

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)
)
STEVEN MICHAEL DIAMOND,) Docket No. E-2022-0003
)
RESPONDENT.)

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the “Division”) files this Administrative Complaint (the “Complaint”) to commence an Adjudicatory Proceeding against Steven Michael Diamond (“Diamond” or “Respondent”) for violations of the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the “Act”). The Division alleges that Respondent operated an unregistered investment advisory business in Massachusetts, made false and misleading representations in advisory agreements and invoices in order to deceive clients as to the legitimacy and legal status of that business, made materially false statements while testifying under oath before the Division, and willfully disobeyed a subpoena from the Division.

The Division seeks a Final Order: (1) finding as fact all allegations set forth in Sections IV through VI, inclusive, of this Complaint; (2) concluding that Respondent violated the Act as alleged in Section VII of this Complaint; (3) finding that all of the sanctions and remedies requested herein are in the public interest and necessary for the protection of Massachusetts investors; (4) requiring Respondent to permanently cease and

desist from further conduct in violation of the Act; (5) censuring Respondent; (6) requiring Respondent to provide a verified accounting of all proceeds which were received as a result of the wrongdoing, along with the full name, address, telephone number, and e-mail address of each client who contributed any portion of those proceeds; (7) requiring Respondent to disgorge all profits and other direct or indirect remuneration received as a result of the wrongdoing; (8) permanently barring Respondent in Massachusetts from registering as, associating with, or acting as (i) a broker-dealer; (ii) a broker-dealer agent; (iii) an investment adviser; (iv) an investment adviser representative; (v) a Securities and Exchange Commission registered investment adviser; (vi) an investment adviser exempted from registration; (vii) a person relying on an exclusion from the definition of “broker-dealer” or “investment adviser” in any capacity; (viii) an issuer; (ix) an issuer-agent; or (x) a partner, an officer, a director, or a control person of any of the foregoing; (9) imposing an administrative fine upon Respondent in an amount and upon such terms and conditions as the Director of the Division (the “Director”) may determine; and (10) taking any such further action which may be necessary or appropriate in the public interest and for the protection of Massachusetts investors.

II. SUMMARY

In December 2020, after four-and-a-half years of working as an investment adviser representative (an “IAR”) of MDS Wealth Advisors, LLC (“MDS”) in Williamstown, Massachusetts, Diamond abruptly submitted his letter of resignation. According to his letter, Diamond decided to resign in order to pursue a more lucrative position, although he offered his soon-to-be former employer no additional details. Diamond’s registration as an

IAR terminated on December 31, 2020, and he never renewed it or applied for any other form of securities industry registration.

Instead of continuing to work in the securities industry in a registered capacity, Diamond decided to flout the law and began operating an under-the-table investment advisory business free from the prying eyes of regulators. Since leaving MDS, Diamond has continued to receive payment from private individuals and businesses in exchange for advising them on securities investments or for providing discretionary management of securities accounts. Many of those individuals had been Diamond's clients at MDS whom he poached upon leaving the firm. Having worked as a registered IAR of multiple firms for roughly twelve years of his life, Diamond knew that he was breaking the law, but that did not deter him.

Although Diamond sought to subvert the securities laws designed to protect investors, he knew that he could attract and retain more clients if his work as an investment adviser (an "IA") had some imprimatur of legitimacy. To that end, Diamond presented his clients with invoices and investment advisory agreements bearing the name, "Diamond36 Asset Management, LLC" ("Diamond36"). Diamond36, purportedly based in Massachusetts, is not a real limited liability company, or any other type of registered business entity for that matter; it is an entirely fictitious construct that Diamond invented in order to dupe his clients. In addition to misrepresenting the existence of Diamond36 as a Massachusetts limited liability company, the investment advisory agreements that Diamond presented to his clients falsely claimed that Diamond36 was in the process of registering as an IA and misleadingly suggested that Diamond himself was already a registered securities professional.

