

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

IN THE MATTER OF:)	
)	
FILIPPO MASTROCOLA,)	Docket No. E-2021-0108
)	
RESPONDENT.)	
)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the “Division”) and Filippo Mastrocola (“Respondent”) with respect to the above-captioned investigation by the Enforcement Section of the Division (the “Enforcement Section”) into whether Respondent engaged in acts or practices that violated the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the “Act”), and the regulations promulgated thereunder at 950 Code Mass. Regs. 10.01-14.413 (the “Regulations”). This Order is necessary and appropriate in the public interest for the protection of investors and is consistent with the purposes fairly intended by the policies and provisions of the Act.

On May 20, 2022, Respondent submitted an Offer of Settlement (the “Offer”) to the Division that was fair, reasonable, and in the public interest. Respondent neither admits nor denies the facts set forth in Sections III through V below, neither admits nor denies the violations of law set forth in Section VI below, and consents to the entry of this Order by

the Division, consistent with the Offer, thereby settling the above-captioned matter with prejudice.

II. JURISDICTION

1. The Division has jurisdiction over matters relating to securities pursuant to the Act, codified at Massachusetts General Laws Chapter 110A.
2. This Order is entered in accordance with the Act and with Section 10.10 of the Regulations.
3. The acts and practices that were the subject of the Enforcement Section's investigation occurred in Massachusetts within the meaning of Section 414 of the Act.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 3, 2018 to December 2, 2021, inclusive (the "Relevant Time Period").

IV. RESPONDENT

5. Filippo Mastrocola ("Respondent") is an individual with a last known address in Everett, Massachusetts. He is a former Certified Public Accountant (a "CPA"), and he is currently a Certified Financial Planner (a "CFP"). He is also a licensed attorney in the Commonwealth of Massachusetts. He operates a law firm, Filippo Mastrocola, P.C. ("Respondent's Firm"), with an office in Lynnfield, Massachusetts.

V. STATEMENT OF FACTS

A. Respondent Advised His Massachusetts Client to Liquidate Stock Holdings and Entrust the Proceeds to Him, Which Respondent Misrepresented that He Would Use to Purchase an Annuity on the Client's Behalf.

6. Respondent provides legal and non-legal financial services to clients through Respondent's Firm.

7. Respondent advertised himself as a CPA and as a CFP throughout the entirety of the Relevant Time Period.

8. In 2017, a Massachusetts resident ("Client") approached Respondent seeking guidance on how to register his wife for the Massachusetts Medicaid program known as MassHealth.

9. Client's wife developed a serious health condition and would soon need care beyond what Client could provide by himself in their home.

10. Client was worried about his household's ability to pay for a nursing home for his wife, and he determined that they required assistance from the state.

11. Respondent rendered legal services to Client that consisted of explaining MassHealth policies and procedures related to long-term care, preparing and filing a MassHealth application for Client's wife, and responding to requests from MassHealth for additional information.

12. Respondent's Firm sent an invoice, dated January 3, 2018, to Client billing him \$12,500 for the aforementioned MassHealth-related services, which Client dutifully paid.

13. Client's wife's health continued to deteriorate, and by December 2019, she was close to requiring the transition to a nursing home.

14. Client frequently communicated with Respondent about qualifying for MassHealth and sought advice from Respondent on how to reallocate assets in order to allow his wife to qualify for the program.
15. After reviewing the assets belonging to Client and his wife, Respondent recommended that Client liquidate stocks held in his individual retirement account (“Client’s IRA”) and provide the proceeds to Respondent.
16. Respondent advised Client that purchasing a Medicaid-compliant annuity can permit a Medicaid applicant to reduce his or her household’s non-exempt assets in order to qualify for the program.
17. Respondent represented that he would use the proceeds of Client’s IRA sales to purchase a Medicaid-compliant annuity on Client’s behalf.
18. Respondent knew that it was not possible for a lawyer or designated agent to purchase an annuity on behalf of another person without that person ever having to sign any type of paperwork or attestations from the insurance company.
19. On January 17, 2020, Client acted upon Respondent’s advice and sold stocks held in Client’s IRA.
20. On January 22, 2020, Client withdrew \$228,000 from Client’s IRA, which constituted the distribution from the IRA.
21. On February 4, 2020, Client wrote a check to Respondent in the amount of \$228,000.
22. On February 4, 2020, Respondent deposited the \$228,000 check from Client into Respondent’s Firm’s Massachusetts Interest on Lawyers’ Trust Account (“Respondent’s Firm’s IOLTA”).

