

CLOTHILDE V. HEWLETT
Commissioner
MARY ANN SMITH
Deputy Commissioner
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BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
OF THE STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF FINANCIAL
PROTECTION AND INNOVATION,

Complainant,

v.

GPS CAPITAL MANAGEMENT, LLC, and
DANIEL WU,

Respondents.

CRD No.: 136330 and 2651056

OAH No.: Pending

SETTLEMENT AGREEMENT

Hearing Date: Pending

Hearing Time: 9:00 AM

Location: Office of Administrative Hearings

1515 Clay St, #206

Oakland, California 94612

Judge: Not Assigned

The Commissioner of Financial Protection and Innovation (Commissioner), respondent GPS Capital Management, LLC (GPS), and respondent Daniel Wu (Wu) (collectively, the "Parties") enter into this settlement agreement (Agreement) with respect to the following facts:

I. RECITALS

A. The Department of Financial Protection and Innovation (Department) regulates California investment advisers and broker-dealers under the Corporate Securities Law of 1968 (CSL). *See* Cal.

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1 Corp. Code §§ 25000-25707¹. Under section 25600, the Commissioner is authorized to administer and
2 enforce the provisions of the CSL, and the regulations promulgated thereunder².

3 B. At all relevant times herein, GPS is and was an investment adviser licensed by the
4 Commissioner since January 30, 2018 (Central Registration Depository No. 136330)³ pursuant to the
5 CSL. GPS was at all relevant times, a California limited liability company, located at 840 Hinckley
6 Road, Suite 246, Burlingame, CA 94010. According to the California Secretary of State's website
7 (available at <https://bizfileonline.sos.ca.gov/search/business>), GPS' registration is terminated as of
8 June 16, 2023.

9 C. At all relevant times, Wu (CRD No. 2651056) is and was an officer, control person, managing
10 member, and an owner of GPS. Since approximately May 14, 2020, Wu was the sole employee,
11 officer, and owner of GPS.

12 D. During the period of November 21, 2005, through May 14, 2020, Dennis Chen (Chen) (CRD
13 No. 2767010) was the chief executive officer, control person, managing member, and majority owner
14 of GPS. On May 14, 2020, Chen left GPS, and was no longer an owner, control person, or officer. On
15 that same day, Chen voluntarily terminated his registration as an investment adviser representative.

16 E. At all relevant times, neither the Department nor the United States Securities and Exchange
17 Commission have issued a broker-dealer certificate to GPS or Wu.

18 F. From May 27, 2020, through October 15, 2021, GPS and Wu provided substantial assistance,
19 within the meaning of section 25403(b), by providing Chen access to GPS' advisory platform at TD
20 Ameritrade, Inc, whereby Chen engaged in the business of effecting transactions in securities, in
21 California, for the accounts of others, in violation of section 25210.

22 G. In connection with the investment advisory services provided, GPS and Wu omitted statements
23 of material fact to approximately 50 GPS' clients, including providing a third-party, access to their
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26 ¹ Unless stated otherwise, all section references are to the California Corporations Code.

27 ² See Cal. Code Regs. tit. 10, §§ 260.000-260.617. All further references will employ the format of 10 C.C.R. [section #].

28 ³ The Central Registration Depository (CRD) and Investment Adviser Registration Depository (IARD) are databases maintained by the Financial Industry Regulatory Authority (FINRA) since 2007. They are used to store and maintain information on registered securities and broker firms, as well as individuals who dispense investing and financial advice.

accounts and personal identifiable information (PII), in violation of section 25238 and 10 C.C.R. 260.238(h) and (m).

H. From May 27, 2020, through October 15, 2021, GPS and Wu provided substantial assistance, within the meaning of section 25403(b), by providing Chen access to GPS' advisory platform at TD Ameritrade, Inc, whereby Chen engaged in a cherry-picking fraudulent scheme, in violation of section 25216 and 10 C.C.R. 260.216(a).

I. On July 24, 2024, the Commissioner issued the following actions and orders (collectively, Orders): (1) Accusation in Support of Order to Revoke GPS Capital Management LLC's Investment Adviser Certificate; (2) Desist and Refrain Order and Claim for Ancillary Relief; and (3) Statement in Support of Order Levying Administrative Penalties.

J. GPS and Wu timely requested a hearing to challenge the Orders and the Parties are currently waiting for the Office of Administrative Hearings to schedule the hearing.

K. The Commissioner, GPS, and Wu now intend to resolve this matter amicably without the necessity of a hearing or other litigation.

L. GPS and Wu, by entering into this Agreement, neither admit nor deny the Commissioner's findings in the Orders.

M. The Commissioner finds this action is appropriate, in the public interest, is necessary for the protection of investors, and is consistent with the purposes fairly intended by the policies and procedures of the CSL.

N. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the Parties agree as follows:

II. TERMS AND CONDITIONS

1. Administrative Penalty: GPS and Wu agree to pay to the Commissioner an administrative penalty in the amount of \$35,000.00 (Penalty) no later than 45 days after the Effective Date of this Agreement. The Penalty shall be made payable in the form of a cashier's check or Automated Clearing House deposit payable to the "Department of Financial Protection and Innovation" and transmitted to the attention of "Accounting – Litigation" at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036.

1 Notice of such payment shall be forwarded to Ryan M. Cassidy, Counsel, Enforcement Division, by
2 email at: ryan.cassidy@dfpi.ca.gov. In the event the payment due date falls on a weekend or holiday,
3 the payment shall be due the next business day.

4 2. Revocation Order: Pursuant to section 25232, GPS' investment adviser certificate
5 (CRD No. 136330) is hereby revoked as of the Effective Date of this Agreement (Revocation Order).

