BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. IKE PETROS IOSIFF, Respondent.	OAH No.: 2009040223

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated December 14, 2009, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with technical and minor changes on the attached Errata Sheet pursuant to Government Code Section 11517(c)(2)(C).

This Decision shall become effective on March 23, 2010.

IT IS SO ORDERED this 22nd day of March 2010.

CALIFORNIA CORPORATIONS COMMISSIONER

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Preston DuFauchard

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, **Complainant,** **vs.** **IKE PETROS IOSIFF,** **Respondent.**	**OAH No. 2009040223**

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on September 15, 2009, in Los Angeles, California. Complainant was represented by Alex Calero, Corporations Counsel. No appearance was made on behalf of Ike Petros Iosiff (Respondent).

Oral and documentary evidence was received and argument was heard. The record was left open until October 16, 2009, to allow Complainant to file a closing brief. Complainant filed a Closing Brief which was marked as Complainant's Exhibit 59 and lodged. The record was closed, and the matter was submitted for decision on October 16, 2009.

FACTUAL FINDINGS

1. On August 12, 2008, Complainant, Preston DuFauchard, filed the Accusation against Respondent in his official capacity as the California Corporations Commissioner (Commissioner), Department of Corporations (Department), State of California (State). Respondent filed a Notice of Defense.

2. On April 20, 2009, a Notice of Hearing, setting forth the date, time and place of hearing, was served by United States mail on Respondent. Service of the Notice of Hearing conformed to the requirements of Government Code sections 11505 and 11509.

3. Respondent did not appear at the September 15, 2009 hearing. At Complainant's request, the matter proceeded as a default, pursuant to Government Code section 11520.

4. At the administrative hearing, Complainant proved the allegations in the Accusation which are set forth verbatim below and adopted as factual findings herein:

> 5. At all relevant times, [Respondent] (CRD #4993972) was President of and maintained full control over the activities of Aegean Capital Group, Inc., a Delaware Corporation (Aegean).
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> 6. On or about August 7, 2001, Aegean became licensed with the Department as an investment advisor (CRD #134547), pursuant to [Corporate Securities Law of 1986 (CSL), found in the California Corporations Code sections 25000 et seq.] section 25230. From that time, until Aegean surrendered its license on [November 25], 2007, Aegean conducted business in the State as an investment advisor. . .
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> 7. At all relevant times, [Respondent] was the only investment advisor representative and employee of Aegean.
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> 8. [Respondent], in relation to the investment adviser activities of Aegean, submitted forms to the Department in which [Respondent] "agree[s] to comply with all provisions, . . . statutes, . . . rules and regulations of" the [State] and represents he "will be familiar with the statutes [and] rules . . . of" this state, and further represents he is "in compliance with the . . . record keeping requirements of" California law.
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> 9. At all relevant times, [Respondent] maintained a Website at www.aegeancapital.com.
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> 10. In or about August 2005, the Department began an examination of [Respondent] and Aegean's investment advisor business, which is discussed more fully below.
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> 11. The examination revealed that [Respondent] and Aegean had discretionary authority over client funds and securities purchased on behalf of clients.
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> 12. The examination revealed that [Respondent] and Aegean [did] not calculate certain financial information, such as "net worth," in accordance with generally accepted accounting principles (GAAP).

13. During the examination, [Respondent] admitted that Aegean's books, records and computations of net capital and aggregate indebtedness [were] only prepared annually by an accountant.

14. As an investment advisor, [Respondent], through Aegean, provided two services: (1) a subscription service, whereby [Respondent] recommend[ed] to subscriber-clients which securities to purchase and or sell; and (2) direct management of funds and trading of securities, in the form of "stock" and "stock options," . . . on behalf of clients.

15. On or about December 18, 2001, [Respondent] solicited a client, [V.M.] for a loan to fund a television venture. In December 2001, the client agreed and in fact did loan $25,000.00 [Respondent].

