

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

Case No.

v.

Hon.

MAYFIELDGENTRY REALTY
ADVISORS, LLC,
CHAUNCEY C. MAYFIELD,
BLAIR D. ACKMAN,
MARSHA BASS,
W. EMERY MATTHEWS, AND
ALICIA M. DIAZ,

Defendants.

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the “Commission”), for its complaint against defendants MayfieldGentry Realty Advisors, LLC (“MGRA”), Chauncey C. Mayfield (“Mayfield”), Blair D. Ackman (“Ackman”), Marsha Bass (“Bass”), W. Emery Matthews (“Matthews”), and Alicia M. Diaz (“Diaz”) (collectively, the “Defendants”), alleges as follows:

1. The Commission brings this suit to remedy (a) the misappropriation by Defendants MGRA and Mayfield of approximately \$3.1 million of assets entrusted to them by their client, the Police and Fire Retirement System of the City of Detroit (the “PFRS”) and (b) the subsequent effort by MGRA’s principals – Defendants Mayfield, Ackman, Bass, Matthews, and Diaz – to hide that theft from the PFRS.

SUMMARY OF ALLEGATIONS

2. The Police and Fire Retirement System of the City of Detroit (the “PFRS”) holds and manages billions of dollars for the benefit of Detroit’s uniformed police officers and firefighters.

3. MGRA has managed assets of the PFRS since 2002. During that time, MGRA and its principals have received millions of dollars from the PFRS in management and transaction fees. The PFRS has consistently been MGRA’s largest source of income.

4. In early 2008, Mayfield, on behalf of MGRA, secretly stole approximately \$3.1 million from the PFRS to purchase two shopping malls in California.

5. At the time, the PFRS paid uniformed retirees and their beneficiaries, on average, less than \$30,000 each in annual retirement benefits. The stolen \$3.1 million could have provided a year of benefits for more than 100 retired police officers, firefighters, and surviving spouses and children.

6. Over the following months and years, as each of the other MGRA principals learned of the theft, they conspired with Mayfield to keep the theft a secret from the PFRS. They devised a plan to secretly pay back the PFRS without the PFRS ever learning of the theft. They also affirmatively misled the PFRS through financial reporting and an extensive budget presentation.

7. More than four years after the theft, in April 2012, the MGRA principals finally told the PFRS about the theft. The PFRS promptly fired MGRA, effectively putting MGRA out of business.

8. As a result of the conduct described in this Complaint, Defendants MGRA and Mayfield violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the

“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

9. In addition, as a result of the conduct described in this Complaint, Defendants Ackman, Bass, Matthews, and Diaz aided and abetted MGRA’s and Mayfield’s violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

JURISDICTION AND VENUE

10. The Commission brings this action pursuant to the authority conferred by Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to restrain and enjoin permanently the Defendants from engaging in the acts, practices, transactions, and courses of business alleged herein.

11. The Commission also seeks a final judgment ordering the Defendants to disgorge their ill-gotten gains and pay prejudgment interest thereon, and ordering the Defendants to pay civil money penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

12. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. The Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Some of these transactions, acts, practices, and courses of business occurred in the Eastern District of Michigan, where each of the Defendants transacted business during the relevant period. In addition, the principal place of business of MGRA is located in the City of Detroit.

DEFENDANTS

13. **MGRA** is a Michigan limited liability company located in Detroit, Michigan, that has been registered with the Commission as an investment adviser since April 29, 2004. MGRA

formerly had approximately \$750 million in assets under management. Before May 2012, MGRA provided advisory services to the PFRS pursuant to a real estate investment advisory agreement, which expressly acknowledged MGRA's role as an investment adviser. In May 2012, after discovering the conduct described herein, the PFRS terminated its advisory agreement with MGRA for cause. MGRA is currently winding down its business. MGRA is a defendant in the Commission's separate enforcement action *SEC v. Kilpatrick, et al.*, Case No. 12-cv-12109 (E.D. Mich.), which is currently pending.

14. **Mayfield**, age 57, resides in Fort Lauderdale, Florida. Mayfield is the founder, President, and CEO of MGRA, a registered investment adviser. Mayfield owns 71% of MGRA's stock. Mayfield is a defendant in the Commission's separate enforcement action *SEC v. Kilpatrick, et al.*, Case No. 12-cv-12109 (E.D. Mich.), which is currently pending. On February 7, 2013 – based on the alleged misconduct at the heart of the *SEC v. Kilpatrick* case – Mayfield pled guilty to one count of Conspiracy to Influence or Reward Local Public Officials in violation of Title 18 United States Code, Sections 371 and 666(a), before the United States District Court for the Eastern District of Michigan, in *United States v. Jeffrey Beasley, et al.*, Crim. No. 12-20030.