6 3. Final Desist and Refrain Order: Pursuant to section 25532, GPS Capital Management,
7 LLC and Daniel Wu are hereby ordered to desist and refrain from violating sections 25210 and
8 25238, and 10 C.C.R. 260.238.

9 4. Waiver of Hearing Rights: GPS and Wu hereby waive the right to any hearings, and to
10 any reconsideration, appeal, or other right to review which may be afforded pursuant to the CSL, the
11 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
12 provision of law. By waiving such rights, GPS and Wu effectively consent to this Agreement and all
13 the terms becoming final.

14 5. Failure to Comply with Agreement: GPS and Wu agree that if they fail to meet any
15 requirement of this Agreement, the Commissioner may, in addition to all other available remedies she
16 may invoke under the CSL, immediately bar Wu. GPS and Wu hereby waive any notice and hearing
17 rights to contest the bar which may be afforded under the CSL, the California Administrative
18 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
19 therewith.

20 6. Information Willfully Withheld or Misrepresented: This Agreement may be revoked,
21 and the Commissioner may pursue any and all remedies available under law against GPS and Wu if
22 the Commissioner discovers that GPS or Wu knowingly or willfully withheld or misrepresented
23 information used for and relied upon in this Agreement.

24 7. Future Actions by Commissioner: If GPS or Wu fail to comply with any terms of the
25 Agreement, the Commissioner may institute proceedings for any and all violations otherwise
26 resolved under this Agreement. The Commissioner reserves the right to bring any future actions
27 against GPS and Wu, for any and all unknown violations of the CSL or any other law under the
28 Commissioner's jurisdiction.

1 8. Assisting Other Agencies: Nothing in this Agreement limits the Commissioner's
2 ability to assist any other government agency (whether city, county, state, or federal) with any
3 administrative, civil or criminal action brought by that agency against GPS and Wu or any other
4 person based upon any of the activities alleged in this matter or otherwise.

5 9. Headings: The headings to the paragraphs of this Agreement are inserted for
6 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
7 the provisions hereof.

8 10. Binding: This Agreement is binding on all heirs, assigns, and/or successors in interest.

9 11. Reliance: Each of the Parties represents, warrants, and agrees that in executing this
10 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
11 Each of the Parties further represents, warrants, and agrees that in executing this Agreement it has
12 placed no reliance on any statement, representation, or promise of any other party, or any other
13 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
14 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have
15 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
16 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
17 supplement, or contradict the terms of this Agreement.

18 12. Waiver, Amendments, and Modifications: No waiver, amendment, or modification of
19 this Agreement will be valid or binding unless it is in writing and signed by each of the Parties. The
20 waiver of any provision of this Agreement will not be deemed a waiver of any other provision. No
21 waiver by either party of any breach of, or of compliance with, any condition or provision of this
22 Agreement by the other party will be considered a waiver of any other condition or provision or of
23 the same condition or provision at another time.

24 13. Full Integration: This Agreement is the final written expression and the complete and
25 exclusive statement of all the agreements, conditions, promises, representations, and covenant
26 between the Parties with respect to the subject matter hereof, and supersedes all prior or
27 contemporaneous agreements, negotiations, representations, understandings, and discussions between
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1 and among the Parties, their respective representatives, and any other person or entity with respect to
2 the subject matter covered hereby.

3 14. Governing Law: This Agreement will be governed by and construed in accordance
4 with California law. Each of the Parties hereto consents to the jurisdiction of such court, and hereby
5 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to
6 the maintenance of such action or proceeding in such court.

7 15. Counterparts: This Agreement may be executed in one or more separate counterparts,
8 each of which when so executed, shall be deemed an original. Such counterparts shall together
9 constitute a single document.

10 16. Effect Upon Future Proceedings: If GPS and Wu apply for any license, certificate,
11 registration, permit, or qualification under the Commissioner's current or future jurisdiction, or is the
12 subject of any future action by the Commissioner to enforce this Agreement, then the subject matter
13 hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

14 17. Voluntary Agreement: GPS and Wu enter into this Agreement voluntarily and without
15 coercion and acknowledge that no promises, threats or assurances have been made by the
16 Commissioner, or any officer, or agent thereof, about this Agreement. The Parties each represent
17 and acknowledge that he, she or it is executing this Agreement completely voluntarily and without
18 any duress or undue influence of any kind from any source.

19 18. Notice: Any notice required under this Agreement shall be provided to each party at
20 the following addresses:

21 To GPS and Wu: Daniel Wu
22 GPS Capital Management LLC
23 2844 Ulloa Street
24 San Francisco, California 94116
onvest@yahoo.com

25 To the Commissioner: Ryan M. Cassidy, Counsel
26 Department of Financial Protection and Innovation
27 2101 Arena Boulevard
28 Sacramento, California 95834
Ryan.Cassidy@dfpi.ca.gov

19. Signatures: A fax or electronic mail signature shall be deemed the same as an original signature.

20. Public Record: GPS and Wu hereby acknowledge that this Agreement is and will be a matter of public record.

21. Effective Date: This Agreement shall become final and effective when signed by all Parties and delivered by the Commissioner's agent via e-mail to Wu and GPS' agent, Daniel Wu, at onvest@yahoo.com.

22. Authority to Sign: Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Agreement and undertake the obligations set forth herein.

Dated: December 16, 2024



CLOTHILDE V. HEWLETT

Commissioner of Financial Protection and Innovation

By

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: December 16, 2024

By

DANIEL WU, as an Individual and authorized agent for
GPS Capital Management, LLC