

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**LINDNER CAPITAL ADVISORS, INC.,
and ROBERT J. LINDNER,**

Defendants.

Civil Action File No.

JURY DEMAND

COMPLAINT

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

SUMMARY

1. In 2018 and 2019, Lindner Capital Advisors, Inc. (“LCA”), a registered investment adviser based in Marietta, Georgia, and its founder and principal, Robert J. Lindner, made materially false statements in a report filed with the Commission and given to clients, and failed to implement compliance

procedures reasonably designed to prevent violations of the Investment Advisers Act of 1940 (“Advisers Act”) and the rules promulgated thereunder.

2. Among other things, an examination of LCA by the Commission’s examination staff in early 2018 found several compliance deficiencies. In May 2018, the Commission staff sent a letter to LCA, outlining those deficiencies. LCA and Lindner adopted several new policies to address the deficiencies, which addressed oversight and approval of client loans to LCA-affiliated persons, quarterly review of LCA’s outstanding debt and the need for revised disclosure of the firm’s financial condition. Subsequently, however, from August 2018 to December 2019, LCA and Lindner failed to implement and enforce those compliance policies and procedures.

3. In addition, in a report on Form ADV, required to be filed and filed with the Commission on April 29, 2019, and provided to clients, LCA and Lindner disclosed that “LCA has no financial condition that is reasonably likely to impair its ability to meet contractual obligations to clients.” In fact, this statement was false because, at the time and throughout the remainder of 2019, LCA was heavily leveraged and increasingly unable to meet its basic operating expenses, resulting in a sale of assets by December 2019. Additionally, the

Form ADV falsely stated that LCA owned, paid for, and was the beneficiary of a life insurance policy on Lindner's life, although no such life insurance policy existed.

VIOLATIONS

4. Defendant LCA has engaged in acts and practices that violated Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2), (4) and 80b-7], and Rule 206(4)-7 [17 C.F.R. § 275.206(4)-7] thereunder. Defendant Lindner has engaged in acts and practices that violated Sections 206(1), 206(2), and 207 of the Advisers Act and aided and abetted LCA's violations of Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14], to enjoin the defendants 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.

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

7. Defendants, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

8. Venue is proper in this district because certain of the transactions, acts, practices, and courses of business constituting violations of the Advisers Act occurred in the Northern District of Georgia. In addition, Defendant Lindner resides in the Northern District of Georgia and Defendant LCA maintains offices in the Northern District of Georgia.

9. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

DEFENDANTS

10. **Lindner Capital Advisors, Inc.** is a Georgia corporation founded and incorporated in 1996 by Lindner. LCA has been registered as an investment adviser with the Commission since September 17, 1997. The

company is headquartered in Marietta, Georgia. On December 23, 2019, LCA entered into an Asset Purchase Agreement to sell its interest in most of its client accounts to a third party entity.

11. LCA purports to provide turnkey asset management and asset-allocated model portfolios to clients who are referred through representatives of unaffiliated, independent registered investment advisers and broker/dealers. LCA also provides these same services to clients obtained directly through its own investment adviser representatives.

12. As of December 31, 2019, LCA reported a total of \$320 million of assets under management, including \$304 million in 1,101 discretionary accounts and \$16 million in 85 non-discretionary accounts.

13. **Robert J. Lindner**, age 69, resides in Marietta, Georgia. He is the founder, principal, and majority owner of LCA and serves as the firm's President, Chief Executive Officer, and Chairman.

VIOLATIVE CONDUCT

LCA's Declining Financial Condition

14. Between 2007 and 2008, LCA experienced a 23% decline in assets under management, a decrease of approximately \$120 million. Over the

following years, LCA's operating results suffered, with its retained loss increasing to \$2.5 million by the beginning of 2015.

15. Due to the resulting decrease in revenues, LCA and Lindner began to rely heavily on commercial and private debt to finance LCA's operations. By the end of 2017, LCA's borrowings were approximately \$1.7 million. Approximately \$1.3 million of these borrowings were loans to LCA from Lindner who had, in turn, personally borrowed funds from LCA advisory clients to fund the loans.