In the course of investigating Diamond, the Division issued a subpoena requiring him to testify under oath before the Division. During his testimony, Diamond misrepresented the nature of the services that he provides to clients now that he is no longer registered as an IAR. Namely, Diamond testified that he merely places securities trades in his clients' brokerage accounts at their direction and that he does not offer any advice as to which trades to place. The reality is that multiple clients, including those located in Massachusetts, paid Diamond fees during 2021 as compensation for discretionary management of their securities brokerage and/or retirement accounts.

Following his on-the-record testimony, the Division issued a subpoena to Diamond requiring him to produce information and documents related to his business activities since leaving MDS. Despite multiple accommodations, Diamond never produced any information or materials responsive to the Division's subpoena. The Division repeatedly called and e-mailed him throughout the several weeks that followed, but received no meaningful response. The Division now brings this action which is necessary and appropriate in order to alert investors to Diamond's illegal practices, obtain compensation for those clients whom he deceived, and prevent him from committing future securities-related misconduct in Massachusetts.

III. JURISDICTION AND AUTHORITY

1. The Division has jurisdiction over matters relating to securities pursuant to the Act, codified at Massachusetts General Laws Chapter 110A.
2. The Division brings this action pursuant to the authority conferred upon the Division by Sections 407A, 412, and 414 of the Act, which empower the Division to conduct an Adjudicatory Proceeding to enforce the provisions of the Act and the

regulations promulgated thereunder at 950 Code Mass. Regs. 10.01-14.413 (the “Regulations”).

3. The Division files this Complaint in accordance with Section 10.06 of the Regulations.

4. The Division reserves the right to move to amend this Complaint pursuant to Section 10.06 of the Regulations.

5. The Division reserves the right to bring additional Administrative Complaints to reflect information discovered during its current and ongoing investigation into this matter.

IV. RELEVANT TIME PERIOD

6. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of December 31, 2020 to present, inclusive (the “Relevant Time Period”).

V. RESPONDENT

7. Steven Michael Diamond (“Diamond”) is an individual with a last known address in Williamstown, Massachusetts. He has a Financial Industry Regulatory Authority Central Registration Depository (“CRD”) number of 5246020.

VI. STATEMENT OF FACTS

A. Background

8. Diamond first registered in Massachusetts as an investment adviser representative (an “IAR”) on November 14, 2006.

9. The investment adviser (an “IA”) that employed Diamond later re-registered under a different CRD number, and on October 18, 2007, Diamond’s IAR registration transferred over.

10. On January 1, 2012, Diamond voluntarily terminated his employment with the IA.

11. On June 7, 2016, Diamond once again became registered in Massachusetts as an IAR, this time under an IA called MDS Wealth Advisors, LLC (“MDS”).

12. In December 2020, Diamond abruptly submitted his letter of resignation to the President of MDS.

13. At the time of his resignation, Diamond was a Senior Vice President & Portfolio Manager of MDS.

14. In his letter of resignation, Diamond stated that he had decided to leave MDS in order to pursue a more lucrative position.

15. On December 31, 2020, Diamond’s registration as an IAR terminated in Massachusetts.

B. Diamond Provided Unregistered Investment Advice in Massachusetts under the Name of a Fictitious Business Entity and Furnished Fraudulent Documents to Clients in Order to Give His Activities the Appearance of Legitimacy.

16. Diamond has not been registered as an IAR (or as a broker-dealer agent) in any jurisdiction since December 31, 2020.

17. Despite no longer being registered in the securities industry in any capacity, Diamond nonetheless began operating an investment advisory business out of his home in Williamstown, Massachusetts under the name of a fictitious business entity that he called, “Diamond36 Strategic Asset Management, LLC” (“Diamond36”).

18. Soon after Diamond left MDS, several of the firm’s clients to whom Diamond had previously provided services informed the firm’s President that they would be taking their business elsewhere.

19. Despite having signed a non-compete agreement with MDS, Diamond continued to provide investment advisory services to the aforementioned clients.

i. Client 1, Client 2, and Client 3

20. “Client 1” is an individual resident of Iowa who received discretionary brokerage and retirement account management services from Diamond during the Relevant Time Period.

