

PRESTON DuFAUCHARD  
California Corporations Commissioner  
ALAN S. WEINGER  
Deputy Commissioner  
JOANNE J. ROSS (CA BAR NO. 202338)  
Corporations Counsel  
Department of Corporations  
1515 K Street, Ste. 200  
Sacramento, California 95814  
Telephone: (916) 324-9687  
Facsimile: (916) 445-6985

Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS  
OF THE STATE OF CALIFORNIA

In the Matter of	)	CASE NO.
	)	
THE CALIFORNIA CORPORATIONS	)	FILE NO. 144075
COMMISSIONER,	)	
	)	1. DESIST AND REFRAIN ORDER;
Complainant,	)	2. CLAIM FOR ANCILLARY RELIEF; and
v.	)	3. ORDER LEVYING ADMINISTRATIVE
	)	PENALTIES
ALPHA CAPITAL PARTNERS, LLC	)	
	)	
and	)	
	)	
MICHAEL MEDIANO	)	
	)	
Respondents	)	

The California Corporations Commissioner ("Commissioner") of the Department of Corporations ("Department") alleges and charges as follows:

**I. JURISDICTION AND VENUE**

1. The Commissioner brings this action pursuant to the provisions of California Corporations Code sections 25252(b), 25254(a), and 25532(b), and the rules and regulations promulgated thereunder.

2. The Commissioner is authorized to administer and enforce the provisions of the

1 Corporate Securities Law of 1968, Corporations Code section 25000 et seq. ("CSL") and the  
2 regulations thereunder at Title 10, California Code of Regulations ("CCR").

## 3 II. STATEMENT OF FACTS

4 3. This action is brought to order Respondent Alpha Capital Partners, LLC ("Alpha")  
5 to:

6 (a) desist and refrain from unlicensed investment adviser activities pursuant to CSL section  
7 25532(b);

8 (b) pay back to clients all fees, of at least one hundred and fifty-six thousand nine hundred  
9 sixty-four dollars (\$156,964), received while unlicensed, pursuant to CSL section 25254(a);

10 (c) pay penalties to the Department for conducting unlicensed investment adviser activities  
11 pursuant to section 25252(b) of seventy thousand dollars (\$70,000) for all violations of 25230(a)  
12 combined; and

13 (d) pay penalties to the Department, pursuant to section 25252(b), of five thousand dollars  
14 (\$5,000) for violating section 25245 by making false statements to the Commissioner in order to  
15 obtain a license.

16 4. At all relevant times, Michael Mediano ("Mediano") was the sole owner of Alpha.  
17 Alpha is a Delaware limited liability company, and its principal place of business is located at 300  
18 N Continental Blvd, Suite 195, El Segundo, California 90245.

19 5. On or about June 2, 2008, Alpha filed an application for an investment adviser  
20 certificate with the Department. The application revealed that Alpha was likely engaging in  
21 investment adviser activities without a license.

22 6. On its application, Alpha showed existing accounts and managed assets of eleven  
23 million dollars (\$11,000,000). When the Department inquired about these accounts, Mediano  
24 "corrected" the investment adviser application by changing the answers to show that Alpha did not  
25 have any pre-existing accounts.

26 7. Alpha became registered as an investment adviser with the Department on August 1,  
27 2008.

28 8. Neither Mediano nor Alpha had a valid investment adviser certificate issued by the

1 Department or the U.S. Securities and Exchange Commission (“SEC”) prior to August 2008. In  
2 addition, Mediano was not registered with any Investment Advisory or Broker Dealer firm from  
3 April 2007 through August 2008.

4 9. The Department conducted a routine, unannounced examination of Alpha on or  
5 about May 24, 2010. During the examination, the Department’s Examiner asked Mediano about  
6 the accounts listed on its initial application. Mediano reiterated that neither he nor Alpha had any  
7 advisory clients prior to being registered with the Department as an investment adviser.

8 10. The examination revealed that, of ten clients sampled, five had new account  
9 applications signed and dated over one year in advance of Alpha’s registration with the Department.  
10 An additional three of the ten sampled did not have signed or dated advisory contracts, so they too  
11 may have been clients prior to Alpha’s registration. Information for the ninth client could not be  
12 located by Mediano.

13 11. As a result of the findings above, the Department’s Examiner determined that further  
14 investigation into the advisory activities of Alpha and Mediano was warranted. The Department  
15 contacted Fidelity Investments (“Fidelity”), the custodian and Broker-Dealer used by Alpha for its  
16 clients’ accounts.

17 12. The Department requested client account statements and new account applications  
18 from all clients on record with Fidelity, in order to establish when advisory activity may have  
19 started.

20 13. The new account applications and related account documents provided by Fidelity  
21 showed that the first client accounts with Alpha and/or Mediano were opened in or around April  
22 2007. However, Alpha was not registered with the Department until August 1, 2008.

23 14. The account statements provided by Fidelity reflect client fees paid to Mediano and  
24 Alpha. The statements show that approximately one hundred and fifty-six thousand nine hundred  
25 sixty-four dollars (\$156,964) in fees were collected by Mediano and Alpha prior to its registration  
26 with the Department.

27 15. The client information provided by Fidelity show that Alpha and Mediano engaged  
28 in unlicensed investment adviser activity in violation of CSL section 25230(a).

