

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89078 / June 16, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5523 / June 16, 2020

INVESTMENT COMPANY ACT OF 1940
Release No. 33895 / June 16, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-15006

In the Matter of

**RAYMOND J. LUCIA
COMPANIES, INC. and
RAYMOND J. LUCIA, SR.**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
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 September 5, 2012, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Respondents Raymond J. Lucia, Sr. and Raymond J. Lucia Companies, Inc. (“OIP”). The proceeding is presently on remand to the Commission following *Lucia v. SEC*, 138 S. Ct. 2044 (2018).

II.

Respondents have submitted an Offer of Settlement (the “Offer”), 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 or the allegations in the OIP, 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 Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 15(b) of the Securities Exchange Act of 1934, 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 (“Order”), as set forth below.

Pursuant to *Lucia v. SEC*, 138 S. Ct. 2044 (2018), Respondents are entitled to a “new hearing” before “another ALJ (or the Commission itself).” *Id.* at 2055. Respondents have knowingly and voluntarily waived any claim or entitlement to such a new hearing before another administrative law judge (“ALJ”) or the Commission itself. Respondents also have knowingly and voluntarily waived any and all challenges to the administrative and cease-and-desist proceedings or any and all orders that were issued during or at the conclusion of these proceedings, whether before the ALJ, the Commission, or any court, based upon any alleged or actual defect in the appointment of any ALJ assigned to this case. In connection with the waiver of any such challenges, Respondents have agreed, within five (5) business days of the entry of the Commission’s Order, to dismiss, with prejudice, their appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered on August 21, 2019 by the United States District Court for the Southern District of California, in *Raymond J. Lucia Companies, et al. v. SEC*, D.C. Case No. 18CV2692 DMS JLB, Ninth Circuit C.A. Case No. 19-56101.

III.

On the basis of this Order and Respondents’ Offer, the Commission¹ finds that:

Findings

1. These proceedings arise from Respondents’ promotion of a proprietary wealth management strategy called “Buckets of Money” from 2006 through 2010. Lucia was associated with RJL, which was a registered investment adviser, and Respondents owed a fiduciary duty to prospective clients. From 2006 through 2010, Lucia appeared at seminars and used a PowerPoint presentation to promote the Buckets of Money strategy, in an effort to generate new advisory clients for RJL. In the seminar presentation, Lucia explained how the Buckets of Money strategy involved allocating assets to different buckets of short-term, medium-term, and long-term investments; drawing from short and medium term buckets to pay for expenses while allowing long-term investments to grow; and periodically reallocating assets from long-term investments to refill the short and medium term buckets. At the culmination of the presentation, Lucia presented slides which purported to show the results of historical tests, which Respondents called “backtests,” of how the strategy would have performed through the “Grizzly Bear Market” that started in 1973, and what Respondents characterized as the “flat market” from 1966 through 2003. The self-described “backtests” were presented as empirical, historical proof that the Buckets of Money strategy

¹ The findings herein are made pursuant to Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

provided inflation-adjusted income for life and growth of investment principal under difficult market conditions. Lucia was responsible for the contents of the PowerPoint presentation, and was personally involved in preparing and reviewing the so-called “backtests” that were presented in the PowerPoint presentation at the seminars.

2. Respondents’ presentation of their so-called “backtests” as an accurate presentation of the historical performance of their strategy was materially misleading and omitted material information about the effect of certain assumptions about inflation, rates of return on real estate investment trusts (“REITs”), and fees; failed to disclose material information that Respondents’ “backtest” methodology did not follow the Buckets of Money Strategy by reallocating assets periodically; and failed to disclose material information that Respondents had no support for how they derived the numbers presented as the results of their so-called 1973 “backtest.”

Respondents

3. **Raymond J. Lucia Companies, Inc.** (“RJL”) is a California corporation located in San Diego, California. RJL was registered with the Commission as an investment adviser from September 2002 through December 2011. In May 2010, RJL sold its assets and transferred its client accounts to Lucia Wealth Services, LLC (doing business at the time as RJL Wealth Management).

4. **Raymond J. Lucia, Sr.**, (“Lucia”) age 69, is a resident of Rancho Santa Fe, California. Lucia owns RJL; Lucia Financial, LLC, a registered broker-dealer; Lucia Financial Group, Inc., an insurance company; and RJL Enterprises, an entertainment company through which he produced a daily syndicated radio show, The Ray Lucia Show. He was a principal of RJL and was registered as an investment adviser associated with RJL from 996 through December 2011. He was then registered as an investment adviser associated with Lucia Wealth Services from December 2011 until he voluntarily resigned on July 12, 2013. Lucia was a registered representative associated with registered broker-dealers First Allied Securities, Inc. from November 2007 through June 2010, and with Lucia Financial, LLC, from November 2006 through June 2010. Lucia previously held Series 7, 24, 63, and 66 licenses.

