

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4975 / July 20, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18607

In the Matter of

**BEVERLY HILLS WEALTH
MANAGEMENT, LLC and
MARGARET MULLIGAN
BLACK (AKA MARGARET
MULLIGAN SCOTT)**

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, 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”) against Beverly Hills Wealth Management, LLC (“BHW”) and Margaret Mulligan Black (aka Margaret Mulligan Scott) (“Black”) (BHW and Black referred to as collectively as “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 Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) 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 Respondents' Offers, the Commission finds that:

Summary

These proceedings arise out of violations of the Investment Advisers Act of 1940 by a registered investment adviser, BHWM, and its principal, Black. In April 2016, BHWM and Black withheld prepaid, unearned advisory fees totaling \$131,000 from 63 departing clients who requested terminating their advisory relationship with BHWM despite representations made in its Form ADV brochures and advisory agreements. Specifically, the firm and Black initially refused to recognize clients' e-mails and mailed requests as proper termination notices, instead demanding that the clients send written requests with a "wet signature," which request was contrary to the disclosures made to clients in both the Forms ADV, Part 2A (the "Firm Brochures") and its advisory contracts. Additionally, between March 2013 and April 2018, BHWM and Black continually omitted material facts and made false and misleading statements regarding BHWM's financial condition in its Firm Brochures. Specifically, the firm failed to disclose that it was insolvent and financially unable to repay its loans during this entire time despite representing in thirteen Firm Brochures issued between March 2013 and April 2018 that "[w]e do not have a financial condition or commitment that impairs [our] ability to meet contractual and fiduciary obligations to clients." In fact, BHWM had borrowed \$700,000 just to keep the business afloat. Since 2014, BHWM has been in default on the loans and currently owes an additional \$75,000 in unpaid interest.

Respondents

1. Beverly Hills Wealth Management, LLC ("BHWM") is a Delaware limited liability corporation with its principal place of business in Beverly Hills, California. BHWM is registered as an investment adviser with the Commission (File No. 801-76566).
2. Margaret Mulligan Black ("Black"), age 74, is BHWM's majority owner. Black is BHWM's founder and its CEO since inception.

Background

3. As of March 2018, BHWM managed over \$142 million in assets, almost all of which it managed on a discretionary basis. BHWM had 168 clients who consisted predominantly of high net worth individuals as well as institutional clients, pension plans and charities. Currently, BHWM has five non-clerical employees, all of whom are financial advisers, including Black. As CEO, Black manages all aspects of BHWM and makes all final business decisions and reviewed and approved and, in many cases, signed its disclosure documents.

BHWM and Black Refused to Refund \$131,000 in Prepaid, Unearned Advisory Fees to Departing Clients

4. Pursuant to BHWM's Investment Advisory Agreement ("Advisory Agreement"), clients prepay their advisory fees at the beginning of each quarter. Accordingly, for the second quarter of 2016, BHWM collected the fees on April 1. On that same day, two of BHWM's financial advisers, who collectively managed over \$160 million in client assets, terminated their relationship with the firm. Shortly thereafter, between April 11, 2016 and June 1, 2016, the departing financial advisers forwarded 63 client termination letters to BHWM. The financial advisers sent the letters by USPS, as well as e-mail. The departing clients physically signed most of the termination letters, but signed some them electronically.

5. BHWM's Advisory Agreement and its Firm Brochure, dated March 28, 2016, indicate the steps required for refunds of prepaid, unearned advisory fees after a client terminated the investment adviser relationship. Specifically, the Firm Brochure states that BHWM will refund the unearned portion of the advisory fee after receiving "written notice" of termination from the client. An original signature was not required for an effective termination under either the Advisory Agreement or Firm Brochure.

6. The Advisory Agreement further states that "[a]fter (5) business days, [a] Client will receive [the] pro-rata refunds" In addition, BHWM's Compliance Manual, dated April 2016, provided that the client could notify BHWM of termination by a variety of methods, including mail, email and even orally. Furthermore, the Compliance Manual states that the "Adviser must cooperate with any account transfer instructions received from the terminated client, and act to complete an account transfer efficiently and expeditiously" and that "Final Fees (or Refunds) for the terminated account shall be determined based upon the client Investment advisory agreement (sic)."

7. Despite this requirement, BHWM did not refund the prepaid advisory fees, which totaled approximately \$131,000. Instead of adhering to the five-day requirement, Black directed all the clients to submit another termination letter with an original or wet signature. After receiving these new termination letters, in July 2016, BHWM refunded only \$46,000, or about 35% of the unearned prepaid advisory fees. Moreover, the firm did not refund the client's fees until more than three months after it received the first termination letters. By that time, examination staff had raised the unearned advisory fee issue with the firm and the enforcement staff had also requested documents from BHWM. It took several more months for BHWM to refund the remaining money to the clients, which had to be recalculated because BHWM and Black initially used the wrong termination date. Eventually, at Black's direction, BHWM refunded the remaining unearned advisory fees, or approximately \$85,000, in early September 2016. Importantly, this came after the examination staff sent the firm a deficiency letter, and the enforcement staff met and followed-up with the firm regarding the status of the remaining refunds.

BHWM Omitted Material Facts and Made False and Misleading Statements in the Firm Brochures

8. Between March 2013 and April 2018, BHWM omitted material facts and made false and misleading statements in thirteen Firm Brochures regarding its financial condition that was reasonably likely to impair BHWM's ability to meet contractual commitments to its clients. Black approved and signed the Firm Brochures, and caused BHWM to file and distribute it to the firm's clients.