15. **Ackman**, age 42, resides in Livonia, Michigan. Ackman is a certified public accountant. From October 2006 through June 2012, Ackman was the Chief Financial Officer of MGRA. Ackman owns 5% of MGRA's stock.

16. **Bass**, age 59, resides in Bloomfield Hills, Michigan. From January 2004 through the present, Bass has been the Chief Operating Officer of MGRA. Bass owns 8% of MGRA's stock.

17. **Matthews**, age 40, resides in Detroit, Michigan. From September 2006 through

May 2012, Matthews was the Chief Investment Officer of MGRA. Matthews owns 8% of MGRA's stock.

18. **Diaz**, age 50, resides in Grosse Point, Michigan. From January 2004 through May 2012, Diaz was the General Counsel, Executive Vice President, and Chief Compliance Officer of MGRA. Diaz owns 8% of MGRA's stock. Diaz is licensed to practice law in Michigan.

OTHER RELEVANT ENTITIES

19. **The MGRA Genesis Value Fund, LP** (the "MGRA Genesis Fund") is a limited partnership formed for the purpose of holding various real estate properties. The MGRA Genesis Fund was established by MGRA and Mayfield in 2007.

20. **The MGRA Genesis Value REIT, Inc.** (the "MGRA Genesis REIT") was a Maryland corporation with a principal place of business in Baltimore, Maryland. It was dissolved in 2010. The purpose of the MGRA Genesis REIT was to raise capital through the sale of securities and to invest that capital in the MGRA Genesis Fund.

FACTS

The Police and Fire Retirement System of Detroit

21. The Police and Fire Retirement System of the City of Detroit (the "PFRS") was established in 1941. The purpose of the PFRS is to hold the retirement assets of the uniformed employees of the City of Detroit in trust – separate and apart from the general funds and assets of the City of Detroit. That structure was put in place to ensure that the City of Detroit could never use the employees' retirement assets for anything other than their intended purpose.

22. The administration and investment of the PFRS's assets is governed by the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended ("PERSIA"). PERSIA authorizes investment of the assets of the Pension Funds, defines and limits the

investments which may be made by the Pension Funds, and defines certain powers and responsibilities of investment fiduciaries.

23. As of June 30, 2011, the PFRS held assets in excess of \$3.8 billion on behalf of over 8,300 retirees and over 3,800 active duty members of Detroit's Police and Fire Departments.

24. From 2008 through 2011, the PFRS paid retirees and their beneficiaries, on average, less than \$30,000 each in annual retirement benefits.

MGRA's Business Relationship with the PFRS

25. At all times relevant to this Complaint, MGRA was owned and operated by five individuals – each of whom were part owners of MGRA and held officer positions at MGRA:

| Name | Title(s) | % Ownership of MGRA |
|--------------------------|---|----------------------------|
| Blair Ackman | Chief Financial Officer | 5% |
| Marsha Bass | Chief Operating Officer | 8% |
| Alicia Diaz | General Counsel, Executive Vice President, Chief Compliance Officer | 8% |
| W. Emery Matthews | Chief Investment Officer | 8% |
| Chauncey Mayfield | President, Chief Executive Officer | 71% |

26. MGRA had a long business relationship with the PFRS. MGRA and its predecessors had provided investment advisory services to the PFRS since 2002.

27. At first, MGRA's work consisted of directing the rehabilitation of a property owned by the PFRS.

28. In 2004, however, MGRA's business with the PFRS rapidly expanded. That year, the PFRS selected MGRA to take over the management of \$140 million in properties owned by the PFRS.

29. The relationship between MGRA and the PFRS was formalized in a Real Estate Investment Advisory and Asset Management Agreement (the “PFRS MGRA Advisory Agreement”), executed in May 2005.

30. In the PFRS MGRA Advisory Agreement, MGRA stipulated that the firm was a registered investment adviser pursuant to the Advisers Act.

31. MGRA also agreed in the PFRS MGRA Advisory Agreement that MGRA was a fiduciary of the PFRS, and that MGRA would be held to common law fiduciary standards as well as the fiduciary standards set forth in PERSIA.