Procedural History

5. The Commission commenced this proceeding on September 5, 2012, with an order instituting administrative and cease-and-desist proceedings pursuant to Section 15(b) of the Exchange Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act.

6. The matter was assigned to an ALJ who issued an initial decision on July 8, 2013. On August 8, 2013, the Commission remanded the matter for additional findings. On December 6, 2013, the ALJ issued an initial decision on remand. Respondents filed a petition for review of the initial decision with the Commission, the Division of Enforcement filed a limited cross-petition, and the Commission granted the petitions for review. The matter was fully briefed and argued to the Commission.

7. On September 3, 2015, the Commission issued its Opinion, which: (1) found that RJI violated, and Lucia willfully aided and abetted and caused RJI's violations, of Advisers Act Sections 206(1), 206(2), and 206(4), and Rule 206(4)-1(a)(5); (2) barred Lucia from association with any investment adviser, broker, or dealer; (3) revoked the investment adviser registrations of RJI and Lucia; (4) ordered Respondents to cease and desist from committing or causing any violations or future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-1; (4) ordered RJI to pay a civil money penalty of \$250,000; and (5) ordered Lucia to pay a civil money penalty of \$50,000. The Commission also held that ALJs working for it were not constitutional officers subject to the requirements of the Appointments Clause.

8. On October 2, 2015, Respondents filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit.

9. Respondents filed a motion with the Commission to stay the Commission's order pending appeal to the D.C. Circuit, which the Commission denied in an order issued on October 22, 2015; however, on the Commission's own motion and in its discretion, the Commission stayed the monetary sanctions until the D. C. Circuit resolved Respondents' appeal and issued its mandate.

10. On August 9, 2016, a panel of the D.C. Circuit denied the petition for review, holding that: (1) ALJs rendering initial decisions on cases before the Commission are not constitutional officers subject to the requirements of the Appointments Clause; (2) the Commission's findings that the seminars were misleading was supported by substantial evidence; (3) the Commission's finding that Respondents acted with scienter was supported by substantial evidence; and (4) imposition of an industry bar on Lucia was not an abuse of discretion. On rehearing *en banc*, the petition for review was denied by an equally divided court.

11. On June 21, 2018, the Supreme Court of the United States reversed the decision of the D.C. Circuit, holding that the Commission's ALJs were not appointed consistently with constitutional requirements and that Respondents were entitled to a "new hearing" before "another ALJ (or the Commission itself)." 138 S. Ct. at 2055.

12. On August 15, 2018, on remand from the Supreme Court, the D.C. Circuit issued an order granting the petition for review, setting aside the Commission's Opinion and remanding the matter to the Commission for a new hearing.

Violations

13. As a result of the conduct summarized above and detailed in the OIP, which Respondents neither admit nor deny, RJI violated Advisers Act Sections 206(1), 206(2), and 206(4), and Rule 206(4)-1(a)(5), and Lucia willfully aided and abetted and caused RJI's violations, of Advisers Act Sections 206(1), 206(2), and 206(4), and Rule 206(4)-1(a)(5).

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, 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. Respondents RJL and Lucia cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) thereunder.

B. Respondent Lucia 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;

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 a right to apply for reentry after three (3) years from an effective date of September 3, 2015 (the date of the original Commission Opinion and Order in this matter), to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Respondent Lucia 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 Respondent Lucia, 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. Lucia shall pay a civil money penalty in the amount of \$25,000.00 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). Lucia shall pay \$10,000 of that amount within ten (10) days of the entry of the Order. Lucia shall pay the remaining amount, \$15,000, within 12 months of the date of the entry of the Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

- E. Payment must be made in one of the following ways:
- (1) Respondent Lucia may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - (2) Respondent Lucia 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 Lucia 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 Lucia 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 John B. Bulgozdy, Senior Trial Counsel, Securities and Exchange Commission, 444 S. 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, Respondent Lucia agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he 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, that the findings in the Order are true and admitted by Respondent Lucia, and further, any debt for disgorgement, prejudgment interest, civil penalty or

other amounts due by Respondent under the 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 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.

Vanessa A. Countryman
Secretary