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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	FILE NO.s: 4460674 & 174064
)	
THE COMMISSIONER OF BUSINESS OVERSIGHT,)	STATEMENT OF ISSUES AND ACCUSATION IN SUPPORT OF NOTICE OF INTENTION TO ISSUE ORDERS:
)	
Complainant,)	1. DENYING THE INVESTMENT ADVISER CERTIFICATE APPLICATION OF MISSION ADVISORY SERVICES, Inc.
v.)	
MISSION ADVISORY SERVICES, Inc. and BRETT REED BARBER, an individual)	2. BARRING BRETT REED BARBER FROM ANY POSITION OF EMPLOYMENT, MANAGMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER
Respondents.)	
)	(Corporations Code §§ 25232 & 25232.1)

Jan Lynn Owen in her capacity as the Commissioner ("Commissioner") of the California Department of Business Oversight ("Department"), alleges and charges as follows:

I. INTRODUCTION

1. This action is brought to deny the investment adviser application of respondent Mission Advisory Services, Inc. (Mission), CRD#174064, pursuant to Corporations Code section 25232 and to bar respondent Brett Reed Barber (Barber), CRD#4460674, from any position of employment,

1 management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to
2 Corporations Code section 25232.1.¹

3 2. Corporations Code section 25600 authorizes the Commissioner to administer and enforce the
4 provisions of the Corporate Securities Law of 1968 (Corp. Code § 25000 *et seq.*) and the regulations
5 promulgated thereunder (Cal. Code Regs., tit. 10, § 260.000 *et seq.*).

6 II. STATEMENT OF FACTS

7 3. On or about January 15, 2015, respondent Mission electronically filed an application on the
8 Form ADV for investment adviser registration in the State of California.² The application stated that
9 respondent Mission was solely owned by its President, respondent Barber.

10 4. Upon receipt of respondent Mission's application, a departmental review of the Central
11 Registration Depository ("CRD") system³ showed that respondent Barber was barred from
12 associating with any member of the Financial Industry Regulatory Authority, Inc. (FINRA) in any
13 capacity.⁴

14 5. The Commissioner's investigation revealed that respondent Barber's bar was a result of
15 disciplinary action initiated by FINRA which culminated in respondent Barber signing a Letter of
16 Acceptance, Waive, and Consent (AWC) on February 3, 2012.

17 6. In the FINRA action, Respondent Barber accepted and consented to the following facts:

18 a. On December 15, 2011, FINRA sent a letter to respondent Barber, through counsel,
19 requesting his appearance at an on-the-record (OTR) interview on January 25, 2012, as part of an
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22 ¹ All code references are to the California Corporations Code unless otherwise indicated.

23 ² The investment adviser application in issue is a "Form ADV (Paper Version) Uniform Application
24 for Investment Adviser Registration" promulgated by the Securities Exchange Commission ("SEC")
25 pursuant to 17 Code of Federal Regulations 279.1 as amended by the SEC Release No. IA-1916, 34-
43758 (*see* Corp. Code § 260.231.2).

26 ³ The CRD system contains the qualification, employment, and disclosure histories of securities
27 professionals.

28 ⁴ FINRA, formerly known as the National Association of Securities Dealers ("NASD"), is the largest
national securities association registered under the Securities Exchange Act of 1934.

1 investigation into respondent Barber’s outside business activities at the FINRA District Office in Los
2 Angeles, California.

3 b. The request was made pursuant to FINRA Rule 8210.

4 c. Prior to the commencement of the OTR, respondent Barber produced documents.

5 d. The OTR commenced at approximately 10:00 a.m. on January 25, 2012.

6 e. After an afternoon break, respondent Barber refused to answer any further questions.

7 f. By refusing to answer further questions, respondent Barber violated FINRA Rules
8 8210 and 2010.

9 g. The following day, FINRA sent a letter to respondent Barber, via counsel, requesting
10 his further appearance at an OTR on February 2, 2012, in order to obtain necessary information to
11 determine whether respondent Barber had committed any violations of NASD/FINRA Rules and/or
12 federal securities laws.

13 h. On January 31, 2012, respondent Barber informed FINRA, through counsel, that he
14 would neither appear nor provide any further sworn testimony at any further OTRs in connection
15 with the FINRA investigation.

16 i. By refusing to appear and provide further sworn testimony, respondent Barber
17 violated FINRA Rules 8210 and 2010.

18 7. Further, in the AWC, respondent Barber consented to the imposition of sanctions, barring
19 him from associating with any FINRA member in any capacity and, *inter alia*, waived his right to
20 appeal.

21 8. On March 16, 2014, based on the AWC, FINRA issued a permanent bar to respondent Barber
22 prohibiting him from associating with any FINRA member.

23 9. However, in an initial Form U4 filed by Respondent Barber on January 23, 2105,
24 respondent Barber stated that FINRA’s sanction of permanent bar was only temporary and/or time
25 limited. He also represented that the regulatory action, including the permanent bar, is and has been
26 on appeal since April 1, 2012, even though he waived the right to appeal the decision in the AWC.