21. “Client 2” is an individual resident of Iowa who received discretionary brokerage and retirement account management services from Diamond during the Relevant Time Period.

22. Client 1 and Client 2 have been married to one another throughout the entirety of the Relevant Time Period.

23. “Client 3” is an Iowa nonprofit foundation operated by Client 1 that received discretionary brokerage account management services from Diamond during the Relevant Time Period.

24. Client 1 learned about Diamond through an advertisement in a monthly publication and subsequently arranged to have MDS manage the investments in the respective securities accounts of Client 1, Client 2, and Client 3.

25. As an IAR of MDS, Diamond provided discretionary management services to the following four (4) accounts connected to Client 1, Client 2, and Client 3:

- Client 1 and Client 2’s joint brokerage account (“Client 1 & Client 2’s Joint Account”);
- Client 1’s individual retirement account (an “IRA”) (“Client 1’s IRA”);
- Client 2’s IRA (“Client 2’s IRA”); and
- Client 3’s brokerage account (“Client 3’s Account”).

26. As of September 30, 2020, the total combined assets of Client 1, Client 2, and Client 3's respective accounts equaled \$630,590.04.

27. When Diamond left MDS, Client 1, Client 2, and Client 3 left as well.

a. Diamond Created and Presented an Investment Advisory Agreement to Client 1 and Client 2 that Contained Fraudulent Misrepresentations about the Legal Status of His Business.

28. On May 3, 2021, Client 1 and Client 2 signed a document entitled, "Investment Advisory Agreement" (the "Agreement"), which Diamond had presented to them after he resigned from MDS.

29. Diamond created the Agreement himself, the preamble to which read:

This Investment Advisory Agreement ("Agreement") is between the undersigned ("Client") and Steven M. Diamond of Diamond36 Strategic Asset Management, LLC (Investment Adviser, CRD#5246020), a Massachusetts limited liability company ("DSAM"), with its principal place of business [in] . . . Williamstown, Massachusetts. Subject to the terms and conditions below, Client appoints DSAM as investment advisor with discretion to invest and re-invest the assets held in Client's investment account(s) under management by DSAM (collectively, the "Account").

30. Diamond36 is not a Massachusetts limited liability company, and it has never been organized or otherwise registered as any type of business entity in any jurisdiction.

31. Diamond has never been registered as an IA.

32. At the time when he presented the Agreement to Client 1 and Client 2, Diamond was not registered as an IAR (or as a broker-dealer agent) in any jurisdiction.

33. Section 1 of the Agreement provided:

1. Investment Advisory Services. DSAM will provide investment supervisory services for Client's Accounts. DSAM will direct, in its discretion and per [C]lient's investment objectives, the purchase, sale, investment and reinvestment of registered investment companies (including mutual funds and exchange-traded funds), cash, and other investments in Client's Account.

(Emphasis in original).

34. Section 3 of the Agreement identified a broker-dealer as the custodian of Client 1 and Client 2's account assets.

35. Section 10 of the Agreement provided:

10. Advisory Fees: Client will pay in advance an advisory fee to DSAM at the beginning of each calendar quarter based upon the value of the assets in Client's Account at the inception of the account and, thereafter, as of the end of the previous quarter.

(Emphasis in original).

36. On the fee table included in Section 10 of the Agreement, Diamond handwrote, "Starting July 1st[,] 2021."

37. Section 13 of the Agreement provided:

13. Disclosure Statement: Client understands DSAM is in the process of formerly [sic] submitting Registered Investment Advisory (RIA) applications per the appropriate state & federal guidelines. Once the RIA application process is completed, copies of the DSAM Form ADV Part II Disclosure Statement (including its Privacy Statement) will be forward [sic] immediately.

(Emphasis in original).

38. Diamond36 has always been a fictitious business entity, and thus, could not have been in the process of submitting Form ADV to any jurisdiction.