16. In or about October 2003, [Respondent] . . . executed a promissory note, with an 8% rate of return per year, in the client's [V.M.'s] favor.

17. [Respondent] has failed to return the principal amount of the loan to the client [V.M.].

18. When individuals become [Respondent's] clients they execute a "Client Agreement." Client Agreements contain a provision providing that 30-day notice must be given in order for either party to terminate the client/investment advisor relationship.

19. Client Agreements also contain a provision providing that [Respondent] will not invest over a specified percentage, ranging from 15% to 35%, of client funds in option trading at any given time.

20. However, [Respondent] invested client funds, in option trading, in excess of the percentages specified in Client Agreements. In some cases, [Respondent] invested 99.73% of client funds in option trading at a given time.

21. [Respondent] represented to some clients that their funds would [be] traded in a "conservative way," using "married puts" to hedge all positions or at a "3:1 reward risk" strategy.

22. [Respondent] did not invest funds in a conservative manner as was represented to clients.

23. Further, [Respondent] did not invest funds based on a 3:1 reward risk strategy.

24. At all relevant times until approximately October 31, 2005, [Respondent] managed client funds and option trading through a service contract with Charles Schwab Institutional, a division of Charles Schwab & Co., Inc. (Schwab). This service contract allowed option trading to take place over the Internet.

25. Schwab requires all clients applying for option trading accounts to complete an "Option, Margin and Short Account Trading" application (Option Application).

26. [Respondent] engaged in option trading, on behalf of clients, by way of a master account/client sub-account arrangement through the Schwab service contact. This arrangement is discussed more fully below.

27. [Respondent] offered four managed trading programs: (1) Short Term Trades (Short Term); (2) Gold & Silver; (3) Retirement; and (4) the Hamzei Options Trading System (HOTS). [Respondent] controlled each managed trading program through a master account over the Internet.

28. A client would have a client account with Schwab for each of the four managed trading programs in which a client participated. Client accounts would then be linked to the corresponding master accounts controlled by [Respondent].

29. [Respondent] required clients to provide [Respondent] direct access to client accounts, which allowed [Respondent] to execute trades in client accounts over the Internet.

30. [Respondent] would purchase and or sell a block of stocks or options in a master account and then allocate the options to client accounts at the end of the trading day. [Respondent] also occasionally traded options directly from the client accounts.

31. Both Aegean and Liliana Iossif, a relative of [Respondent], maintained funds in client accounts managed by [Respondent]. The fact that [Respondent] managed client sub-accounts for Aegean and Liliana Iossif was disclosed in a public licensing document called Form ADV, Part II. However, [Respondent's] Form ADV, Part II also represented that [Respondent] will not execute orders for securities, such as stocks and stock options, "in a fashion either preferential to one account relative to other like accounts managed by Aegean Capital, or otherwise materially adverse to such other accounts."

32. Option trading conducted in the master accounts were not always allocated to client accounts in an equitable manner, as discussed more fully below.

33. [Respondent] would "cherry pick" or allocate profitable option trades to the Aegean or Liliana Iossif account while less profitable trades, or trades resulting in a loss, were allocated to client accounts.

34. Further, [Respondent] did not allocate option trades on a pro-rata basis, given each clients' fractional interest in relation to the total amount of assets under management.

35. For example, as of January 1, 2005, six (6) client accounts were linked to the Short Term master account: (1) Client A [W.K.[1] and F.K. jointly] had $375,317.63 under management, for 0.890782 of the total assets in the Short Term managed trading program; (2) Client B [R.H.] had $35,494.63 under management, for 0.084243 of the total assets in the Short Term managed trading program; (3) Client C [F.O.] had $5,919.53 under management, for 0.014049 of the total assets under management in the Short Term managed trading program; (4) Client D [J.C.] had $4,206.29 under management, for 0.009983 of the total assets in the Short Term managed trading program; (5) Aegean had only $378.06 under management, for 0.000897 of the total assets in the Short Term managed trading program; and (6) Liliana Iossif had $19.02 under management, for 0.000045 of the total assets in the Short Term managed trading program.

