

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4963 / July 10, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18588

In the Matter of

HBA Advisors, LLC, and
Jaime Enrique Biel,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS 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) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against HBA Advisors, LLC (“HBA”) and Jaime Enrique Biel (“Biel”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, the 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 in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers 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 the Respondents’ Offers, the Commission finds that:

Summary

1. These proceedings arise out of HBA's violations and Biel's causing HBA's violations of the testimonial rule under the Advisers Act, which states that it shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser registered with the Commission to publish, circulate or distribute any advertisement which refers to, among other things, any testimonial of any kind concerning the investment adviser. HBA violated, and Biel caused HBA to violate, the testimonial rule under the Advisers Act by publishing on the internet advertisements containing testimonials concerning HBA, Biel and the investment advice and services they render. The testimonials were available to the public on various websites, including Yelp.com and Facebook.com. By publishing statements containing client testimonials on the internet, HBA violated, and Biel caused HBA to violate, Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(1) thereunder.

Respondents

2. HBA Advisors, LLC is an investment adviser based in Pasadena, California. It has been registered with the Commission as an investment adviser since 2009. HBA provides investment advisory services to individual investors and has approximately \$112 million in assets under management. From 2014 until 2017, HBA offered brokerage services through Arete Wealth Management, LLC.

3. Jaime Enrique "Ricky" Biel is a founding member of HBA and owns half of the firm's equity. Biel is also an investment adviser representative of HBA. From 2014 until 2017, Biel was a registered representative of Arete Wealth Management. From 1999 until 2012, Biel was an investment adviser representative and registered representative with various other brokerage firms.

Facts

4. Since approximately 1999, Biel has provided investment advisory and brokerage services to individual investors. Biel has offered advisory services through HBA since 2009 and offered brokerage services through Arete Wealth Management between 2014 and 2017.

5. Yelp.com is a public website that publishes information, including testimonials and advertisements, about businesses. Yelp.com describes its purpose as helping people find great local businesses. Since at least September 2015, HBA has used Yelp.com to advertise its advisory business, including maintaining a webpage and purchasing advertisements on Yelp.com. Members of the public could visit HBA's webpage and post testimonials about HBA. Yelp.com was, at that time, solely responsible for maintaining the content of its website.

6. In early 2016, as part of an effort to improve its rating on Yelp.com, HBA claimed its webpage on the site. Claiming the Yelp.com webpage enabled HBA to post a link to its public website and include additional information about its business. It also enabled HBA to post responses to the testimonials that appeared on the webpage. For example, Biel posted "thank you,"

in response to a favorable testimonial and he and HBA's co-founder responded to unfavorable reviews by stating that they were false.

7. Also in early 2016, Biel, on HBA's behalf, hired a marketing consultant named Dr. Leonard Schwartz ("Schwartz") and his company, Create Your Fate, LLC ("Create Your Fate"), based in Richboro, Pennsylvania. Schwartz and Create Your Fate offered a service called Squeaky Clean Reputation, through which they would contact an investment adviser's clients and request that they submit testimonials on the investment adviser's behalf to Yelp.com and other social media websites. Biel understood that Schwartz and Create Your Fate would contact HBA's clients by email and request that the clients submit testimonials on HBA's behalf. Biel agreed to pay Schwartz and Create Your Fate a monthly fee for this service.

8. In March 2016, Schwartz and Create Your Fate sent emails to approximately twenty clients Biel identified. The email asked the clients to post a testimonial about HBA on Yelp.com and included a link to HBA's Yelp.com webpage. Biel reviewed and approved the emails.

9. Several clients submitted testimonials in response to the emails. At least one client responded by publishing on Yelp.com a testimonial describing the client's experiences with HBA. The testimonial described investment advisory services HBA had provided and stated that HBA had enabled the client to purchase unique investments and had protected the client's investment from risk.

10. Around the same time, Biel and others at HBA orally solicited clients and other individuals to post additional testimonials on Yelp.com. A number of clients responded by publishing testimonials on HBA's Yelp.com webpage describing investment advisory services they had received from HBA. Among other things, certain of these clients stated that HBA had helped them generate significant investment returns, had made them feel more secure about their retirements, and had provided a high level of service. Several professionals also published testimonials on HBA's Yelp.com webpage, stating that they were comfortable referring clients to HBA because, among other things, HBA was trustworthy and had helped them increase the value of their investments.

11. HBA then purchased advertisements on Yelp.com. Visitors to Yelp.com could click a link in one of the advertisements and be directed to HBA's Yelp.com webpage where they could view the testimonials.

12. During all relevant times, HBA had policies and procedures that prohibited the use of testimonials or endorsements on social media.

13. Biel was, at all relevant times, aware of HBA's policy prohibiting its investment adviser representatives from distributing testimonials or receiving endorsements on social media.

Violations

14. As a result of the conduct described above, HBA willfully violated¹ and Biel caused HBA's violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(1) thereunder, which states that it shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser registered or required to be registered under the Advisers Act, directly or indirectly, to publish, circulate, or distribute any advertisement which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser.

IV.

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

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

- A. Respondents HBA and Biel cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(1) thereunder.
- B. Respondent HBA is censured.
- C. Respondent HBA shall pay a civil penalty of \$15,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (i) \$3,750 within 10 days of the entry of this Order; and (ii) ten monthly installments of \$1,125 within 90, 120, 150, 180, 210, 240, 270, 300, 330 and 360 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of the civil money penalty, plus any additional interest accrued pursuant to 31 U.S.C. §3717, shall be due and payable immediately, without further application.

- D. Respondent Biel shall pay a civil penalty of \$10,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (i) \$2,500

¹ 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)).

within 10 days of the entry of this Order; and (ii) ten monthly installments of \$750 within 90, 120, 150, 180, 210, 240, 270, 300, 330 and 360 days of entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of the civil money penalty, plus any additional interest accrued pursuant to 31 U.S.C. §3717, shall be due and payable immediately, without further application.

E. 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 HBA or Jaime Enrique Biel 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 Anne C. McKinley, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

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