16. LCA's financial situation continued to deteriorate during 2018 and 2019, including increased annual net losses and borrowings. By December 2019, LCA's borrowings had increased to \$2.2 million, an estimated 50% of its annual revenue.

The 2018 Deficiency Letter

17. In early 2018, the Commission's Office of Compliance Inspections and Examinations conducted an examination of LCA. In May 2018, the Commission's examination staff issued a deficiency letter to LCA ("Deficiency Letter"), which identified deficiencies with regard to LCA's obligation to have

and implement procedures reasonably designed to prevent violations of the Advisers Act and rules promulgated thereunder, and other issues.

18. One of the items identified in the May 2018 Deficiency Letter concerned inaccuracies regarding LCA's financial condition in a Form ADV dated March 2017. Form ADV is a report LCA was required to file with the Commission. In that Form ADV, LCA reported that it had no financial condition that was "reasonably likely to impair its ability to meet contractual obligations to clients."

19. The May 2018 Deficiency Letter, however, noted that LCA was heavily leveraged, and that large loans made by Lindner to LCA (approximately \$1.2 million) were in part funded by money loaned to Linder by LCA clients, often for short terms and at high interest rates. The letter also noted LCA's significant deficit in stockholders' equity due to recurring losses over the previous years (approximately \$2.5 million).

20. The May 2018 Deficiency Letter also identified LCA's failure to enforce certain written compliance policies and procedures. The letter pointed out that Linder, as a result of his personal borrowings from LCA clients, violated an LCA policy requiring Compliance department approval before an

LCA representative obtains a loan from an LCA client, as well as a policy requiring approval before representatives hold any client cash or securities.

LCA's New Procedures

21. On June 15, 2018, LCA and Lindner responded to the Deficiency Letter. LCA and Lindner agreed to implement additional compliance procedures regarding any future client loans and assessment and reporting of LCA's financial condition.

22. Specifically, the new procedures adopted by LCA generally required that any borrowings from an LCA client by an LCA-affiliated person must be documented in writing and approved by LCA's Chief Compliance Officer ("CCO"), who would review all such loan requests for compliance with custody, fiduciary duty and suitability requirements.

23. The new procedures also required the establishment of a Compliance Committee, composed of LCA's CEO, CCO, and CFO (or their designees), to review, on a quarterly basis, LCA's total borrowings. The Compliance Committee was required to determine whether LCA's total borrowing amount would likely impair LCA's ability to meet its contractual obligations to clients, and if so, amend Form ADV Part 2A (specifically Item

18. Financial Information) with the appropriate disclosures.

24. The new procedures generally required disclosure if LCA's total borrowings exceeded 25% of LCA's cumulative revenue for the prior four financial quarters.

25. The new procedures imposed specific documentation requirements, such as a record of each loan document, including the loan agreement or promissory note; a record of each loan review, along with an indication of the date of review and whether approval was granted; and a record of the Compliance Committee's review of total outstanding debt and determination related to Form ADV disclosures.

26. Beginning in August 2018 and continuing throughout 2019, LCA and Linder largely disregarded these new procedures. As a result, LCA failed to implement compliance procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder.

27. Client loans Lindner personally received in late 2018 and 2019 (totaling approximately \$700,000) were not adequately documented or approved by LCA's CCO, and thus failed to comply with LCA's procedures.

28. LCA failed to create or maintain any documentary evidence that LCA's client loan approval procedures were followed, despite the specific documentation requirements contained in the new procedures.

29. The Compliance Committee failed to meet on a quarterly basis, as required by the procedures.

30. Indeed, upon information and belief, the Compliance Committee was not constituted during 2018 or 2019, never met, and never considered LCA's total borrowings in light of LCA's Form ADV disclosures.

31. LCA and Lindner also failed to comply with the firm's procedures regarding Form ADV disclosure. The procedures specifically required LCA to amend its Form ADV disclosures if the firm's borrowings exceeded 25% of the firm's cumulative revenue for the four most recent quarters. LCA's borrowings exceeded this threshold throughout the end of 2018 and during 2019.

