

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5869 / September 21, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20586

In the Matter of

DANIEL B. KAMENSKY,

Respondent.

**CORRECTED ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Daniel B. Kamensky (“Respondent” or “Kamensky”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From 2015 through at least August 1, 2020, Respondent was the founder and Managing Partner and Portfolio Manager of New York-based and Commission-registered investment adviser, Marble Ridge Capital LP (“MRC”). Respondent, 48 years old, is incarcerated at the Otisville Federal Correctional Institution in Otisville, New York.

B. ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTION

2. On September 10, 2021, a final judgment was entered by consent against Kamensky, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 in the civil action entitled Securities and Exchange Commission v. Daniel B. Kamensky, Civil Action Number 1:20-CV-07193, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that Kamensky, founder of MRC, a then-registered investment adviser to private funds, including Marble Ridge Master Fund LP (collectively, the "Fund"), which specialized in distressed investment opportunities, engaged in misconduct in the offer of certain securities (MyTheresa Series B preferred shares) being disposed of as part of the Neiman Marcus Group Ltd. LLC ("Neiman") Chapter 11 bankruptcy proceedings. Specifically, on July 31, 2020, Kamensky, after learning that Jefferies Financial Group Inc. ("Jefferies") submitted a bid for the securities that was higher than his bid, contacted Jefferies to coerce it into withdrawing its bid. Kamensky told Jefferies that he would use his position on the unsecured creditor's committee (the "UCC") to ensure that Jefferies' bid was rejected and that, if Jefferies, nevertheless, proceeded with its bid, and thereby drove the price up, Kamensky would retaliate by having MRC cease doing business with Jefferies. Kamensky abused his position of trust as a member of the UCC by improperly leveraging that position to scuttle a competing, higher, bid that was in the best interest of all unsecured creditors to consider. Jefferies withdrew its rival bid in response to Kamensky's coercive threats, but reported Kamensky's misconduct to the UCC. When Kamensky learned of this, he again reached out to Jefferies to cover up the fact that Kamensky tried to prevent Jefferies from participating in Neiman's offering of securities through his coercive threats. On a recorded call, Kamensky candidly admitted to Jefferies that he could go to jail if Jefferies did not adopt his (a false) version of their previous conversation. Jefferies refused to cover up for Kamensky and his misconduct was ultimately revealed.

4. On February 3, 2021, Kamensky pleaded guilty to one count of extortion and bribery in connection with bankruptcy, in violation of Title 18 United States Code, Section 152(6), before the United States District Court for the Southern District of New York, in United States v. Daniel Kamensky, No. 21-CR-67. On May 10, 2021, a judgment in the criminal case was entered against Kamensky. He was sentenced to imprisonment for six months, followed by six months of supervised release with home detention, and fined \$55,000.

5. The count of the criminal information to which Kamensky pleaded guilty arises out of substantially the same facts and circumstance underlying the Commission's complaint described in Paragraph 3 above, and, alleges, among other things, that Kamensky, while associated with an investment adviser, pressured Jefferies to refrain from bidding to purchase securities from the unsecured creditors of Neiman in connection with its Chapter 11 bankruptcy proceeding by threatening to: (i) use his position on the UCC to ensure that Jefferies' bid would be rejected; and (ii) withhold MRC's future business from Jefferies, so that MRC, an investment adviser partially owned and managed by Kamensky, could obtain those securities at an artificially lower price.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. §

201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, www.sec.gov, at <http://www.sec.gov/eFAP>. Respondent also must serve and accept service of documents electronically. All motions, objections, or applications will be decided by the Commission. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman
Secretary