WALKER GAVE ADVISER AN UNFAIR COMPETITIVE ADVANTAGE

26. After obtaining the RFP Responses, Walker asked Associate A to prepare an analysis and ranking of the RFP Responses. Despite having agreed to maintain the confidentiality of the RFP process, Walker sent copies of each of the seven RFP Responses (including the Adviser's own RFP response) to a colleague of Associate A at the Adviser ("Associate B").

27. Over the course of approximately two weeks, Associate A and Associate B prepared a multi-page discussion and analysis of the RFP Responses. In that analysis, Associate A and Associate B also numerically ranked each of the entities pursuant to subjective criteria outlined in the RFPs. Associate A and Associate B ranked the Adviser's (*i.e.* their own) RFP Response first among all seven RFP Responses.

28. In a competitive bidding process, it is unusual for an investment adviser to be provided with copies of its competitors' proposals and to be asked to rank and rate its own proposal against its competitors' proposals.

29. Associate A understood that that the opportunity to review and rank the RFPs Responses gave the Adviser a competitive advantage in the Pension Funds' selection process and in competitions for future investment advisory business. On August 12, 2014, Associate A sent an email to a colleague at Adviser stating that "this is a very important project" and that "[n]ot only will it help us win the Macon accounts, but will also aid us in preparing future RFPs with knowledge of our competitors' information."

30. Walker did not provide any of the other responding investment advisers with copies of the RFP and did not provide any other responding investment advisors with the opportunity to analyze and rank their competition.

31. On the morning of Friday, August 22, 2014, Walker emailed Associate A, asking when the analysis and ranking would be completed, stating that they were the “only thing left to put together for the package,” *i.e.*, Walker’s recommendation memorandum to the boards recommending an investment adviser.

32. That evening, Associate A emailed Walker the final completed analysis and ranking. In the final analysis and ranking, the Adviser ranked itself first among all seven RFP Responses.

33. The analysis and ranking that Associate A provided to Walker were not on the Adviser’s letterhead and did not contain any indication that they had been prepared by the Adviser.

WALKER MISLED THE PENSION FUNDS ABOUT ADVISER’S ROLE

34. On Saturday morning, August 23, 2014, Walker emailed Associate A a copy of his draft recommendation memorandum. In the email, Walker informed Associate A that he intended to send the document to the board of one of the Pension Funds and that he was recommending that the Adviser be chosen as investment adviser. Attached to Walker’s draft recommendation was the Adviser’s analysis and ranking. Walker had made no changes to the attached analysis and ranking that Associate A had sent him the previous evening. He asked Associate A to let him know if anything was misstated in his memorandum recommending the Adviser.

35. Shortly thereafter, Walker emailed his final recommendation memorandum, with the attached analysis and ranking prepared by the Adviser, to the board of one of the Pension Funds. In the final memorandum, Walker recommended that the board select the Adviser as its investment consultant. There were no changes from the draft he had provided Associate A hours earlier and he had made no changes to the Adviser's analysis and ranking document before attaching it to his recommendation memorandum.

36. In his final recommendation memorandum to the board, Walker falsely represented: (1) that the comments in the attached analysis were his; and (2) that he had imposed the ranking in the attached analysis. The memorandum also represented that the "technical analysis was intense and time consuming" and had "taken some time to develop and be objective" and that "the results have been fair and objective."

37. Walker then forwarded to Associate A the email with his final recommendation to the board. Associate A forwarded it to Associate B, who, in turn, forwarded it to other individuals at the Adviser.

38. In the following days, Walker provided nearly identical memoranda recommending the Adviser to the boards for the other two Pension Funds.

**ADVISER'S ROLE IN THE SELECTION PROCESS WAS NOT
DISCLOSED TO THE PENSION FUND BOARDS**

39. In recommending that the Pension Funds' boards hire the Adviser, Walker did not disclose: (1) that the Adviser, not Walker, had prepared the analysis and ranking that was attached to Walker's memorandum that supported his recommendation and, thus, the analysis and ranking were conflicted and subject to bias; and (2) that Walker had breached his obligation to keep the RFP Responses confidential by providing them to the Adviser and Associates A and B.

40. Adviser knew or should have known that its role in the selection process had not been disclosed to the Pension Fund boards. The Adviser owed a fiduciary duty to the Pension Fund boards because the Pension Fund boards were prospective clients. Despite this duty, Adviser did not disclose its central role in the selection process to its prospective clients, the Pension Fund boards. Specifically, Adviser did not disclose that its personnel had prepared the analysis and ranking that supported Walker's recommendation and did not disclose the material conflict of interest it had in preparing the analysis and ranking.

41. Unaware of Advisers' role in the recommendation process, each of the Pension Funds' boards voted to accept Walker's recommendation and engaged the Adviser as investment adviser.

42. In October 2014, the Adviser executed consulting agreements with each of the Pension Funds in which it agreed to provide consulting, investment

advisory and management services for certain of their assets for an annual fee to be paid monthly.

COUNT I

**AIDING AND ABETTING VIOLATIONS OF SECTION 206(2) OF THE
ADVISERS ACT [15 U.S.C. § 80b-6(2)]**

43. Paragraphs 1 through 42 are hereby re-alleged and incorporated herein by reference.

44. Defendant Walker aided and abetted the Adviser's violations of Section 206(2) of the Advisers Act by knowingly or recklessly providing substantial assistance to Adviser who, by use of the mails or means or instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients.

45. By reason of the foregoing, Defendant Walker, directly and indirectly, aided and abetted and, unless enjoined, will continue to aid and abet violations of Sections 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from:

- A. Violating, directly or indirectly, Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)];
- B. Participating on behalf of a government entity in the decision to select or retain an investment adviser or broker-dealer for any government entity;
- C. Any involvement with managing any public pension or making investment recommendations to such entities; and

D. Participating on behalf of a government entity in the selection of underwriters or municipal advisers for any contemplated or actual offering of municipal securities.

III.

Issue an Order requiring Defendant, pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)], to pay civil monetary penalties.

IV.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

V.

Grant such other and further relief as may be necessary and appropriate.

This 15th day of March, 2019.

RESPECTFULLY SUBMITTED,

/s/ M. Graham Loomis
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