

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4863 / March 5, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18385

In the Matter of

**FINANCIAL FIDUCIARIES,
LLC and THOMAS
BATTERMAN,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 203(k) OF THE
INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Financial Fiduciaries, LLC (“Financial Fiduciaries”) and Thomas Batterman (“Batterman”) (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 them 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 Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Advisers Act of 1940, Making Findings, and Imposing 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

1. These proceedings arise out of Respondent Financial Fiduciaries' non-disclosure of financial conflicts of interest and violations of the "Custody Rule" of the Advisers Act. From early 2012 to mid-2015, Financial Fiduciaries, an investment advisory firm registered with the Commission, failed to disclose to certain of its clients financial conflicts of interest created by Financial Fiduciaries' arrangement with a third party trust company. Because of these arrangements and the fact that an employee of Financial Fiduciaries' parent company handled funds of Financial Fiduciaries' clients, from early 2012 to mid-2014, Financial Fiduciaries had custody over some of its clients' assets while failing to implement sufficient controls designed to protect those client assets from loss or misappropriation, as required by the Advisers Act. Respondent Thomas Batterman, as a principal of the firm, caused the violations by Financial Fiduciaries.

RESPONDENTS

2. Financial Fiduciaries is a single-member limited liability company organized under the laws of the State of Wisconsin and based in Wausau, Wisconsin. Financial Fiduciaries registered with the Commission as an investment adviser in 2010. It offers discretionary asset management, financial planning, and tax preparation services. Financial Fiduciaries advises over 160 clients and manages over \$145 million of assets.

3. Thomas Batterman, age 60, is a resident of Wausau, Wisconsin. Batterman is the founder, registered agent, and a principal of Financial Fiduciaries and is the president and majority shareholder of WTC, Inc. ("WTC"), the sole member of Financial Fiduciaries. In 1997, Batterman settled a Commission action based primarily on custody violations and misrepresentations to clients regarding brokerage rates by an investment adviser formerly registered with the Commission. See In the Matter of Vigil Asset Management Group, Inc. and Thomas Batterman, AP File No. 3-9128 (March 17, 1997).

OTHER RELEVANT ENTITIES

4. WTC is a private Wisconsin corporation based in Wausau, Wisconsin. WTC is the sole member of Financial Fiduciaries and manages its payroll.

5. Investors Independent Trust Company ("IITC") is a Colorado trust company and private wealth management firm based in Boulder, Colorado. IITC did business in Wisconsin out of a shared office with WTC and Financial Fiduciaries under the registered trade name Vigil Trust & Financial Advocacy ("Vigil Trust"). IITC, through Vigil Trust, served as trustee for certain of Financial Fiduciaries' clients' trusts, and pursuant to an agreement between IITC and WTC, Financial Fiduciaries provided asset management services to certain of IITC's trust clients requiring such services.

THE FINANCIAL ARRANGEMENTS BETWEEN WTC AND IITC

6. In December 2011, WTC entered into a trust services agreement (“the 2011 Agreement”) with IITC whereby IITC would hire Financial Fiduciaries to provide investment advisory services for IITC’s clients in Wisconsin. Under the 2011 Agreement, among other things, (1) IITC was to act as custodian for the trust assets of Financial Fiduciaries’ clients who utilized IITC as trustee; (2) IITC would maintain a trust services office in WTC’s and Financial Fiduciaries’ Wausau offices; (3) Financial Fiduciaries would be the exclusive provider of investment advisory services for all IITC’s clients requiring such services; (4) one WTC employee in Wausau would serve as a “dual employee” of IITC and WTC; (5) IITC would pay WTC \$2,000 per month as part of the dual employee’s compensation; and (6) IITC would pay WTC “variable monthly rent” for providing office space and other office support for the IITC Wisconsin office equal to 50% of the total monthly trust administrative, custody, and base account fees (after reduction for expenses) earned by IITC from Financial Fiduciaries’ clients.

THE “DUAL EMPLOYEE’S” ACCESS TO CLIENT FUNDS

7. A WTC employee served in the “dual employee” role from approximately January 1, 2012 through mid-June 2014, when she retired. In that role she performed work for both WTC and IITC from WTC’s Wausau office. For WTC, she primarily performed bookkeeping for WTC. For IITC, she performed trust administrative activities on behalf of IITC’s clients in Wausau. This included serving as the primary liaison with IITC’s clients, helping to set up new client accounts and updating account information, assisting with deposits and distributions of trust funds, distributing client correspondence, and court and tax return reporting. Her salary was paid in full by WTC; IITC reimbursed WTC \$2,000 per month for her IITC-related compensation. IITC also paid WTC 50% of the trust administrative fees it generated as “variable rent” for the use of WTC office space and other office support services. On average, the “variable rent” amounted to approximately \$3,000 per month. Given the financial arrangements between WTC and IITC, Financial Fiduciaries had financial incentives to recommend IITC to its clients who required trust services, and ensure such clients utilized IITC as a trustee.

8. From early 2012 through mid-2014, the WTC “dual employee” had direct access to and control over assets of Financial Fiduciaries’ trust clients by virtue of her also being an employee of IITC. Pursuant to a September 4, 2012, IITC Corporate Resolution, she was authorized to act on behalf of IITC, to include opening/closing client accounts, purchasing and selling securities in the accounts, and transferring funds into and out of such accounts. Further, she had direct check writing authority over an IITC account at a local bank in Wausau. She received and deposited checks into the account from trust clients of Financial Fiduciaries, and wrote checks out of the account to trust beneficiaries. As an employee of WTC, the “dual employee” reported to Batterman, who knew of and approved the above arrangement.

RESPONDENTS’ BREACH OF FIDUCIARY DUTIES

9. Prior to August 7, 2015, Financial Fiduciaries did not disclose in its Forms ADV, or otherwise to clients, the material conflicts of interest that existed as a result of the fee and employment arrangements between WTC and IITC described above. Batterman had ultimate

authority over the content of Financial Fiduciaries' Forms ADV. Given the above-described arrangements, Financial Fiduciaries had financial incentives to recommend to clients that they designate IITC as a successor trustee for their trusts, leading to conflicts of interest.

RESPONDENTS' VIOLATION OF THE CUSTODY RULE

10. Rule 206(4)-2 promulgated under Section 206(4) of the Advisers Act (the "Custody Rule") is designed to protect investor assets. The Custody Rule requires that advisers who have custody of client assets put in place a set of procedural safeguards to prevent loss, misuse or misappropriation of those assets. An adviser has "custody" of client assets if it holds, directly or indirectly, client funds or securities, or if it has any authority to obtain possession of those assets. Rule 206(4)-2(d)(2). An adviser also has custody if it or its "related person" has possession of client funds or securities or has authority to obtain possession of them. Id. A "related person" is defined as any person, directly or indirectly, controlling or controlled by the adviser, and any person that is under common control with the adviser. Rule 206(4)-2(d)(7). "Control" is defined as "the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise." Rule 206(4)-2(d)(1).

11. Under the Custody Rule an investment adviser who has custody of client assets must ensure that such assets are maintained by a "qualified custodian." Rule 206(4)-2(a)(1). A "qualified custodian" includes a federally insured bank or savings association, a registered broker-dealer, a registered futures commission merchant, or a foreign financial institution. Rule 206(4)-2(d)(6). Furthermore, the adviser must, among other things: (i) ensure that the qualified custodian maintains client funds in a separate account for each client under that client's name, or in accounts that contain only the clients' funds and securities under the investment adviser's name as agent or trustee for the clients; (ii) notify each client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained; (iii) have a reasonable basis, after due inquiry, for believing that the qualified custodian sends account statements to each client at least quarterly; and (iv) have an independent public accountant perform a surprise examination of the client funds and securities of which the adviser has custody at least once during each calendar year. Rule 206(4)-2(a)(1)-(4).

12. Financial Fiduciaries disclosed in Item 9 of Form ADV Part 1 and Item 15 of Part 2A of its 2012, 2013, and 2014 Forms ADV that it did not have custody of client assets.

13. Financial Fiduciaries had custody of client assets from 2012 through mid-June 2014, when the "dual employee" retired. The "dual employee" of WTC and IITC had direct access to certain Financial Fiduciaries' clients' trust assets as an authorized signatory on an IITC local bank account in Wausau. She received and deposited checks into the account from trust clients of Financial Fiduciaries, and wrote checks out of the account to trust beneficiaries. As an employee of WTC, she reported to Batterman. The "dual employee" and WTC were "related persons" to Batterman and Financial Fiduciaries because they were "directly or indirectly ... controlled by the adviser, and ... under common control with the adviser." See Rule 206(4)-2(d)(7).

14. During the period it had custody of certain of its clients' trust assets, Financial Fiduciaries did not, among other things: (a) notify clients that it maintained custody of client assets; (b) maintain such client funds in a separate account for each client under that client's name, or in accounts that contain only the client's funds under Financial Fiduciaries' name as agent or trustee for the client; or (c) have an independent public accountant perform a surprise examination of the client's trust assets over which Financial Fiduciaries had access. In doing so, Financial Fiduciaries failed to comply with the Custody Rule, and Batterman caused Financial Fiduciaries' failure to comply.

RESPONDENTS' FILING OF MATERIALLY UNTRUE FORMS ADV

15. Section 207 of the Advisers Act makes it unlawful for any person to willfully make any untrue statement of a material fact or omit to state any material fact required to be stated in a registration application or report filed with the Commission. A person violates Section 207 by filing a false or materially misleading Form ADV, including any amended Forms ADV. See Rule 204-1(d). Batterman signed Financial Fiduciaries' 2012 to 2015 Forms ADV, controlled the content of the Forms ADV, and caused them to be filed with the Commission.

16. Form ADV Parts 1 and 2A require disclosure of conflicts of interest and financial incentives. Moreover, the general instructions to Form ADV Part 2A require investment advisers to disclose all material conflicts of interest between the adviser and clients whether in Part 2 of Form ADV or by some other means.

17. Form ADV Part 1 requires disclosure of whether the adviser, or any of its related persons, maintains custody of client assets.

18. Prior to August 7, 2015, Financial Fiduciaries violated Section 207 of the Advisers Act by not disclosing in Forms ADV Part 1 or Part 2A the conflicts of interest and financial incentives associated with the arrangement between WTC and IITC.

19. From 2012 to mid-June 2014, Financial Fiduciaries' Forms ADV incorrectly stated that it did not have custody of client assets.

VIOLATIONS

20. As a result of the conduct described above, Respondent Financial Fiduciaries willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon a client or prospective client.

21. As a result of the conduct described above, Respondent Financial Fiduciaries willfully violated Section 206(4) of the Advisers Act, which prohibits a registered investment adviser from engaging in fraudulent, deceptive or manipulative conduct, and Rule 206(4)-2 thereunder, which requires an adviser to take certain enumerated steps to safeguard client assets over which it has custody.

22. As a result of the conduct described above, Respondent Financial Fiduciaries willfully violated Section 207 of the Advisers Act, which makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

23. As a result of the conduct described above, Respondent Batterman caused Respondent Financial Fiduciaries’ above-referenced violations of Sections 206(2), 206(4), and 207 of the Advisers Act, and Rule 206(4)-2 thereunder.

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(i) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4), and 207 of the Advisers Act, and Rule 206(4)-2 thereunder.

B. Respondent Financial Fiduciaries shall pay a civil money penalty in the amount of \$40,000, and Respondent Batterman shall pay a civil money penalty in the amount of \$20,000. The civil penalties shall be paid within 14 days of the entry of this Order to the Commission for transfer 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.

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 either Financial Fiduciaries or Thomas Batterman as 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 Robert J. Burson, Acting Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

C. 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 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 Respondents 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.

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