

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 62189 / May 27, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13914**

**In the Matter of**

**Joseph Milanowski**

**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 15(b) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**  
**AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Joseph Milanowski (“Milanowski” or “Respondent”)

**II.**

After an investigation, the Division of Enforcement alleges that:

**A.     RESPONDENT**

1.     Joseph Milanowski, age 48, is a resident of Henderson, Nevada. He was the President and COO of USA Commercial Mortgage Company, dba USA Capital (“USA Capital”), a mortgage broker based in Las Vegas, Nevada from 1998 to April 2006 and a director from 1998 to March 2007. He was affiliated with a registered broker-dealer, USA Securities, LLC, from September 2001 to December 2005 and held Series 22, 39, and 63 NASD licenses. Milanowski was also an owner and the sole manager of USA Investment Partners, LLC (“USAIP”) from November 1, 1999 until May 1, 2001 and from August 2005 to March 28, 2007, when it was forced into involuntary bankruptcy. USAIP was the manager of USA Capital Realty Advisors, LLC, which managed USA Capital Diversified Trust Deed Fund (“Diversified Fund” or the “Fund”) and also managed USA Capital First Trust Deed Fund, LLC, an investment vehicle that made a registered securities offering. Milanowski was forced into involuntary bankruptcy on May 29, 2007.

B. THE DISTRICT COURT PROCEEDINGS

1. On April 23, 2008, the Commission filed a Complaint in the United States District Court for the District of Nevada (Las Vegas Division). The case was entitled Securities and Exchange Commission v. Joseph Milanowski, Case No. CV 08-0511-KJD-PAI.

2. On June 23, 2009, the Commission filed a Motion for Summary Judgment against Milanowski. On March 15, 2010, the District Court granted the Commission's Motion for Summary Judgment and issued an Order constituting its Findings of Fact and Conclusions of Law. On April 14, 2010, the District Court entered an Amended Final Judgment of Permanent Injunction, Disgorgement, Civil Penalty and Officer and Director Bar against Milanowski. The Amended Final Judgment enjoins Milanowski from violating the registration provisions of Section 5 of the Securities Act of 1933 ("Securities Act") together with the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

3. In the Amended Final Judgment, the District Court imposed a civil penalty of \$100,000 against Milanowski. The Court ordered Milanowski to disgorge \$80,900,000. The Court further permanently barred Milanowski, pursuant to Section 21(d)(2) of the Exchange Act, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act. This Court expressly found that Milanowski's conduct in the case before it violated Section 10(b) of the Exchange Act and demonstrated his unfitness to serve as an officer or director of any public company

4. The District Court found in the Order constituting its Finding of Fact and Conclusions of Law that:

a. The Complaint alleged that Defendant Milanowski, while acting as Director and Chief Operating Officer of the Diversified Fund and/or the owner/manager of USAIP and other securities and investment companies, defrauded his investors by offering and selling securities fraudulently, conducting unregistered offerings, making misrepresentations to investors about the Fund in prospectuses, sales materials, and monthly account statements, and misappropriating and/or misusing the Fund's offering proceeds.

b. From May 2000 to September 27, 2005, the Diversified Fund raised \$150 million, net of redemptions, from 1,900 investors. Although the Fund stopped sales to new investors in the fourth quarter of 2004, the Fund allowed members to reinvest their distributions in the Fund until September 27, 2005, when USA Capital announced that it was liquidating the Fund. Through a series of prospectuses dated from May 2000 to December 2004, the Diversified Fund made a continuous offering of membership units ranging in price from \$5,000–\$25,000 per unit. The maximum number of units increased over the course of the offering from approximately 3,000 to 27,000 units

c. Milanowski made three principal representations to investors in the Diversified Fund. First, he represented to his investors in the Fund that all loans would be secured by first deeds of trust on real property. Second, he represented that the Fund would make no loans to its Manager, USA Capital Realty Advisors, LLC, Milanowski himself or to any affiliate of either. Third, Milanowski represented that once the Fund had over \$100 million in assets (which occurred in early 2003) the Fund would (a) not make any loan in excess of \$20 million, (b) not make any loan that would exceed 15% of its then total outstanding loans; and (c) have no more than 25% of its outstanding loans made to a single borrower or affiliate of that borrower.

d. Notwithstanding these representations, Milanowski caused the Fund to make at least seven loans totaling \$86.9 million that were not secured by a first deed of trust, that were made or likely made to USAIP or other affiliates of Milanowski and which loans became non-performing or had defaulted. When an independent accounting firm required that Milanowski disclose these affiliations in audited financial statement to Fund investors, Milanowski shut the Fund down on September 27, 2005. As of November 30, 2006, \$86.9 million or 94% of the Fund's outstanding portfolio were loans that were not secured by first trust deeds or loans that were made to USAIP, Milanowski or an affiliate thereof. The Fund filed for bankruptcy protection on April 13, 2006.

e. The District Court found that some seven loans were made by Milanowski in contravention of the representations in the Fund prospectus: (1) the 10-90 loan; (2) the Sheraton Loan; (3) the Epic loan; (4) the Colt #1 loan, (5) the Colt #2 loan, (6) the Colt CREC loan and (7) the Fiesta loan.

f. The District Court further found that the shares in the Fund sold by Milanowski were not registered and that he could not rely on the intrastate exemption set forth in Section 3(a)(11) of the Securities Act. Moreover, the misrepresentations made by Milanowski in the prospectus and sales materials were material and constituted violations of the antifraud provisions of the securities laws, including Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. The Court also found that Milanowski acted with the requisite scienter regarding these misrepresentations.

g. Accordingly, the District Court enjoined Milanowski from violating the registration provisions of Section 5 of the Securities Act and also enjoined him from future violations of the antifraud provisions of Section 17(a) of the Securities Act and of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. The Court further barred Milanowski from acting as an officer or director of a public company.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Because this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedures Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy  
Secretary

## SERVICE LIST

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission shall serve a copy of the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Order") on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

The Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Gregory C. Glynn, Esq.  
Securities and Exchange Commission  
Los Angeles Regional Office  
5670 Wilshire Blvd., 11th Floor  
Los Angeles, CA 90036

Mr. Joseph Milanowski  
8520 Chiquita Drive  
Las Vegas, NV 89128

Brent Baker, Esq.  
Parsons, Behle & Latimer  
201 South Main Street  
Suite 1800  
Salt Lake City, UT 84111

(Counsel for Joseph Milanowski)