1 10. The Department’s investigation has confirmed that Respondent is permanently barred from
2 association with any FINRA member and that there is not now, and was never, any appeal of
3 FINRA’s decision based on the AWC.

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5 **III. FIRST CAUSE FOR DENIAL OF APPLICATION: RESPONDENT MISSION’S**
6 **SOLE OWNER AND PRESIDENT HAS BEEN SUBJECT TO AN ORDER OF A**
7 **SECURITIES ASSOCIATION WHICH HAS BARRED HIM FROM MEMBERSHIP IN**
8 **AND ASSOCIATION WITH OTHER MEMBERS WITHIN THE MEANING OF**
9 **CORPORATIONS CODE SECTION 25232, SUBDIVISIONS (d)(2)**

10 11. Corporations Code section 25232 provides, in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser, if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or any partner, officer or director thereof or any person performing similar functions or any person directly or indirectly controlling the investment adviser, whether prior or subsequent to becoming such, or any employee of the investment adviser while so employed has done any of the following:

(d) Is or has been subject to . . . (2) any order of any national securities association . . . suspending or expelling him or her from membership or from association with any member thereof . . .

19 12. On March 16, 2014, FINRA permanently barred respondent Mission’s sole owner and
20 President, respondent Barber, from association with any FINRA member in any capacity.

21 13. Based on the FINRA bar order, the Commissioner finds that it is in the public interest to deny
22 Respondent Mission’s application for an investment adviser certificate because the sole owner and
23 control person, respondent Barber, is subject to FINRA’s order permanently barring him from
24 association with any FINRA member.

25 **IV. SECOND CAUSE FOR DENIAL OF APPLICATION: RESPONDENTS**
26 **WILLFULLY OMITTED TO STATE MATERIAL FACTS REQUIRED TO BE**
27 **DISCLOSED IN THE APPLICATION TO THE COMMISSIONER WITHIN THE**
28 **MEANING OF CORPORATIONS CODE SECTION 25232, SUBDIVISION (a).**

1 14. Corporations Code section 25232, subdivision (a) authorizes the Commissioner to deny an
2 application for investment adviser registration when it is in the public interest and where the
3 applicant:

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6 . . . (a) Has willfully made or caused to be made in any application for a
7 certificate . . . any statement which was at the time and in the light of the
8 circumstances under which it was made false or misleading with respect to
9 any material fact, or has willfully omitted to state in the application or
report any material fact which is required to be stated therein.

10 15. On March 16, 2014, FINRA permanently barred respondent Mission's sole owner and
11 President, respondent Barber, from association with any FINRA member in any capacity.

12 16. However, respondent Barber willfully stated in his initial U4 filing that the bar is temporary
13 and/or time limited. Further, respondent Barber further stated that the decision is on appeal.

14 17. However, the Commissioner's investigation has revealed that the bar is not temporary and/or
15 time limited. FINRA confirms that the bar is permanent. Moreover, the matter is not now, nor has it
16 ever been on appeal. In fact, respondent Barber waived his right to appeal in the AWC.

17 18. The Commissioner finds that by misrepresenting the true nature of FINRA's sanction against
18 him in his initial U4 filing, respondent Barber willfully omitted to state in the application the
19 material fact that he was permanently barred by FINRA from any association with any FINRA
20 member.

21 19. Based on the foregoing, the Commissioner finds that respondent Barber failed to disclose
22 required material facts in an application filed with the Commissioner within the meaning of
23 Corporations Code section 25232, subdivision (a), and it is in the public interest to deny Respondent
24 Mission's application for an investment adviser certificate.

25 **V. RESPONDENT BARBER SHOULD BE BARRED FROM ANY POSITION**
26 **OF EMPLOYMENT, MANAGEMENT, OR CONTROL OF ANY INVESTMENT**
27 **ADVISER, BROKER-DEALER, OR COMMODITY ADVISER PURSUANT TO**
CORPORATIONS CODE SECTION 25232.1.

28 20. Corporations Code Section 25232.1 provides in relevant part:

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The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, if he or she finds that the censure, suspension or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232 or . . . is subject to any order specified in subdivision (d) of Section 25232.

21. The Commissioner finds that respondent Barber “committed an act or omission enumerated in subdivision (a) . . . of [s]ection 25232” (see, *infra*) when he willfully made false and misleading statements with respect to material facts, including but not limited to the length of his bar and the existence of an appeal, in his initial U4 filed on January 23, 2105.

22. Further, the Commissioner finds that respondent Barber is subject to “an order specified in subdivision (d) of [s]ection 25232” by virtue of the March 2014 order issued by FINRA permanently barring him from any association with any FINRA member.

23. Based on the foregoing, the Commissioner finds it is in the public interest to bar respondent Barber from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

VII. RELIEF REQUESTED

WHEREFORE, IT IS PRAYED that: (1) the investment adviser application of respondent Mission Advisory Services, Inc. be denied pursuant to Corporations Code section 25232, subdivisions (a) and (d)(2); and, (2) respondent Barber be barred from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

Dated: June 30, 2015

JAN LYNN OWEN
Commissioner OF Business Oversight

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By: _____
ERIK BRUNKAL
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Enforcement Division