32. In 2007, MGRA created a new vehicle for the PFRS’s investments. MGRA established the MGRA Genesis Value Fund, LP (the “MGRA Genesis Fund”), a limited partnership formed for the purpose of holding various real estate properties. Also in 2007, MGRA incorporated the MGRA Genesis Value REIT, Inc. (the “MGRA Genesis REIT”). The purpose of the MGRA Genesis REIT was to invest all of its proceeds in the MGRA Genesis Fund. MGRA earned management fees based on the value of the assets of the MGRA Genesis Fund. During 2007, MGRA and Mayfield advised the PFRS to purchase approximately \$116 million in shares of the MGRA Genesis REIT.

33. At all times relevant to this Complaint, MGRA and Mayfield acted as “investment advisers” to the PFRS as that term is used in the Advisers Act. MGRA and Mayfield provided investment advice to the PFRS regarding investments in securities – namely shares of the MGRA Genesis REIT – and received compensation in the form of a percentage of the assets that MGRA managed on behalf of the PFRS.

34. As investment advisers to the PFRS, MGRA and Mayfield owed the PFRS a fiduciary duty, including a duty to disclose all material information regarding the assets that

MGRA managed on behalf of the PFRS.

MGRA's Control of the PFRS Master Account

35. In connection with managing the PFRS's real estate investments, MGRA and Mayfield managed and controlled one of the PFRS's bank accounts – the “PFRS Master Account.”

36. The PFRS Master Account contained accumulated funds from rental income and refinancing proceeds generated by the real estate investments that MGRA managed for the PFRS. At the end of January 2008, the PFRS Master Account contained approximately \$16 million.

37. The funds in the PFRS Master Account belonged to the PFRS, and at the end of every month MGRA would wire a portion of the money to another bank account controlled by the PFRS.

38. Despite the fact that the funds contained in the PFRS Master Account belonged to the PFRS, MGRA did not provide the PFRS with any reporting regarding the account.

MGRA's Shopping Center Investment Concept

39. In mid-2007, MGRA's five principals – Mayfield, Ackman, Bass, Matthews, and Diaz – convened for their annual strategy meeting.

40. At the meeting, Mayfield proposed that MGRA consider building a portfolio of “triple net lease” real estate properties.

41. A “triple net lease” property is typically a commercial property for which the tenant pays all the real estate taxes, building insurance, and maintenance costs – while the lessor simply receives the rental income. Mayfield's idea was for MGRA to bundle a number of triple net lease properties and sell them – either to an institutional investor or in a public offering.

42. During the following months, Mayfield and Matthews continued to discuss

Mayfield's concept. Through business contacts, Mayfield and Matthews learned that Bismarck Real Estate Partners ("Bismarck"), a real estate developer, had obtained the rights to develop up to 25 retail shopping centers anchored by Starbucks coffee stores. Bismarck told Mayfield that it could deliver five Starbucks-anchored shopping centers to MGRA in 2007, followed by more in the following years.

43. By the fall of 2007, Bismarck had informed Mayfield that it could only deliver two Starbucks-anchored shopping centers that year, one in Carmichael, California (the "Carmichael Property"), the other in Santa Rosa, California (the "Santa Rosa Property") (together, the "California Properties").

44. In January 2007, MGRA agreed to purchase the California Properties from Bismarck for \$7.4 million. Mayfield signed the purchase agreement on behalf of MGRA.

45. MGRA secured a bank loan for approximately \$4.3 million of the \$7.4 million purchase price for the California Properties.

46. MGRA's December 2007 balance sheet showed that MGRA had less than \$200,000 in cash on hand.

Mayfield and MGRA Quietly Steal \$3.1 Million from the PFRS

47. At the end of January 2008, Mayfield directed Ackman to wire \$400,000 from the "PFRS Master Account" as a down payment on the California Properties.

48. The PFRS, however, was not an investor in the California Properties and had not authorized MGRA or any of its principals to use \$400,000 of its assets to fund MGRA's purchase of the California Properties. The California Properties were not presented to the PFRS as an investment opportunity, and the PFRS did not otherwise seek to participate in any investment in the California Properties.

49. In other words, Mayfield and MGRA simply took \$400,000 of the PFRS's money without permission.

50. At the time he directed the transfer of \$400,000 from the PFRS Master Account, Mayfield – and through Mayfield, MGRA – knew that they did not have permission from the PFRS to take \$400,000 of the PFRS's funds so that MGRA could purchase the California Properties.

51. On February 29, 2008, MGRA completed its purchase of the California Properties. On that day, Mayfield directed Ackman to wire approximately \$2.7 million from the PFRS Master Account to an account controlled by Bismarck. The remainder of the purchase price – approximately \$4.3 million – was financed with a bank loan.

52. MGRA effected the purchase using a special purpose limited liability company, which was wholly owned and controlled by MGRA. The MGRA principals – Mayfield, Ackman, Bass, Matthews, and Diaz – acted as officers of the limited liability company. Each of the MGRA principals knew that MGRA was purchasing the California Properties.

53. Again, the PFRS was not an investor in the California Properties and had not authorized MGRA or any of its principals to use \$2.7 million of its assets to fund MGRA's purchase of the properties.

54. In other words, Mayfield and MGRA simply took an additional \$2.7 million of the PFRS's money without permission.

55. At the time he directed the transfer of \$2.7 million from the PFRS Master Account, Mayfield – and through Mayfield, MGRA – knew that they did not have permission from the PFRS to take \$2.7 million of the PFRS's funds so that MGRA could purchase the California Properties.

56. Neither MGRA, nor anyone associated with MGRA, informed the PFRS that its assets were being used to fund MGRA's purchase of the California Properties.

57. Mayfield's and MGRA's misappropriation of \$3.1 million of the PFRS's assets was material. A reasonable investment advisory client in the position of the PFRS would want to know that its investment adviser had misappropriated its assets without permission.

58. By taking \$3.1 million of the PFRS's money to purchase the California Properties for MGRA – without permission from or disclosure to the PFRS – Mayfield and MGRA breached their fiduciary duty to the PFRS.

Mayfield, MGRA, and Ackman Collude to Keep the Theft of PFRS's Assets Secret

59. In late March 2008, Ackman reviewed the closing documents from MGRA's purchase of the California Properties to confirm that the closing documents reflected the appropriate ownership of the properties. The change in title – from MGRA to the entity that had provided the capital to fund the purchase – usually occurred after the closing. It typically took about a month to receive the closing binder from the attorneys who handled the deal.

60. In reviewing the closing binder, Ackman noticed that the closing documents did not indicate that the PFRS owned the California Properties. MGRA was still listed as the owner.

61. Ackman asked Mayfield why the PFRS was not listed as the owner – to which Mayfield responded that he “ran out of time” to get the purchase approved by the PFRS. Ackman asked Mayfield what they were going to do, to which Mayfield replied that he was looking for high net worth investors to “take the PFRS out of the deal.”

62. Ackman and Mayfield did not discuss informing the PFRS that \$3.1 million had been secretly taken from its bank account.

63. During the following three months, Ackman followed up with Mayfield on a

monthly basis regarding the California Properties. Mayfield's only response was that he was "working on it."

64. At that point, as the U.S. real estate market collapsed – and the California Properties lost a significant amount of their value – Ackman realized that no outside investors were going to "take the PFRS out of the deal."

65. On a regular basis from 2008 through 2011, Ackman discussed the California Properties with Mayfield.

66. Instead of taking steps to disclose the theft to the PFRS, Ackman and Mayfield discussed ways of replacing the stolen funds so that the theft would not be discovered.

67. From 2008 through 2011, Ackman and Mayfield discussed setting aside money or selling company assets to pay back the PFRS, but they never arrived at a successful strategy. In the meantime, neither Ackman nor Mayfield ever disclosed the theft of the \$3.1 million to the PFRS.

68. On a quarterly basis from 2008 through 2011, Ackman provided detailed financial reports to the PFRS regarding properties owned by the PFRS. The financial reports included, among other things: the names of the properties MGRA managed on behalf of the PFRS; the assets, liabilities, and equity associated with the properties; and the income and expenses associated with the properties. Ackman also regularly gave written notice to the PFRS of all funds transferred to and from the PFRS's bank accounts. None of these financial reports or written notices ever included the California Properties or disclosed that MGRA had used \$3.1 million of the PFRS's money to purchase the California Properties.

The MGRA Principals Discuss the Theft and Collude to Keep it Quiet

69. In May 2011, Ackman, Bass, Matthews, and Diaz met to discuss budgeting and cost cutting. Mayfield was not in attendance. At the May 2011 meeting, the MGRA principals discussed that the \$3.1 million used to purchase the California Properties was taken without permission from the PFRS Master Account.

70. The principals discussed different scenarios for paying back the PFRS, including selling the California Properties and implementing cost-cutting measures. But the principals did not discuss disclosing the theft to the PFRS. Rather, the principals discussed ways to put the \$3.1 million back into the PFRS Master Account without the PFRS ever discovering the money was missing in the first place. This decision was based on the principals' fear that the PFRS would fire MGRA upon learning of the theft. A vast majority of the compensation earned by MGRA's principals was directly attributable to the management and transaction fees MGRA earned from its work for the PFRS.

71. Once they had all become aware of the theft of the \$3.1 million, Mayfield, Ackman, Bass, Matthews, and Diaz did not make any effort to inform the PFRS of the theft.

72. Instead, Mayfield, Ackman, Bass, Matthews, and Diaz engaged in affirmative efforts to conceal the theft from the PFRS.

73. Beginning shortly after the May 2011 meeting, the MGRA principals took affirmative steps to sell the California Properties in an attempt to secretly pay back the PFRS. In July 2011, MGRA hired a broker to market and solicit offers for the California Properties. Mayfield, Ackman, Bass, Matthews, and Diaz communicated with each other regularly regarding these efforts.

74. The first call for offers ended in August 2011, with no buyers expressing any

interest in purchasing the California Properties. The marketing efforts continued throughout 2011, with one interested buyer signing a letter of intent in December – but that deal eventually fell through. At no time during this period did MGRA or its principals inform the PFRS of their actions.

75. During the summer of 2011, the MGRA principals continued to discuss cost-cutting measures, including reductions in their own salaries. Their annual compensation was substantial:

| | Mayfield | Diaz | Bass | Matthews | Ackman |
|-------------|-----------------|-------------|-------------|-----------------|---------------|
| 2007 | \$1,691,745 | \$553,122 | \$556,482 | \$482,458 | \$293,389 |
| 2008 | \$1,175,657 | \$262,849 | \$259,727 | \$294,507 | \$307,943 |
| 2009 | \$869,820 | \$314,648 | \$310,070 | \$319,999 | \$305,589 |
| 2010 | \$984,796 | \$312,596 | \$392,406 | \$501,489 | \$383,676 |
| 2011 | \$795,191 | \$288,754 | \$301,863 | \$469,722 | \$350,092 |

76. The MGRA principals decided to fire the company’s travel coordinator to save money. Mayfield agreed to cut his own salary by \$100,000, but he rescinded this offer after a month or two. In September 2011, despite the discussions of cost-cutting, Mayfield directed MGRA to hire his son and daughter to work at the company at annual salaries in excess of \$100,000 each.

77. Subsequent to the May 2011 meeting, MGRA continued to market its investment advisory services to potential clients. MGRA repeatedly distributed a PowerPoint presentation to potential clients, called the “Capabilities Presentation.” The Capabilities Presentation included a “portfolio summary,” which identified all of the real estate properties managed by MGRA. The California Properties were listed on the portfolio summary, despite the fact that they were purchased with money stolen from the PFRS. All of the MGRA principals were involved in drafting and reviewing the Capabilities Presentation.

78. At the same time, the MGRA principals continued to appear at PFRS board meetings to conduct existing business and to propose new business. For example, on July 14, 2011, Matthews and Diaz attended a PFRS board meeting and discussed portfolio performance, along with a proposal for a new investment opportunity. On July 21, 2011, Matthews and Diaz again appeared at a board meeting, during which they discussed performance measurement reporting. At no time during these appearances in front of the PFRS board did the MGRA principals disclose the theft or discuss the California Properties.

The MGRA Principals Whitewash MGRA's Performance During Their Annual Budget Presentation to the PFRS Board

79. As a major investment adviser to the PFRS, MGRA made annual budget presentations to the PFRS board. These were critical meetings in which MGRA's principals discussed the full scope of MGRA's advisory activities for the PFRS and requested continued funding of the assets that MGRA managed on behalf of the PFRS.

80. MGRA made its 2012 budget presentation to the PFRS board on December 15, 2011, after all of MGRA's principals had learned of the \$3.1 million theft. Mayfield, Ackman, Bass, Matthews, and Diaz all attended the meeting and participated in briefing the PFRS Board.

81. Prior to the meeting, MGRA had provided the PFRS with an extremely-detailed and voluminous document titled "Police & Fire Retirement System of the City of Detroit – 2012 Annual Operating Budget" (the "Budget Document"). The Budget Document exhaustively reviewed MGRA's advisory activities on behalf of the PFRS. It began with an executive summary that touted MGRA's performance as an asset manager for the PFRS. Following the executive summary was an asset-by-asset analysis of the portfolio that MGRA managed for the PFRS. All of MGRA's principals had a hand in preparing the Budget Document. Despite the

exhaustive level of detail in the Budget Document, the MGRA principals did not include any mention of the California Properties purchased with funds stolen from the PFRS.

82. Matthews opened the budget presentation at the December 15, 2011 meeting. He stated that “we are happy to be back and report another year of strong results despite a challenging economy.”

83. Diaz then walked the PFRS board through a PowerPoint summary of the Budget Document. During her presentation, which lasted approximately fifteen minutes, Diaz discussed each of the PFRS’s properties in great detail. The main theme of the presentation was how well the properties were performing, and how well-positioned the PFRS portfolio was for continued profitability.

84. Diaz repeatedly told the PFRS board that MGRA’s focus is always on the cash return that MGRA generates through its management of the PFRS’s assets. Among other things, Diaz stated that “we have always managed the [PFRS] portfolio with regard to looking at cash,” “the cash we deliver at the end of the day is the ultimate testimony in terms of what we do,” “at the end of the day what you are measured by is the cash remittance,” and “this is all about generating cash from these assets and increasing the bottom line on behalf of the system so you have that available.” Diaz concluded by stating the projected cash remittance to the PFRS for 2012: \$4.96 million (which was roughly equivalent to the cash remittance for 2011).

85. At no point during her presentation did Diaz discuss the California Properties, which had been purchased with \$3.1 million in cash stolen from the PFRS. Nor did Diaz mention the difficulties MGRA had been having in selling the California Properties, which had dramatically declined in value since being acquired in 2008.

86. When Diaz finished, Matthews took over the presentation, summarizing Diaz’s

points and asking the PFRS board to approve MGRA's 2012 budget. Matthews then solicited questions from the PFRS board. There was significant back-and-forth between the PFRS trustees and Matthews. The question-and-answer period continued for about fifteen minutes.

87. Among other things, the PFRS trustees asked questions about whether MGRA calculated a "return on investment" for each property, or for the entire PFRS portfolio. Matthews explained that MGRA calculated an "internal rate of return" ("IRR") for the PFRS portfolio, and that it was currently 6.8%. Matthews explained that the portfolio had "exceeded relevant benchmarks," such as the National Council of Real Estate Investment Fiduciaries benchmark. Neither Matthews nor any of the other MGRA principals explained that the 6.8% IRR would be materially impacted if it took into account the \$3.1 million theft.

88. Mayfield, Ackman, Bass, Matthews, and Diaz were all present at the December 15, 2011 meeting, and they all had an opportunity to tell the PFRS board about the California Properties and the fact that they had been purchased with funds stolen from the PFRS. Mayfield, Ackman, Bass, Matthews, and Diaz, despite their participation in a lengthy discussion of the PFRS's properties and the budget expectations for the coming year, chose to conceal from the PFRS the California Properties and the \$3.1 million theft. Instead, Matthews and Diaz extolled MGRA's performance and prudence in managing assets for the PFRS.

**The Theft is Disclosed, The PFRS Fires MGRA,
and the PFRS Sues MGRA and its Principals**

89. In March 2012, MGRA sold the Carmichael Property, at a loss, to a third party. The proceeds from the sale were used to pay down the mortgage on the California Properties (although an outstanding balance remained). None of the proceeds were returned to the PFRS, nor was the PFRS informed of the sale.

90. In late April 2012 – more than four years after the theft of the \$3.1 million, and nearly a year after all of MGRA’s principals knew of the theft – MGRA faxed an undated letter to the PFRS.

91. The letter disclosed to the PFRS, for the first time, that MGRA used PFRS funds to purchase the California Properties, and that the properties were never titled to the PFRS.

92. On May 3, 2012, the PFRS voted to terminate its business relationship with MGRA. That same day, the PFRS delivered a letter to MGRA terminating the PFRS MGRA Advisory Agreement for cause. In the letter, the PFRS stated that the \$3.1 million theft, and MGRA’s failure to disclose the theft, constituted fraud, bad faith, negligence, and a breach of the provisions of the agreement.

93. Shortly thereafter, all of MGRA’s other clients terminated their business relationships with MGRA. MGRA has since transitioned the real estate assets it was managing to other entities, and is in the process of winding down its operations.

94. On May 23, 2012, the PFRS filed a complaint and an *ex parte* motion for a temporary restraining order in Michigan state court against MGRA, MGRA’s principals, and the MGRA limited liability companies involved in the purchase of the California Properties. *Police and Fire Retirement System of the City of Detroit v. MayfieldGentry Realty Advisors, LLC et al.*, Case No. 12-6994-CZ (Mich., Wayne Cty. Cir. Ct.) (“*PFRS v. MGRA*”). The complaint includes allegations of conversion, money had and received, fraudulent transfers, breach of contract, breach of fiduciary duty, misrepresentation, silent fraud, payment by mistake, unjust enrichment, and conspiracy. As relief, the PFRS seeks an accounting, a declaratory judgment, and the imposition of a constructive trust and equitable lien. The Court granted the motion for a temporary restraining order. The PFRS’s lawsuit is pending.

95. On December 31, 2012, MGRA sold the Santa Rosa Property to a third party for \$1.55 million. Part of the proceeds of the sale were used to satisfy the outstanding balance on the loan used to finance the original purchase of the California Properties. Some of the proceeds went to commissions and fees, and the balance – approximately \$1.1 million – was remitted to the PFRS in connection with the *PFRS v. MGRA* lawsuit.

COUNT I

VIOLATIONS OF SECTIONS 206(1) and 206(2) OF THE ADVISERS ACT [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] (Against MGRA and Mayfield)

96. Paragraphs 1 through 95 above are realleged and incorporated herein by reference.

97. By their conduct, MGRA and Mayfield, while acting as investment advisers, directly or indirectly, by use of the mails or means or instrumentalities of interstate commerce, knowing or recklessly: (a) employed devices, schemes, or artifices to defraud their clients or prospective clients; and (b) engaged in transactions, practices, and courses of business that operated or would have operated as a fraud or deceit upon clients or prospective clients.

98. MGRA and Mayfield acted with scienter.

99. By reason of the foregoing, MGRA and Mayfield violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

COUNT II

AIDING AND ABETTING VIOLATIONS OF SECTIONS 206(1) and 206(2) OF THE ADVISERS ACT [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] (Against Defendants Ackman, Bass, Matthews and Diaz)

100. Paragraphs 1 through 99 above are realleged and incorporated herein by reference.

101. By their conduct, MGRA and Mayfield, while acting as investment advisers, directly or indirectly, by use of the mails or means or instrumentalities of interstate commerce,

knowing or recklessly: (a) employed devices, schemes, or artifices to defraud their clients or prospective clients; and (b) engaged in transactions, practices, and courses of business that operated or would have operated as a fraud or deceit upon clients or prospective clients.

102. Ackman, Bass, Matthews, and Diaz knowingly or recklessly provided substantial assistance to MGRA and Mayfield in the commission of these violations.

103. Ackman, Bass, Matthews, and Diaz acted with scienter.

104. By reason of the foregoing, MGRA and Mayfield violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)], and Ackman, Bass, Matthews, and Diaz are liable for aiding and abetting those violations pursuant to Section 209(f) of the Advisers Act [15 U.S.C. § 80b-9(f)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Find that MGRA, Mayfield, Ackman, Bass, Matthews, and Diaz committed the violations alleged herein and find that, as a result of these violations, each of the Defendants received ill-gotten gains.

II.

Issue an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining:

- A. Mayfield and MGRA, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]; and

B. Ackman, Bass, Matthews, and Diaz, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from aiding and abetting Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

III.

Order MGRA, Mayfield, Ackman, Bass, Matthews, and Diaz to disgorge their ill-gotten gains, derived directly or indirectly from the misconduct alleged, together with prejudgment interest thereon.

IV.

Order MGRA, Mayfield, Ackman, Bass, Matthews, and Diaz to pay civil penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

V.

Retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as the Court deems just and appropriate.

JURY TRIAL DEMAND

The Commission requests a trial by jury.

Dated: June 10, 2013

Respectfully Submitted,

/s/ Timothy S. Leiman

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