23. Because the proceeds resulting from the IRA distribution were taxable, Client instructed the broker-dealer with which he maintained Client's IRA to withhold \$172,000 for future state and federal taxes.

24. Client incurred \$102,000 in tax liability for the 2020 tax year as a result of the bulk withdrawal from the IRA.

B. Respondent Used the Proceeds from Client's Stock Sales for Purposes Unrelated to Client.

25. Respondent is the only person who has ever been authorized to spend or withdraw funds from Respondent's Firm's IOLTA.

26. Between February 1, 2020 and February 25, 2020, Respondent transferred or withdrew \$225,085.88 of the \$228,000 in funds attributable to the proceeds of Client's stock sales held in Respondent's Firm's IOLTA for purposes unrelated to Client.

27. On February 21, 2020, Respondent wired \$220,000 of the funds attributable to Client to an account held for the benefit of an unaffiliated third party.

28. Respondent misrepresented to Client that he had used Client's \$228,000 to purchase a Medicaid-compliant annuity on Client's behalf.

29. Respondent never actually purchased any annuity on Client's behalf.

30. In May 2020, Client's wife moved into a nursing home in Massachusetts.

C. Respondent Masked How He Used Client's Funds.

31. On May 3, 2021, Respondent opened an attorney trust savings account for the benefit of Client ("Respondent's Trust Account for Client").

32. Respondent is the only person who has ever been authorized to spend or withdraw funds from Respondent's Trust Account for Client.

33. From May 2021 to November 2021, Respondent made regular transfers in the amount of \$4,633.35 from Respondent's Trust Account for Client to Client's checking account.

34. Respondent did not tell Client that the \$4,633.35 transfers were not actually payments from a Medicaid-compliant annuity that Respondent had purchased on Client's behalf.

D. The Enforcement Section Commenced an Investigation into Respondent's Securities-Related Conduct.

35. On November 18, 2021, the Enforcement Section sent an inquiry letter to Respondent seeking information about all annuities that he had assisted Client in purchasing.

36. In a letter to the Enforcement Section dated November 29, 2021, Respondent admitted that he had not purchased an annuity for Client.

37. On December 1, 2021, Respondent transferred \$250,373.56 from Respondent's Trust Account for Client to Client's checking account.

38. On December 1, 2021, a gift basket from Respondent was delivered to Client's home.

39. On December 2, 2021, Respondent called Client and admitted that he had not actually purchased a Medicaid-compliant annuity on Client's behalf.

40. During their December 2, 2021 telephone conversation, Respondent told Client that he had held the proceeds of Client's stock sales in a trust account, minus \$25,193 that Respondent paid to Client's wife's nursing home.

VI. VIOLATIONS OF LAW

Count I - Mass. Gen. Laws c. 110A, § 101(2)

41. Section 101 of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading

Mass. Gen. Laws c. 110A, § 101(2).

42. Respondent's acts and practices, as described above, constitute violations of Section 101(2) of the Act.

VII. ORDER

IT IS HEREBY ORDERED:

- A. Respondent shall permanently cease and desist from committing further violations of the Act.
- B. Respondent is censured by the Division.
- C. Respondent is permanently barred 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.

D. Within sixty (60) days after the entry of this Order, Respondent shall pay restitution to Client in the amount of \$102,000 (USD). Within the aforementioned sixty (60) day deadline, Respondent shall provide proof of payment to the Enforcement Section.

E. Within ninety (90) days after the entry of this Order, Respondent shall pay an administrative fine in the amount of \$175,000 (USD). Payment shall be:

- i. Made by United States Postal Service postal money order, certified check, bank cashier's check, bank money order, or wire transfer;
- ii. Made payable to the Commonwealth of Massachusetts;
- iii. Mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per the Division's instructions; and
- iv. Submitted under cover letter or other documentation that identifies Respondent as the person making the payment and that bears the docket number of this matter (Docket No. E-2021-0108).

Additionally, Respondent shall provide the Enforcement Section with notice twenty-four (24) hours prior to making the payment.

F. Respondent shall not claim, assert, or apply for a tax deduction or tax credit with regard to any local, state, or federal tax for any amount that he shall pay in accordance with this Order.

G. Respondent shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that he shall pay in accordance with this Order.

H. If Respondent is the subject of a voluntary or involuntary bankruptcy petition under Title 11 of the United States Code within three hundred sixty-five (365) days after the entry

Diane Young-Spitzer
