

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5088 / December 21, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33335 / December 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18099

In the Matter of

**BLACK DIAMOND ASSET
MANAGEMENT LLC**

and

ROBERT WILSON,

Respondents.

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

I.

On August 4, 2017, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (the “Advisers Act”) and Section 9(b) of the Investment Company Act of 1940 against Respondents Black Diamond Asset Management LLC (“Black Diamond”) and Robert Wilson (“Wilson”) (collectively, “Respondents”).

II.

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, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940.

III.

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

A. SUMMARY

1. In 2015, Wilson registered Black Diamond with the Commission as an investment adviser. In the initial Form ADV registration statement Wilson signed on Black Diamond's behalf—as its managing member, chief compliance officer (“CCO”), and chief investment officer—Wilson claimed that Black Diamond held assets under management worth over \$583 million.

2. In reality, Black Diamond managed no marketable assets at the time and has never met the minimum requirements for investment adviser registration with the Commission.

3. Through this and similar conduct, Wilson and Black Diamond violated certain provisions of the Advisers Act.

B. RESPONDENTS

4. **Wilson**, age 59 and a resident of Calverton, New York, is Black Diamond's sole managing member, chief investment officer, and CCO.

5. **Black Diamond**, formed by Wilson in 2013 as a Wyoming limited liability company, has no employees or owners other than Wilson. At all relevant times, Black Diamond has been located at Wilson's residence: first in Southampton, New York and later in Calverton, New York. Since March 10, 2015, Black Diamond has been registered with the Commission as an investment adviser.

C. RESPONDENTS' MISCONDUCT

6. On March 10, 2015, on Black Diamond's behalf, Wilson filed a Form ADV registration statement (“2015 ADV”), which registered Black Diamond as an investment adviser with the Commission.

7. Wilson listed himself on the 2015 ADV as Black Diamond's managing member, CCO, and chief investment officer.

8. The 2015 ADV form informed Wilson that, to register with the Commission, Black Diamond had to fit into one of certain enumerated categories of advisers eligible for Commission registration as an investment adviser.

9. As the 2015 ADV form specified, one of the enumerated categories rendering an investment adviser eligible for Commission registration was “a large advisory firm that...has regulatory assets under management of \$100 million (in U.S. dollars) or more.”

10. On Black Diamond's behalf, Wilson checked off the box corresponding to that category on the 2015 ADV.

11. The 2015 ADV form asked Black Diamond “what is the amount of your regulatory assets under management and total number of accounts.”

12. The instructions informed Wilson and Black Diamond: “In determining the amount of your regulatory assets under management, include the securities portfolios for which you provide continuous and regular supervisory or management services as of the date of filing this Form ADV.... Determine your regulatory assets under management based on the current market value of the assets as determined within 90 days prior to the date of filing this Form ADV.”

13. In response, Wilson claimed that Black Diamond had \$583,750,000 in regulatory assets under management.

14. Wilson electronically signed the 2015 ADV. In doing so, he certified, for both himself and Black Diamond, “under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV...are true and correct.”

15. In reality, as Wilson knew or recklessly disregarded, Black Diamond had no marketable assets under management on or before March 10, 2015.

16. On March 30, 2016, Wilson filed a second Form ADV for Black Diamond (the “2016 ADV”).

17. Wilson again listed himself as Black Diamond’s managing member, chief investment officer, and CCO.

18. Wilson provided his Calverton, New York street address as Black Diamond’s address.

19. On the 2016 ADV, Wilson claimed that Black Diamond was a “mid-sized advisory firm that has regulatory assets under management of \$25 million (in U.S. dollars) or more but less than \$100 million (in U.S. dollars).”

20. Wilson further claimed that Black Diamond had \$25,690,900 in regulatory assets under management.

21. Wilson electronically signed the 2016 ADV and certified, for both himself and Black Diamond, “under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV...are true and correct.”

22. In reality, as Wilson knew or recklessly disregarded, any assets Black Diamond claimed to have under management held a market value of less than \$5.4 million during the 90-day period before Black Diamond filed its 2016 ADV.

23. Wilson used the 2015 ADV and the 2016 ADV to solicit potential investment advisory clients. Among other things, Wilson had sole responsibility for the content of Black Diamond’s website, which contained general solicitations to retain Black Diamond as an investment adviser and links to Black Diamond’s 2015 and 2016 Forms ADV.

24. On its website, Black Diamond claimed to be in the business of advising clients on securities investments in exchange for a fee based on a percentage of the asset value of each client’s account.

D. VIOLATIONS

25. As a result of the conduct described above, Respondents Wilson and Black Diamond willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

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

27. As a result of the conduct described above, Respondent Black Diamond willfully violated Section 203A of the Advisers Act, which prohibits an adviser “regulated or required to be regulated in the [s]tate in which it maintains its principal office and place of business” from registering with the Commission, unless it “has assets under management of not less than \$25,000,000 [or such higher amount as the Commission may by rule deem appropriate]...or...is an adviser to an investment company registered under” the Investment Company Act.

28. As a result of the conduct described above, Respondent Wilson willfully aided and abetted and caused Black Diamond’s violations of Sections 203A, 206(1), 206(2), and 207 of the Advisers Act.

IV.

In view of the foregoing, the Commission deems it appropriate, 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(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Wilson cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), 207, and 203A of the Advisers Act.

B. Respondent Wilson be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

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;

with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Respondent Black Diamond’s registration with the Commission as an investment adviser be and hereby is revoked.

D. Any reapplication for association by Respondent Wilson 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 the Respondent, 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.

By the Commission.

Brent J. Fields
Secretary