1           16.     When asked about existing clients prior to the investment adviser registration,  
2 Mediano told the Department's Examiner that Alpha did not have any clients prior to its  
3 registration. In addition, Mediano changed his answers on his investment adviser application to  
4 show that he did not have existing or prior clients. The Department's examination revealed that  
5 Mediano and Alpha did indeed have clients prior to registration.

6           17.     Consequently, Mediano and Alpha willfully made an untrue statement of a material  
7 fact or omitted a material fact in an application filed with the Department, which was a material fact  
8 required to be stated therein, in violation of CSL section 25245.

9           **III.     ORDER TO DESIST AND REFRAIN FROM UNLICENSED INVESTMENT**  
10           **ADVISER ACTIVITIES IN CALIFORNIA PURSUANT TO CORPORATIONS CODE**

11                   **SECTION 25230(a) AND 25532 (b)**

12           18.     Corporations Code section 25230 (a) provides, in pertinent part:

13                   It is unlawful for any investment adviser to conduct business as an  
14 investment adviser in this state unless the investment adviser has first applied for  
15 and secured from the commissioner a certificate, then in effect, authorizing the  
16 investment adviser to do so . . . .

17           19.     Corporations Code section 25532(b) provides, in pertinent part:

18                   If, in the opinion of the commissioner, a person has been or is acting as a  
19 broker-dealer or investment adviser, or has been or is engaging in broker-dealer or  
20 investment adviser activities, in violation of Section 25210, 25230, or 25230.1,  
21 the commissioner may order that person to desist and refrain from the activity  
22 until the person has been appropriately licensed or the required filing has been  
23 made under this law.

24           20.     Mediano and Alpha were conducting business as an investment adviser in this state  
25 without first securing from the commissioner a certificate, then in effect, in violation of  
26 Corporations Code section 25230(a).

27           Mediano and Alpha are hereby ordered to desist and refrain from acting as an investment  
28 adviser in the State of California unless and until they have first applied for and secured from the  
commissioner a certificate, then in effect, authorizing them to act as an investment adviser, or  
unless exempt.

1 This Order is necessary, in the public interest, for the protection of investors, and consistent  
2 with the purposes, policies, and provisions of the CSL.

3 **IV. CLAIM FOR ANCILLARY RELIEF IN THE FORM OF DISGORGEMENT**

4 21. Corporations Code section 25254(a) provides, in pertinent part:

5 If the commissioner determines it is in the public interest, the  
6 commissioner may include in any administrative action brought under this part a  
7 claim for ancillary relief, including, but not limited to, a claim for restitution or  
8 disgorgement or damages on behalf of the persons injured by the act or practice  
constituting the subject matter of the action. . .”

9 The Commissioner hereby makes a claim for disgorgement by Mediano and Alpha of all  
10 fees, in the amount of at least one hundred and fifty-six thousand nine hundred sixty-four dollars  
11 (\$156,964), charged to clients while Mediano and Alpha were engaged in unregistered investment  
12 advisory activities.

13 **V. ORDER LEVYING ADMINISTRATIVE PENALTIES**

14 22. Mediano and Alpha willfully violated the CSL by engaging in unlicensed investment  
15 adviser activity, in violation of CSL section 25230(a), and by making false statements about that  
16 activity to the commissioner, in violation of CSL section 25245.

17 23. CSL section 25245 states:

18 It is unlawful for any person willfully to make any untrue statement of a  
19 material fact in any application, notice, or report filed with the commissioner  
20 under this part, or willfully to omit to state in any such application, notice, or  
report any material fact which is required to be stated therein.

21 24. Corporations Code section 25252(b) authorizes the Commissioner to issue an order  
22 levying administrative penalties against any investment adviser for willful violations of any  
23 provisions of the California Securities Laws and any rules promulgated thereunder.

24 25. Corporations Code section 25252(b) provides, in relevant part:

25 (b) Any broker-dealer or investment adviser that willfully violates  
26 any provision of this division to which it is subject, or that willfully  
27 violates any rule or order adopted or issued pursuant to this division and to  
28 which it is subject, is liable for administrative penalties of not more than  
five thousand dollars (\$5,000) for the first violation, not more than ten  
thousand dollars (\$10,000) for the second violation, and not more than  
fifteen thousand dollars (\$15,000) for each subsequent violation.

Pursuant to Corporations Code section 25252(b), the commissioner hereby levies administrative penalties against Respondent Mediano and Alpha in the amount of seventy thousand dollars (\$70,000), for repeated willful violations of section 25230(a) over more than one year of advising clients and collecting fees while unlicensed, and in the amount of five thousand dollars (\$5,000) for misrepresenting a material fact to the commissioner in its application for an investment adviser registration, for a total penalty of seventy-five thousand dollars (\$75,000). This amount shall be paid to the commissioner within sixty (60) days of the date of this Order.

This Order is necessary, in the public interest, for the protection of investors, and consistent with the purposes, policies, and provisions of the CSL.

Dated: July 18, 2011

PRESTON DuFAUCHARD  
California Corporations Commissioner

By: \_\_\_\_\_  
ALAN S. WEINGER  
Deputy Commissioner