36. At 9:54 a.m. on January 21, 2005, [Respondent] ordered the purchase of five (5) Google stock options, in the form of puts, through the Short Term master account. During January 21, 2005, the price of Google stock declined, resulting in the value of the puts almost doubling. Although the Aegean account constituted approximately 0.000987 of the total assets under management in the Short Term managed trading program, [Respondent] allocated all five (5) of the Google puts to the Aegean account. The allocation of the five (5) Google puts resulted in a gain of $1,935.98 to [Respondent]. No other clients shared in this gain.

37. As a result of the illegal and inequitable allocation of option trades, the Aegean and Liliana Iossif accounts made money while client accounts lost money.

[1] Clients' initials are used in lieu of their full names in order to protect their privacy.

38. [Respondent] represented to clients that options trading made in the HOTS managed trading program would reflect trading recommendations made on the Hamzei Analytics Website at www.hamzeianalytics.com.

39. From November 2004 to May 2005, [Respondent] recommended trades published on the Hamzei Analytics Website.

40. Beginning in February 2005, [Respondent] made option trades in the HOTS master account that did not reflect trades recommended on the Hamzei Analytics Website. Further, [Respondent] allocated option trades to client accounts that did not reflect trades recommended on the Hamzie Analytics Website.

41. For example, under the HOTS managed trading program client accounts should have experienced the same gains and losses. However, a comparison of two client accounts linked to the HOTS master account (both funded with $50,000.00 in early February 2005) over the same three-month period (February 1, 2005 – May 1, 2005), demonstrates that [Respondent] allocated option to client accounts different quantities. This resulted in one client account having a balance of $47,426.21 in May 2005 while another client account had a balance of $73,749.02 in May 2005.

42. As a result of the illegal and non-recommended option trading in the HOTS managed trading program client accounts lost money.

43. In or about December 2004, [Respondent's] Website, www.aegeancapital.com, advertised that for the past two years (2003-2004) client accounts managed by [Respondent] averaged a 20-30% rate of return.

44. The Department's examination revealed that, during the period [of 2003 to 2004, accounts managed by Respondent did not realize an average gain of 20 percent, much less 30 percent].

45. The Schwab service contract allowed clients to review trading data, in their respective accounts, in real time over the Internet.

46. Many clients monitored trading activity in their accounts and corresponded with [Respondent], via telephone, e-mail and letter, on a daily basis regarding trading activity in their respective accounts.

> 47. On several occasions, clients requested that [Respondent] cease trading in their accounts and, in some cases, close their accounts due to the monetary los[s]es taking place.
>
> 48. Despite repeated requests by clients to cease trading and or close their accounts, [Respondent] continued to trade for days, weeks, and in some cases, months without client authorization.

5. Respondent's clients paid investment advisory fees to Respondent totaling $10,732.53, as follows: Client M.C. - $896.00; Client F.O. - $763.00; Client C.F.T. - $750.00; Client Y.C. - $3,669.53[2]; Client T.C. - $3,132.00; Client J.M. - $1,522.00.

6. As a result of Respondent's actions, his clients suffered losses totaling $1,717,189.99, as follows: Client M.C. $12,348.92; Client F.O. $ 96,422.51; Client V.M. $47,058.96; Client C.F.T. $102,588.96; Client R.H. $70,020.65; Client M.S. $130,732.11; Client H.T. $64,505.37; Clients W.K. & F.K. $336,699.39 (from multiple accounts with losses of: $311,702.41, $2,199.21, $11,692.10, and $11,105.67); Clients Y.C. & J.C. $76,048.85 (from multiple accounts with losses of $20,936.26 and $55,112.59); Client S.S. $675,233.58 (from accounts with losses of $271,933.89 and $403,299.69); Client J.M. $13,777.98; Client F.F. $6,596.01; Client H.K. $49,665.58; Client S.P. $31,098.19 (from accounts with losses of $579.27 and $30,518.92); Client M.L. $4,393.14.