9. From at least March 2013 through April 2018, BHWM has been unable to pay its expenses through its operating income and generally has experienced cash shortages in the last month of each quarter. This occurs because BHWM receives client advisory fees at the beginning of each quarter, which BHWM generally spends in the first two months in the quarter, thereby resulting in a cash shortage. To cover the shortage, as well as the costs associated with hiring new financial advisers, Black, on behalf of BHWM, borrowed a total of \$675,000 from several individuals in 2013, and \$50,000 in 2014.

10. As of 2014, BHWM was in default to its creditors for \$700,000 in principal and, by December 31, 2017, an additional \$75,000 in unpaid interest. BHWM has no viable means to repay its creditors and depended upon borrowings to pay its daily operating expenses, including payroll, rent and legal fees especially in the last month of each quarter absent the loans. Therefore, these debts are subject to judicial action for collection. In addition to the loans described above, BHWM also currently owes Black \$1 million and her husband an additional \$100,000; although, the amount owed to both has ranged between \$900,000 and \$1.5 million between 2013 and 2017. Without these loans, BHWM would have been unable to pay its expenses, including payroll and rent. As of 2017, BHWM had a negative net worth of \$1,498,279.¹

11. BHWM omitted material information and made false and misleading statements in the Firm Brochures. Among other things, the Firm Brochures require BHWM to disclose any financial condition that is reasonably likely to impair its ability to meet a financial commitment to the client. Under the Investment Advisory Agreement, BHWM was financially obligated to provide advisory services to its clients. However, BHWM's poor financial condition (e.g., its large negative net worth, defaults and interest totaling \$775,000 to creditors, and its difficulties in paying its daily operating expenses, including payroll, rent and legal fees) was reasonably likely to impair BHWM's ability to fulfill its contractual obligations under the Advisory Agreements. Consequently, BHWM was obligated to disclose this information in the Firm Brochures

¹ See *Amendments to Form ADV*, Release No. IA-3060 (Effective Date: October 12, 2010), Ftn 177 ("a determination about what constitutes [a] financial condition reasonably likely to impair an adviser's ability to meet contractual commitments . . . will generally include insolvency.") Insolvency is typically defined as when a person's or entity's total liabilities exceed their total assets, which is commonly referred to as a negative net worth.

12. Instead of disclosing the information, BHWM affirmatively made false and misleading statements in its Firm Brochures that BHWM “do[es] not have a financial condition or commitment that impairs its ability to meet contractual and fiduciary obligations to clients.”

13. From March 2013 to the present, BHWM and Black never amended any of the Firm Brochures to disclose the reasonable likelihood of BHWM becoming financially impaired. Black never caused BHWM to amend the Firm Brochures to disclose its financial problems and its potential effect upon BHWM’s clients.

Violations

14. As a result of the conduct described above, BHWM and Black willfully committed violations² of Section 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any client or prospective client.

15. As a result of the conduct described above, BHWM and Black 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.”

16. As a result of the conduct described above, BHWM willfully violated, and Black willfully aided and abetted and caused violations of, Section 204(a) of the Advisers Act and Rule 204-1(a)(2) promulgated thereunder, which incorporates by reference the instructions to Form ADV and therefore requires that Form ADV be amended “promptly whenever any information in the brochure becomes materially inaccurate.”

17. As a result of the conduct described above, BHWM willfully committed violations of, and Black willfully aided and abetted and caused violations of, Section 206(4) of the Advisers Act, and Rule 206(4)-7 promulgated thereunder, which requires that an investment adviser registered with the Commission to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules adopted under the Advisers Act.

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)).

Undertakings

18. Within ten (10) days of the entry of this Order, BHWM shall post prominently on its principal website this Order, for twelve months, in a form and location acceptable to the Commission's staff, with a hyperlink to the entire Order. BHWM will correct the disclosure in its Firm Brochure regarding its financial impairments in Form ADV, Part 2A, Item 18.B. described in Paragraphs 8-12 of this Order and within thirty (30) days of the issuance of this Order, BHWM shall provide a copy of the Order to each of BHWM's existing advisory clients as of the entry of this Order via mail, e-mail, or such other method as may be acceptable to the Commission's staff, together with a cover letter in a form not unacceptable to the Commission's staff. BHWM shall also provide a copy of the Order to any new client that engages BHWM within one (1) year of the date of this Order.

19. BHWM shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission's staff may make reasonable requests for further evidence of compliance, and Respondents agrees to provide such evidence. The certification and supporting material shall be submitted to Alka Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Ste. 900, Los Angeles, CA 90071, with a copy to the Office of Chief Counsel of the Enforcement Division (100 F St., 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, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents Offers.

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

A. Respondent BHWM cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), 206(4), and 207 of the Advisers Act, and Rules 204-1(a)(2) and 206(4)-7 thereunder.

B. Respondent Black cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), 206(4), and 207 of the Advisers Act, and Rules 204-1(a)(2) and 206(4)-7 thereunder.

C. Respondents BHWM and Black are censured.

D. BHWM shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 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). 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) 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 BHWB 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 Alka Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

E. Black shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 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). 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) 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 Black 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 Alka Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

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 agrees 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.

G. Respondents shall comply with the undertakings enumerated in Paragraphs 18 and 19 of Section III 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 Black, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Black 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 Black 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