39. Diamond has not filed an application for registration, either on behalf of himself or on behalf of Diamond36, with any securities regulator during the Relevant Time Period.

b. During the Relevant Time Period, Diamond Traded Securities in Client 1, Client 2, and Client 3's Respective Accounts Pursuant to His Discretionary Authority under the Agreement.

40. Client 1 gave Diamond the broker-dealer website login credentials in order to place trades in Client 1, Client 2, and Client 3's respective accounts.

41. On October 6, 2021, Diamond logged into the broker-dealer's website using the credentials he received from Client 1 and sold thirty-five (35) shares of ARK Innovation ETF ("ARKK") held in Client 2's IRA.
42. On October 6, 2021, while logged into the broker-dealer's website, Diamond bought ninety-four (94) shares of VanEck Morningstar Wide Moat ETF ("MOAT") for Client 2's IRA.
43. On October 6, 2021, while logged into the broker-dealer's website, Diamond sold 202.0746 shares of Invesco WilderHill Clean Energy ETF ("PBW") held in Client 1 & Client 2's Joint Account.
44. On October 6, 2021, while logged into the broker-dealer's website, Diamond sold 101.6248 shares of ARKK held in Client 3's Account.
45. On October 6, 2021, while logged into the broker-dealer's website, Diamond bought 200 shares of MOAT for Client 3's Account.
46. On October 6, 2021, while logged into the broker-dealer's website, Diamond sold 40.9945 shares of Vanguard Health Care Index Fund ETF ("VHT") held in Client 3's Account.
47. On October 6, 2021, Diamond sent Client 1 an e-mail that opened with the following:

Dear [Client 1],

It was a pleasure speaking with you today. After we spoke, I made several changes to the portfolio which I have outlined below. As you will see, the total cash in the portfolio will be approximately 8% of the portfolio once the trades settle. Please feel free to call me if you have any questions. I hope all is well, and I will look forward to speaking with you soon.

48. The October 6, 2021 e-mail that Diamond sent to Client 1 also included a summary of the trades that Diamond had made in the four (4) accounts connected to Client 1, Client 2, and Client 3.

c. The Invoices Diamond Created and Sent to Client 1, Client 2, and Client 3 Misrepresented the Legal Status of Diamond's Business.

49. On or about August 6, 2021, Diamond sent Client 1, Client 2, and Client 3 an invoice for Diamond36's management fee for Q3 2021; the invoice was labeled, "Invoice #0009."

50. Diamond generated the Q3 2021 invoice for Client 1, Client 2, and Client 3 using Square Invoices software.

51. The Q3 2021 invoice for Client 1, Client 2, and Client 3 featured a header that read, "Diamond36 Strategic Asset Management, LLC," despite the fact that Diamond36 has never been organized as a limited liability company.

52. Along with the Q3 2021 invoice for Client 1, Client 2, and Client 3, Diamond included a fee calculation sheet that listed the respective values of the assets in Client 1 & Client 2's Joint Account, Client 1's IRA, Client 2's IRA, and Client 3's Account as of June 30, 2021.

53. The Q3 2021 invoice for Client 1, Client 2, and Client 3 charged a quarterly management fee of 0.25% of the \$775,128.61 in total combined assets between the four (4) accounts as of June 30, 2021, which equaled \$1,937.82.

54. On August 15, 2021, Client 1 wrote a check to Diamond in the amount of \$1,937.82 for "3rd 1/4 fees."

55. On August 19, 2021, Diamond deposited the \$1,937.82 check from Client 1 into a bank checking account (“Diamond’s Account”).¹

56. On or about October 17, 2021, Diamond sent Client 1, Client 2, and Client 3 an invoice for Diamond36’s management fee for Q4 2021; the invoice was labeled, “Invoice #0018.”

57. Diamond generated the Q4 2021 invoice for Client 1, Client 2, and Client 3 using Square Invoices software.

58. The Q4 2021 invoice for Client 1, Client 2, and Client 3 featured a header that read, “Diamond36 Strategic Asset Management, LLC,” despite the fact that Diamond36 has never been organized as a limited liability company.

59. Along with the Q4 2021 invoice for Client 1, Client 2, and Client 3, Diamond included a fee calculation sheet that listed the respective values of the assets in Client 1 & Client 2’s Joint Account, Client 1’s IRA, Client 2’s IRA, and Client 3’s Account as of September 30, 2021.

60. The Q4 2021 invoice for Client 1, Client 2, and Client 3 charged a quarterly management fee of 0.25% of the \$734,336.88 in total combined assets between the four (4) accounts as of September 30, 2021, which equaled \$1,835.84.

61. Along with the Q4 2021 invoice for Client 1, Client 2, and Client 3, Diamond included an additional page indicating that he was discounting the management fee for that quarter by \$335.84 for “credit card inconvenience.”

¹ The bank apparently misread Client 1’s handwriting and recorded the value of the check as \$1,927.82.

ii. Client 4

62. “Client 4” is an individual resident of East Falmouth, Massachusetts who received investment advisory services from Diamond during the Relevant Time Period.

63. As an IAR of MDS, Diamond provided discretionary management services to Client 4’s IRA and a trust account in Client 4’s name.

64. When Diamond left MDS, Client 4 left as well.

65. As of September 30, 2020, the total combined assets of Client 4’s IRA and trust account equaled \$346,692.68.

a. During the Relevant Time Period, Diamond Advised Client 4 on Which Securities Trades to Place in Client 4’s IRA.

66. On multiple occasions during the Relevant Time Period, Diamond provided investment advice to Client 4 over the telephone.

67. During these telephone advisory sessions, Client 4 provided Diamond with the former’s login credentials for the broker-dealer’s website and the necessary two-factor authentication code that allowed Diamond to access Client 4’s IRA.

68. During these telephone advisory sessions, upon considering Diamond’s advice as to which securities trades to place in the Client 4’s IRA, Client 4 gave Diamond permission to place those trades.

69. On March 24, 2021, Client 4 sent the following e-mail to Diamond’s former MDS e-mail address:

Hi Steve, hope all is well! How do the new teeth feel?
Steve[,] I would like \$2000 sent in the next couple days.
Please advise[.]
Thanks[,]
[Client 4]

b. Client 4 Compensated Diamond for the Investment Advisory Services that Diamond Provided During the Relevant Time Period.

70. On four (4) different occasions during the Relevant Time Period, Client 4 wrote a check to Diamond as compensation for the investment advisory services that he had provided.

71. Diamond cashed each of the four (4) checks that he received from Client 4 during the Relevant Time Period.

iii. Client 5 and Client 6

72. “Client 5” and “Client 6” are a married couple who reside in Longmeadow, Massachusetts.

73. As an IAR of MDS, Diamond provided discretionary management services to Client 5’s IRA and a trust account in Client 6’s name.

74. When Diamond left MDS, Client 5 and Client 6 left as well.

75. As of September 30, 2020, the total combined assets of Client 5’s IRA and the trust account in Client 6’s name equaled \$2,497,738.71.

76. Upon information and belief, Diamond provided investment advisory services to Client 5 and Client 6 in exchange for compensation during the Relevant Time Period.

iv. Other Out-of-State-Clients

77. During the Relevant Time Period, Diamond provided discretionary account management and investment consulting services to the following individuals and entities in exchange for compensation:

- Two (2) individual residents of New York;
- a New York professional corporation; and
- an individual resident of California.

78. Upon information and belief, Diamond provided investment advisory services to other former MDS clients located in Florida, New York, and Texas in exchange for compensation during the Relevant Time Period.

C. Diamond Provided Untruthful Testimony to the Division about His Business Activities, Thereby Causing the Transcript Later Filed with the Division to Contain Materially False Statements.

79. On February 11, 2022, Diamond provided on-the-record testimony to the Division at its office.

80. While under oath, Diamond falsely testified that he never provided investment advice in the form of discretionary account management services after leaving MDS.

81. As a result of Diamond's false testimony, the transcript thereof that was later filed with the Division contained materially false statements.

D. Diamond Willfully Failed to Comply with a Subpoena from the Division Ordering Him to Identify His Clients and Provide Relevant Business Records.

82. On February 11, 2022, the Division issued a subpoena duces tecum and ad testificandum to Diamond with a production deadline of 5:00 PM ET on February 25, 2022.

83. Despite being granted multiple extensions and assuring the Division that he would comply, Diamond has not produced any information or materials responsive to the Division's subpoena as of the date of this Complaint.

VII. VIOLATIONS OF LAW

Count I - Mass. Gen. Laws c. 110A, § 102(2)

84. Section 102 of the Act provides:

It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

Mass. Gen. Laws c. 110A, § 102(2).

85. The Division restates and incorporates the allegations of fact set forth in Sections IV through VI, inclusive, above.

86. The acts and practices of Respondent, as described above, constitute violations of Section 102(2) of the Act.

Count II - Mass. Gen. Laws c. 110A, § 201(c)

87. Section 201 of the Act provides:

(c) It is unlawful for any person to transact business in this [C]ommonwealth as an investment adviser or as an investment adviser representative unless he is so registered under [the Act].

Id. § 201(c).

88. The Division restates and incorporates the allegations of fact set forth in Sections IV through VI, inclusive, above.

89. The acts and practices of Respondent, as described above, constitute violations of Section 201(c) of the Act.

Count III - Mass. Gen. Laws c. 110A, § 404

90. Section 404 of the Act provides:

It is unlawful for any person to make or cause to be made, in any document filed with the [S]ecretary or in any proceeding under [the Act], any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Id. § 404.

91. The Division restates and incorporates the allegations of fact set forth in Sections IV through VI, inclusive, above.

92. The acts and practices of Respondent, as described above, constitute a violation of Section 404 of the Act.

VIII. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides:

If the [S]ecretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of [the Act] or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

Id. § 407A(a).

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter a Final Order finding that the relief requested below is “necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of [the Act].” *Id.* § 412(b).

X. RELIEF REQUESTED

The Division requests that a Final Order be entered:

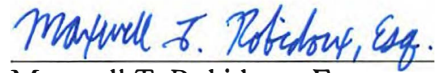
A. Finding as fact all allegations set forth in Sections IV through VI, inclusive, of this Complaint;

B. Concluding that Respondent violated the Act as alleged in Section VII of this Complaint;

- C. Finding that all of the sanctions and remedies requested herein are in the public interest and necessary for the protection of Massachusetts investors;
- D. Requiring Respondent to permanently cease and desist from further conduct in violation of the Act;
- E. Censuring Respondent;
- F. Requiring Respondent to provide a verified accounting of all proceeds which were received as a result of the wrongdoing, along with the full name, address, telephone number, and e-mail address of each client who contributed any portion of those proceeds;
- G. Requiring Respondent to disgorge all profits and other direct or indirect remuneration received as a result of the wrongdoing;
- H. Permanently barring Respondent in Massachusetts from registering as, associating with, or acting as (i) a broker-dealer; (ii) a broker-dealer agent; (iii) an investment adviser; (iv) an investment adviser representative; (v) a Securities and Exchange Commission registered investment adviser; (vi) an investment adviser exempted from registration; (vii) a person relying on an exclusion from the definition of “broker-dealer” or “investment adviser” in any capacity; (viii) an issuer; (ix) an issuer-agent; or (x) a partner, an officer, a director, or a control person of any of the foregoing;
- I. Imposing an administrative fine upon Respondent in an amount and upon such terms and conditions as the Director may determine; and
- J. Taking any such further action which may be necessary or appropriate in the public interest and for the protection of Massachusetts investors.

MASSACHUSETTS SECURITIES DIVISION

By and through its attorneys,



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