7. Complainant has incurred total costs of $153,919 in investigative expenses and attorneys' fees for this matter, all of which are deemed reasonable.

LEGAL CONCLUSIONS

1. Cause exists to bar Respondent from any position of employment, management or control of any investment advisor, broker-dealer or commodity advisor, pursuant to CSL section 25232.1, for violation of CSL section 25232, subdivision (e), for: (A) failure to calculate net worth in accordance with GAAP; (B) failure to prepare computations of net capital and aggregate indebtedness at least once per month; (C) placing orders to trade options in client accounts without authority to do so; (D) borrowing money from a client; (E) publishing an advertisement containing an untrue statement of material fact, or which is otherwise false or misleading; and (F) engaging in a practice of trading options, i.e. "cherry picking," which operates as a fraud or deceit upon clients, as set forth in Factual Finding 4.

2. Cause exists, pursuant to CSL section 25254, subdivision (a), to award ancillary relief in the form of: restitution totaling $1,717,189.99; disgorgement of investment advisory fees totaling $10,732.53; and repayment of the V.M. loan in the amount of $25,000, as set forth in Factual Findings 4, 5 and 6.

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[2] In the Closing Brief, Complainant alleged that this figure was $5,169.53. However, the evidence (Exhibit 54) established a different number.

3. Cause exists, pursuant to CSL section 25254, subdivision (b), to award costs recovery in the amount of $153,919, as set forth in Factual Findings 4 and 7.

ORDERS

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. Respondent, Ike Petros Iosiff, is hereby barred from any position of employment, management, or control of any of any investment advisor, broker-dealer or commodity advisor.

2. Within 90 days from the effective date of this Decision and Order, Respondent, Ike Petros Iosiff, shall disgorge $10,732.53 in investment advisory fees paid to him by his clients and shall submit proof to the Department of the disgorgement of fees as follows: to Client M.C. - $896.00; to Client F.O. - $763.00; to Client C.F.T. - $750.00; to Client Y.C. - $3,669.53; to Client T.C. - $3,132.00; and to Client J.M. - $1,522.00.

3. Within 90 days from the effective date of this Decision and Order, Respondent, Ike Petros Iosiff, shall make payment of restitution totaling $1,717,189.99 to his clients and shall submit proof to the Department of the payment of restitution as follows: Client M.C. $12,348.92; Client F.O. $ 96,422.51; Client V.M. $47,058.96; Client C.F.T. $102,588.96; Client R.H. $70,020.65; Client M.S. $130,732.11; Client H.T. $64,505.37; Clients W.K. & F.K. $336,699.39 (from multiple accounts with losses of: $311,702.41, $2,199.21, $11,692.10, and $11,105.67); Clients Y.C. & J.C. $76,048.85 (from multiple accounts with losses of $20,936.26 and $55,112.59); Client S.S. $675,233.58 (from accounts with losses of $271,933.89 and $403,299.69); Client J.M. $13,777.98; Client F.F. $6,596.01; Client H.K. $49,665.58; Client S.P. $31,098.19 (from accounts with losses of $579.27 and $30,518.92); Client M.L. $4,393.14.

4. Within 90 days of the effective date of this Decision and Order, Respondent, Ike Petros Iosiff, shall make repayment of the loan to V.M. in the amount of $25,000 and shall submit proof to the Department of the repayment of the V.M. loan.

5. Within 90 days of the effective date of this Decision and Order, Respondent, Ike Petros Iosiff, shall reimburse the Department the sum of $153,919 incurred in investigative expenses and attorneys' fees.

DATED: December 14, 2009

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JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings