

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4725 / July 6, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32725 / July 6, 2017

ADMINISTRATIVE PROCEEDING
File No. 3- 18059

In the Matter of

**LANDWIN MANAGEMENT,
LLC AND MARTIN LANDIS**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e), 203(f)
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION 9(f)
OF THE INVESTMENT COMPANY ACT OF
1940, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Landwin Management, LLC and Martin Landis (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(f) of the Investment Company Act Of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. For over three years, Landwin Management LLC ("Landwin"), an unregistered investment adviser, and Martin Landis ("Landis"), Landwin's indirect majority shareholder and principal officer, used assets of Landwin Partners Fund I, LLC (the "Fund"), a proprietary real estate investment fund, in a manner not authorized by the Fund's operating documents. According to the Fund's disclosures, it was to acquire a portfolio of real estate and/or real estate-related investments. Yet from June 2011 through August 2014, Landwin and Landis also purchased for the Fund securities in publicly-traded bonds and stocks unrelated to real estate. Although the Fund's financial statements included a line item for securities, Landwin and Landis did not disclose to investors that the securities were stocks and bonds unrelated to real estate. As a result of this conduct, Landwin and Landis violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8. Additionally, from at least January 2011 through September 2015, the Fund operated as an investment company as defined by Section 3(a)(1)(C) of the Investment Company Act without being registered with the Commission. The Fund engaged in the business of investing and trading in securities, and more than 40% of the Fund's total assets (other than Government securities and cash items) were securities interests, including limited partnership interests, loan notes, and publicly-traded stocks and bonds. As a result, the Fund violated Section 7(a) of the Investment Company Act because it did not register with the Commission as an Investment Company, and Landwin and Landis caused the Fund's registration violation.

Respondents

2. Landwin Management, LLC, a Delaware limited liability corporation based in Encino, California, is an unregistered investment adviser. Landwin is managed by Sylvia, Inc. ("Sylvia"), a California corporation. Landwin serves as an investment adviser to Landwin Fund Partners I, LLC and other proprietary investment funds.

3. Martin Landis, 83, resides in Los Angeles, California. Landis is Landwin's founder and, along with his wife, its indirect majority shareholder. Landis and his wife are officers of Sylvia and trustees of the Landis Family Trust, which is the sole shareholder of Sylvia. Landis was the CEO of Landwin until mid-2015, when he became Landwin's managing member and Landwin's office manager became its CEO. At all relevant times, Landis was responsible for the management of Landwin's business.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Other Relevant Entity

4. Landwin Partners Fund I, LLC, a Delaware limited liability company, is currently a private fund formed by Landis in 2006 to invest in real estate-related investments. It has never been registered with the Commission as an investment company in any capacity.

Background

5. Landis formed the Fund on March 31, 2006. In 2006 and 2007, Landwin and Landis offered and sold interests in the Fund, pooling together over \$20 million from 327 investors, including Landis who invested \$3.2 million.

6. Landwin and Landis control the Fund's operations and the selection of its investments. Investors have no right to participate in the management of the Fund.

7. Landwin and Landis are entitled to performance-based profit sharing income of 30% of all distributions after the Fund investors receive their capital contribution plus a 7% return, but have not received income from the Fund to date.

Facts

The Fund's Disclosures and Investments

8. The Fund's PPM and other offering documents disclose that Landwin "[g]enerally ... will seek to acquire a portfolio of real estate and/or real estate-related investments...." Example investments in the PPM include mortgage loans and investments in retail shopping centers, office buildings, industrial properties, multi-family properties, mixed-use properties and "other properties selected in the sole discretion of our manager [Landwin]."

9. From April 2007 through August 2014, Landwin and Landis invested in real estate-related opportunities for the Fund by (a) purchasing almost \$5.84 million in limited partnership interests in two Landwin-managed limited liability companies that hold commercial real estate assets, (b) using almost \$2.7 million to loan money to seven real estate-related entities, and (c) investing almost \$4 million in a commercial property. The Fund held the majority of its assets in cash and money market accounts.

10. From at least June 2011 through August 2014, however, Landwin and Landis also used up to \$2.4 million in Fund cash to purchase short-term bank, corporate and sales tax revenue bonds and preferred and common shares of stock that were unrelated to real estate. For example, in 2014, the Fund acquired about \$1.1 million – or about 5% of the Fund's money – of non-controlling interests in various companies, including oil and gas, media, nutrition, insurance and financial companies.

11. The Fund's offering documents did not authorize investments in anything other than real estate-related opportunities and did not disclose any potential risks associated with investments other than real estate.

12. Landwin and Landis never disclosed to investors that they invested Fund assets in publicly-traded bonds and stocks unrelated to real estate. Although Landwin sent out newsletters to the Fund investors describing the Fund’s real estate investments, the newsletters failed to discuss the non-real estate investments. Similarly, while annual financial statements sent to investors included line items for ‘securities in brokerage’ and dividends, Landwin and Landis did not disclose that the securities were stocks and bonds unrelated to real estate.

Failure to Register with the Commission as an Investment Company

13. Landwin and Landis also caused the Fund’s non-compliance with the Investment Company Act. The Fund PPM discloses that Landwin “will not cause the Partners Fund to be engaged primarily in the business of investing in securities, nor will it knowingly permit the Partners Fund to invest in, own, or hold securities having a value exceeding 40 percent of the value of the total assets of the Partners Fund.”

14. Section 3(a)(1) of the Investment Company Act defines “investment company” to mean, among other things, any issuer that “is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities” or “is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer’s total assets . . . on an unconsolidated basis.”

15. The Fund’s investments in real estate-related limited partnership interests, mortgage loans, and publicly traded stocks and bonds, each fall under the definition of a security in Section 3(a)(2) of the Investment Company Act. Outside independent advisers, who did not have discretionary authority to invest Fund assets, suggested some of the stocks and bonds that Landwin and Landis approved and purchased for the Fund.

16. Beginning in January 2011 through September 2015, between 48% and 100% of the Fund’s total assets (exclusive of Government securities and cash items) were comprised of investment securities.

Year	Range of Securities Assets	Average Real Estate Assets
2011	48% to 100%	0%
2012	61%	39%
2013	60% to 100%	0% (starting 2/2013)
2014	100%	0%
01/2015 - 09/2015	100%	0%

17. The Fund did not meet any statutory exemption or exclusion from the definition of an “investment company,” and did not seek an order from the Commission declaring that it was primarily engaged in a business other than that of investing, reinvesting, owning, holding, or

trading in securities, or exempting it from complying with any provisions of the Investment Company Act or the rules thereunder. Thus, the Fund should have registered with the Commission as an investment company.

Violations

18. As a result of the conduct described above, Landwin and Landis willfully² violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” Scier is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

19. As a result of the conduct described above, Landwin and Landis willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which makes it unlawful for any investment adviser to a pooled investment vehicle to “[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle” or “engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.” A violation of Section 206(4) and the rules thereunder does not require scier. *Steadman*, 967 F.2d at 647.

20. As a result of the conduct described above, Landwin and Landis caused the Fund’s violations of Section 7(a) of the Investment Company Act, which prohibits an investment company not registered with the Commission from engaging in any business in interstate commerce, including offering, selling, purchasing, or redeeming interests in the investment company.

Undertakings

21. Before the entry of this Order, and pursuant to an agreement with Fund investors, Respondents Landwin and Landis had begun winding down the operations of the Fund and shall continue that process. As part of that process, Landis and Landwin had discontinued the solicitation or acceptance of any investments for the Fund from existing or new investors and had discontinued seeking investments for the Fund to invest in. Respondents shall continue not to solicit or accept any new investments for the Fund and shall continue not to invest the Fund’s money in any new investments.

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

22. Within thirty (30) days of entry of this Order, Respondents Landwin and Landis shall engage, at their own expense, an independent monitor (“Monitor”) who is not unacceptable to the Commission staff, to:

- i. oversee the sale of the properties underlying the Fund’s investments;
- ii. oversee the completion of the winding down of the Fund’s operations;
- iii. submit to the Commission staff a quarterly report describing the status of the wind down and the status of all assets of the Fund; and
- iv. report any potential irregularities or misconduct involving the Fund or Landwin to the Commission staff on an ongoing basis.

23. Respondents Landwin and Landis shall fully cooperate with the Monitor and provide the Monitor with access to any and all accounting and financial records and other documents and information the Monitor may request for review in the course of his/her/its duties.

24. Where practicable, Respondents Landwin and Landis shall provide the Monitor with five (5) days advance notice of all transactions involving more than \$50,000 of the Fund’s assets; and for transactions where such notice is not practicable, Landwin and Landis shall provide the Monitor with notice of the completed transaction within two (2) business days after completion.

25. Respondents Landwin and Landis shall retain the Monitor, at their own expense, from the date of the engagement of the Monitor until such date when the Fund has ceased operations.

26. Notice to Investors: Within thirty (30) days of entry of this Order, Landwin and Landis shall provide a copy of the Order to each of the Fund investors via mail, e-mail, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

27. Respondents Landwin and Landis shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to C. Dabney O’Riordan, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Landwin and Landis shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder and Section 7(a) of the Investment Company Act;

B. Respondents Landwin and Landis are censured.

C. Respondents Landwin and Landis on a joint and several basis shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Landwin and Landis as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to C. Dabney O'Riordan, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents Landwin and Landwin agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by,

offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent Landwin and/or Respondent Landis by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondents Landwin and Landis shall comply with the undertakings enumerated in Section III.21 through III.27 above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Landis, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Landis under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Landis of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary