

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83191 / May 9, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33093 / May 9, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18476

In the Matter of

BARCELONA STRATEGIES, LLC
and MARIO HINOJOSA

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15B AND 21C OF
THE SECURITIES EXCHANGE ACT OF 1934
AND SECTION 9(b) 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 15B and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Respondents Barcelona Strategies, LLC (“Barcelona”) and Mario Hinojosa (“Hinojosa”).

II.

In anticipation of the institution of these proceedings, Respondents Barcelona and Hinojosa (together “Respondents”) have each submitted an Offer 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 the Respondents 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 15B and 21C of the Securities Exchange Act of 1934 and Section 9(b) 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 finds that:

Summary

These proceedings arise out of breaches of fiduciary duty by Barcelona, a municipal advisor based in Edinburg, Texas, and Hinojosa, Barcelona's sole member and associated person. Barcelona acted as the municipal advisor to the La Joya Independent School District ("LJISD") on three bond offerings between January 2013 and December 2014, earning \$386,876.52 in municipal advisory fees. During LJISD's process of selecting Barcelona as its municipal advisor, Barcelona and Hinojosa overstated and misrepresented their municipal finance experience to LJISD. Barcelona and Hinojosa also failed to disclose that Hinojosa was employed by the attorneys who served as bond counsel for all three bond offerings. By misrepresenting their municipal finance experience and failing to disclose the conflict of interest with bond counsel, Barcelona and Hinojosa violated the federal securities laws and the rules of the Municipal Securities Rulemaking Board ("MSRB").

Respondents

1. Barcelona Strategies, LLC is a limited liability company located in Edinburg, Texas. In June 2012, Barcelona registered with the Commission as a municipal advisor under the temporary registration rules that were effective as of October 1, 2010. In December 2014, Barcelona registered with the Commission as a municipal advisor under Form MA under the final registration rules that were effective July 1, 2014. Barcelona registered as a municipal advisor with the MSRB in August 2014. Barcelona filed its Notice of Withdrawal from Registration as a Municipal Advisor in December 2017 and its deregistration was effective February 12, 2018. Barcelona has no disciplinary history with the Commission.

2. Mario Hinojosa, age 57, is a resident of Mission, Texas and the 100% owner, President, and sole employee of Barcelona. Hinojosa has been an associated person of Barcelona since June 2012 and was engaged in municipal advisory activities on Barcelona's behalf at the time of the conduct at issue. Hinojosa was employed by the law firm of Munoz & Frankel (the "Firm") from at least 2009 through 2014. Hinojosa has also been employed by The Munoz Law Firm – Sergio Munoz Jr. & Associates ("Munoz & Associates") from at least 2012 through the present. Hinojosa has no disciplinary history with the Commission.

Other Relevant Individuals and Entity

3. Sergio Munoz, Jr. ("Munoz"), age 35, is resident of Mission, Texas. Munoz is licensed to practice law in the state of Texas and has been a member of the Texas House of Representatives since 2011. Munoz currently runs and operates The Munoz Law Firm – Sergio Munoz Jr. & Associates ("Munoz & Associates") in Edinburg, Texas. Munoz is also partners with Martin Frankel in the law firm Munoz & Frankel (the "Firm").

4. Martin Sheldon Frankel (“Frankel”), age 67, is a resident of Little Elm, Texas. Frankel is a licensed attorney in the state of California and has licenses to practice in Ohio and New York that are currently inactive. Frankel partners with Munoz in the Firm.

5. LJISD is a school district located in Hidalgo County and headquartered in La Joya, Texas. During 2013 and 2014, LJSID conducted three municipal bond offerings. LJISD retained Barcelona as a municipal advisor for three of its bond offerings.

Background

6. In or around January 2009, the Firm hired Hinojosa. Hinojosa is not a licensed attorney. Rather, he performed paralegal and administrative services for the Firm. Beginning in 2009 and continuing through 2014, the Firm served as bond counsel to several municipalities, including the LJISD, on numerous municipal bond offerings. During this time, Hinojosa was also employed by Munoz & Associates.

7. In June 2012, at Frankel’s suggestion, Hinojosa formed Barcelona and registered it as a municipal advisor with the Commission. Hinojosa had no advisory experience—municipal or otherwise—when he formed Barcelona. Throughout the relevant time period, Barcelona shared office space with the Firm and Munoz & Associates. Additionally, Barcelona’s registered address with both the Commission and the Texas Secretary of State is the same address as the Firm and Munoz & Associates.

8. In an attempt to gain municipal advisory clients, Hinojosa drafted a brochure for Barcelona called “Statement of Qualifications.” Hinojosa circulated it to various municipalities, including LJISD, to market Barcelona’s purported municipal experience. The brochure was false and misleading in multiple respects. First, the brochure claimed that the “professionals” at Barcelona have participated in several municipal offerings and have municipal finance experience in 14 different municipal bond issuances and that Hinojosa had four years of municipal finance experience. Hinojosa was Barcelona’s only employee and had never served as advisor—municipal or otherwise—on any bond issuances. Second, the brochure did not mention that Hinojosa’s municipal finance experience was limited to providing administrative and paralegal services to the Firm, the current bond counsel for LJSID. Third, the brochure failed to mention that Hinojosa already possessed a financial interest in the LJSID bond offerings by virtue of his status as an employee of the Firm. Fourth, the brochure listed Hinojosa’s home address as Barcelona’s office address instead of using its actual location—the office it shares with the Firm and with Munoz & Associates.

9. On November 11, 2012, Barcelona and LJISD executed an agreement whereby Barcelona agreed to provide municipal advisory services to LJISD for its bond offerings. Barcelona ultimately served as LJISD’s municipal advisor for three bond refunding offerings: two that closed in 2013 and one that closed in 2014. LJISD paid Barcelona \$386,876.52 in municipal advisory fees on these transactions.

10. The Firm served as bond counsel for all three of these LJISD offerings. While serving as municipal advisor to LJISD on these offerings, Hinojosa was employed by both the Firm and Munoz & Associates.

11. During the time that Hinojosa and Barcelona provided municipal advisory services to LJSID: (a) they never disclosed Hinojosa's affiliations with the Firm and with Munoz & Associates; and (b) misrepresented Barcelona's and Hinojosa's municipal advisory experience.

Violations

12. Municipal advisors include financial advisers who assist municipal entities with bond offerings, reinvestment of bond proceeds, and the structuring and pricing of related products. Commission Report on the Municipal Securities Market (July 31, 2012) at 45, available at <http://sec.gov/news/studies/2012/munireport073112.pdf>. In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which included provisions for the registration and regulation of municipal advisors. The municipal advisor registration requirements and regulatory standards are intended to mitigate some of the problems observed with the conduct of some municipal advisors, including undisclosed conflicts of interest and failure to place the duty of loyalty to their municipal entity clients ahead of their own interests. See Registration of Municipal Advisors, SEC Release No. 34-70462 (September 20, 2013) at 6.

13. Section 15B(a)(5) of the Exchange Act provides: "No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products [or] the issuance of municipal securities . . . in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice."

14. Section 15B(c)(1) of the Exchange Act, as amended by Section 975 of the Dodd-Frank Act, imposes upon municipal advisors and their associated persons a fiduciary duty to their municipal entity clients, and prohibits them from engaging in any act, practice, or course of business that is not consistent with their fiduciary duty. It is well settled that fiduciaries must act in utmost good faith, use reasonable care to avoid misleading clients, and fully and fairly disclose conflicts of interest. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963). Issues that affect a fiduciary's economic interest pose a conflict and must be disclosed to the client. SEC v. Wall Street Publ'g Inst., Inc., 591 F. Supp. 1070, 1084 (D.D.C. 1984). A fiduciary's failure to disclose such a conflict is a breach of the fiduciary duty that violates the federal securities laws. Vernazza v. SEC, 327 F.3d 851, 859 (9th Cir. 2003); Belmont v. MB Inv. Partners, Inc., 708 F.3d 470 (3d Cir. 2013).

15. MSRB Rule G-17 states that, in the conduct of its municipal securities business, every broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. Negligence is sufficient to establish a violation of MSRB Rule G-17. In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Inc., Exchange Act Release No. 40352, 1998 WL 518489, at *13 (Aug. 24, 1998). Effective December 22, 2010, MSRB Rule G-17 applies to municipal advisors and their associated persons.

16. As a result of the conduct described above, Barcelona violated Section 15B(a)(5) of the Exchange Act, which prohibits any fraudulent, deceptive, or manipulative act or practice while providing advice to a municipal entity with respect to municipal financial products [or] the issuance of municipal securities; breached its fiduciary duty to LJISD, as set forth in Section 15B(c)(1) of the Exchange Act; and failed to deal fairly with LJISD in violation of MSRB Rule G-17.

17. As a result of the conduct described above, Hinojosa willfully violated Section 15B(a)(5) of the Exchange Act, which prohibits any fraudulent, deceptive, or manipulative act or practice while providing advice to a municipal entity with respect to municipal financial products [or] the issuance of municipal securities; willfully breached his fiduciary duty to LJISD, as set forth in Section 15B(c)(1) of the Exchange Act; and failed to deal fairly with LJISD in willful violation of MSRB Rule G-17.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Barcelona:

- (1) Shall cease and desist from committing or causing any violations and any future violations of Section 15B of the Exchange Act and MSRB Rule G-17;
- (2) Shall, within 30 days of the entry of this Order, pay, jointly and severally with Hinojosa, disgorgement of \$362,606.91 and prejudgment interest of \$19,514.37 to the Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600;
- (3) Shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$160,000 to the Commission of which of which \$26,666.67 shall be transferred to the MSRB in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$133,333.33 shall be transferred to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

B. Pursuant to Sections 15B and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, Hinojosa:

- (1) Shall cease and desist from committing or causing any violations and any future violations of Section 15B of the Exchange Act and MSRB Rule G-17;

- (2) Be, and is hereby, barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;
- (3) Be, and is hereby, prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;
- (4) Shall, within 30 days of the entry of this Order, pay, jointly and severally with Barcelona, disgorgement of \$362,606.91 and prejudgment interest of \$19,514.37 to the Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600;
- (5) Shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 to the Commission of which \$3,333.33 shall be transferred to the MSRB in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$16,666.67 shall be transferred to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

C. Any reapplication for association by Hinojosa will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Hinojosa, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent 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) Respondent 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 Barcelona or Hinojosa, respectively, as a Respondent 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 Eric Werner, Associate Director, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102.

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 Hinojosa and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Hinojosa 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 Hinojosa 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