32. At December 31, 2018, LCA's borrowings were \$2.0 million, approximately 33% of its revenue of \$6.0 million for the four quarters ended December 31, 2018.

33. As of September 30, 2019, LCA's borrowings were \$2.3 million, approximately 50% of LCA's estimated revenue of \$4.6 million for the four quarters ended September 30, 2019.

34. Despite these high borrowing levels, LCA and Lindner never amended their Form ADV Part 2A disclosure, as required by their own policies.

Misrepresentations in LCA's 2019 Form ADV

35. In Form ADV Part 2A filed on April 29, 2019, LCA and Lindner misrepresented LCA's financial condition and the existence of a life insurance policy on Lindner's life for LCA's benefit.

The Financial Condition Misrepresentation

36. Form ADV Part 2A Item 18 (Financial Information) requires investment advisers with discretionary authority of client funds to disclose "any financial condition that is reasonably likely to impair (the IA's) ability to meet contractual commitments to clients." On April 29, 2019, LCA made the following disclosure in Item 18:

As a registered investment advisor that maintains discretionary authority over client accounts, LCA has no financial condition that is reasonably likely to impair its ability to meet contractual obligations to clients.

37. This disclosure was false, as LCA's financial condition was reasonably likely to impair its client obligations. Pursuant to LCA's own compliance procedures, LCA's high level of borrowing (\$2.2 million at March 2019), which exceeded 25% of its previous four quarters of revenue, required additional disclosure. Further, LCA's operating results continued to be inadequate to support its operations. LCA's retained deficit was \$2.6 million as of March 2019, having increased each year from a level of \$2.3 million in 2015. LCA also incurred a net loss for four out of the five years between 2015 and 2019.

38. By December 31, 2019, LCA's borrowings were approximately \$2.2 million (approximating 50% of its annual revenue), with an annual loss of approximately \$480,000. Included in the \$2.2 million of borrowings were loans of \$1.8 million to LCA from Lindner, who funded these loans with short-term personal loans from LCA clients. LCA also faced increasing difficulty in finding new sources of capital and had been refused financing on more than 20 occasions. Notwithstanding that LCA's financial condition worsened throughout 2019, LCA and Lindner failed to update this disclosure as required.

39. By December 2019, LCA was unable to meet basic operating expenses. LCA had run out of cash and had missed vendor and other payments, including payroll and office space rent.

40. By late December 2019, LCA agreed to sell all of its assets, including client accounts and contracts related thereto, to a third party, who made a loan to LCA to maintain operations and assumed day-to-day management of LCA's operations, pending completion of the asset sale, which is expected by the end of 2020.

The Life Insurance Misrepresentation

41. LCA and Lindner also made the following disclosures in Item 18 of Part 2A of its Form ADV filed on April 29, 2019:

LCA's CEO, Robert Lindner, has extended a loan to LCA, the proceeds of which are used to fund part of LCA's operating expenses. ... LCA owns, pays for and is the beneficiary of a life insurance policy on the life of Mr. Lindner in an amount greater than any obligation under the loan agreement.

42. This disclosure was false because, on information and belief, no such policy ever existed.

COUNT I

**Violations of Sections 206(1) of the Advisers Act
[15 U.S.C. §§ 80b-6(1)]**

43. Paragraphs 1 through 42 are hereby realleged and are incorporated herein by reference.

44. From at least 2018 through the present, Defendants LCA and Lindner, acting as investment advisers, using the mails and the means and instrumentalities of interstate commerce, directly and indirectly, employed devices, schemes and artifices to defraud one or more advisory clients and/or prospective clients.

45. Defendants LCA and Lindner knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendants LCA and Lindner acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

46. By reason of the foregoing, Defendants LCA and Lindner, directly and indirectly, violated Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)], and, unless enjoined, Defendants will continue to violate such violations.

COUNT II

**Violations of Section 206(2) of the Advisers Act
[15 U.S.C. § 80b-6(2)]**

47. Paragraphs 1 through 46 are hereby realleged and are incorporated herein by reference.

48. From at least 2018 through the present, Defendants LCA and Lindner, acting as investment advisers, by the use of the mails and the means and instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices, and courses of business which would and did operate as a fraud and deceit on one or more advisory clients and/or prospective clients.

49. By reason of the foregoing, Defendants LCA and Lindner, directly and indirectly, violated, and, unless enjoined, Defendants LCA and Lindner will continue to violate, Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT III

**Violations of Section 206(4) and Rule 206(4)-7 of the Advisers Act
[15 U.S.C. § 80b-6(4) & 17 C.F.R. § 206(4)-7]**

50. Paragraphs 1 through 49 are hereby realleged and are incorporated herein by reference.

51. From at least 2018 through the present, Defendant LCA, acting as

an investment adviser, using the mails and the means and instrumentalities of interstate commerce, directly and indirectly, engaged in fraudulent, deceptive or manipulative practices or courses of business, and failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by LCA and its supervised persons, in violation of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 [17 C.F.R. § 206(4)-7] thereunder.

52. By engaging in the foregoing conduct, defendant LCA violated and unless enjoined will continue to violate, Section 206(4) and of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 [17 C.F.R. § 206(4)-7] thereunder.

COUNT IV

Violations of Section 207 of the Advisers Act [15 U.S.C. § 80b-7]

53. Paragraphs 1 through 52 are hereby realleged and are incorporated herein by reference.

54. From at least 2018 to the present, Defendants LCA and Lindner, using the mails and the means and instrumentalities of interstate commerce, directly and indirectly, willfully made untrue statements of material fact or willfully omitted to state material facts required to be stated in a report filed

with the Commission.

55. Defendants LCA and Lindner knowingly, intentionally, and/or recklessly made the aforementioned untrue statements or omitted the material facts required to be stated in such a report. In engaging in such conduct, Defendants LCA and Lindner acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

56. By reason of the foregoing, Defendants LCA and Lindner, directly and indirectly, violated, and, unless enjoined, Defendants LCA and Lindner will continue to violate, Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

COUNT V

Aiding and Abetting

57. Paragraphs 1 through 56 are hereby realleged and are incorporated herein by reference.

58. Defendant Lindner substantially assisted LCA's violations of Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4) and 80b-7] and Rule 206(4)-7[17 C.F.R. § 206(4)-7] thereunder set forth in Counts I through IV above, by, among other things, directing LCA to engage in business while failing to implement its procedures,

and making or causing LCA to make the misrepresentations and omissions.

59. Lindner knew or was reckless in not knowing that the disclosures were false and knew that LCA was failing to comply with the required procedures. Defendant Lindner knowingly, intentionally, and/or recklessly provided substantial assistance to the violations.

60. As a result of the conduct described above, Lindner aided and abetted LCA's violations of Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4) and 80b-7] and Rule 206(4)-7[17 C.F.R. § 206(4)-7] thereunder set forth in Counts I through IV above, and unless enjoined will continue to aid and abet such violations.

PRAYER FOR RELIEF

The Commission respectfully requests that this Court:

1. Find that Defendants committed the violations alleged;
2. Enter injunctions, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendants from violating, directly or indirectly, or aiding and abetting violations of the law and rules alleged in this complaint;
3. Order Defendants to pay civil penalties, pursuant to Section 209(e)

of the Advisers Act [15 U.S.C. § 80b-9(e)] in an amount to be determined by the Court;

4. Issue an Order retaining 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; and

5. Order such other relief as is necessary and appropriate.

JURY TRIAL DEMAND

The Commission hereby demands a jury trial as to all issues so triable.

This 25th day of September, 2020.

Respectfully submitted,

/s/ William P. Hicks

William P. Hicks

Senior Trial Attorney

Georgia Bar No. 351649

hicksw@sec.gov

M. Graham Loomis

Regional Trial Counsel

Georgia Bar No. 457868

loomism@sec.gov

United States Securities & Exchange Commission
950 E. Paces Ferry Road NE
Suite 900
Atlanta, GA 30326
404-842-7600