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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CRD NO.: 157547, 1723403
)
12 THE COMMISSIONER OF BUSINESS) ACCUSATION IN SUPPORT OF:
OVERSIGHT,)
13) 1. NOTICE OF INTENT TO ISSUE ORDER
14 Complainant,) REVOKING INVESTMENT ADVISER
) LICENSES OF AC3 CAPITAL, LLC AND
15 v.) AVELINO CORTINA, III
)
16 AC3 CAPITAL, LLC and AVELINO) 2. ORDER SUSPENDING AVELINO
17 CORTINA, III,) CORTINA, III FROM ANY POSITION OF
) EMPLOYMENT, MANAGEMENT, OR
18 Respondents.) CONTROL OF ANY INVESTMENT
) ADVISER, BROKER-DEALER OR
19) COMMODITY ADVISER
20)
21) (Corp. Code sections 25212, 25213, 25232 and
22) 25232.1)
)

23 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed
24 and believes and based upon such information and belief, alleges and charges as follows:

25 I.

26 **Jurisdiction and Venue**

27 1. The Commissioner brings this action pursuant to the provisions of California
28 Corporations Code sections 25212, 25213, 25232 and 25232.1.

1 2. The Commissioner is authorized to administer and enforce the provisions of the
2 Corporate Securities Law of 1968, Corporations Code section 25000 et seq.,

3 **II.**

4 **Statement of Facts**

5 3. At all relevant times, AC3 Capital, LLC is a licensed investment adviser firm in
6 the State of California, registered through the Central Registration Depository (CRD)¹, with
7 assigned number 157547 and has its principal place of business located at 7855 Ivanhoe Avenue,
8 Suite 460, La Jolla, California 92037. AC3 Capital, LLC has been licensed in California since
9 April 27, 2012.

10 4. At all relevant times, Avelino Cortina, III (Cortina) is a licensed investment
11 adviser in the State of California, CRD Number 1723403. Cortina is the 100% owner of AC3
12 Capital, LLC.

13 5. The Financial Industry Regulatory Agency (FINRA) is a private, not for profit,
14 self-regulatory agency for member in the securities industry or profession. FINRA provides
15 regulation, education, enforcement, and arbitration among its members. Cortina is a member of
16 FINRA.

17 6. On January 28, 2013, Cortina was a respondent in a FINRA arbitration matter, 12-
18 00068. In that FINRA arbitration matter, Cortina was ordered to pay the claimant \$1,568,786.20
19 in compensatory damages and \$15,000.00 in attorney’s fees.

20 7. Cortina violated FINRA rule 9554² when he failed to comply with the arbitration
21 award in the FINRA matter and FINRA suspended Cortina effective August 8, 2017 from all
22 capacities until such time as the required payment is made or discharged.

23 8. Form U4 is the Uniform Application for Securities Industry Registration or
24

25 ¹ Central Registration Depository (CRD) is a licensing and registration system for the U.S. Securities industry and
26 regulators. CRD system contains the registration records, qualifications, employment, and disclosure histories of
active registered individuals. CRD system facilitates the processing and payment of registration-related fees such as
form filings, fingerprint submissions, qualification exams, and continuing education sessions.

27 ² FINRA rule 9554 sets forth, “If a member, person associated with a member or person subject to FINRA’s
28 jurisdiction fails to comply with an arbitration award ... related to an arbitration or mediation under [Article VI, Section 3](#) of the FINRA By-Laws ... FINRA staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member.”

1 Transfer. Representatives of broker-dealers, investment advisers, or issuers of securities are
2 required to use Form U4 to become registered in the appropriate jurisdiction and/or self-
3 regulatory organization. Cortina filed his most recent Form U4 on October 4, 2013 indicating
4 his employment with AC3 Capital, LLC. Form U4, Question 14E asks the following:

5 Question 14E: Has any self-regulatory organization ever:

6 (4) disciplined you by expelling or suspending you from membership, barring or
7 suspending your association with its members, or restricting your activities?

8 Cortina responded “No”.

9 9. Cortina did not update Form U4 to disclose the FINRA disciplinary action against
10 him effective August 8, 2017. Furthermore, Cortina did not complete the Disclosure Reporting
11 Pages section of Form U4. 10 CCR section 260.236.1 requires “[w]ithin thirty (30) days of any
12 changes to the information contained in Form U4, an amendment to Form U4 shall be filed with
13 CRD. If Form U4 is being amended due to a disciplinary occurrence, a copy of the amendment
14 shall be filed with the Commissioner upon request.”

15 10. On May 25, 2018, Department of Business Oversight (DBO) examiner Ayhan
16 Diker asked both verbally and in writing that Cortina withdraw his registration with AC3
17 Capital, LLC until his suspension was lifted.

18 11. On June 3, 2018, Cortina responded that the suspension was erroneous, and that
19 he was in the process of having the suspension removed from his record. Cortina requested a
20 120 day extension to clear his suspension.

21 12. In a June 6, 2018 phone call, Cortina told a DBO examiner that he had hired an
22 attorney and hoped to clear the suspension soon. Further, Cortina related that the complainant in
23 the FINA arbitration matter, had cancelled his debt and he was in contact with FINRA to clear
24 the suspension.

25 13. The DBO denied Cortina’s request for an extension because DBO did not receive
26 any documentation of Cortina’s debt cancellation and resolution of the suspension. Further DBO
27 requested Cortina to withdraw AC3 Capital, LLC’s investment adviser’s registration since
28 Cortina is the only owner and investment advisory representative (IAR) of the firm. DBO also

1 asked Cortina to withdraw his individual IAR registration until FINA lifted the suspension.

2 14. On September 7, 2018, DBO learned that Cortina had not contacted FINRA since
3 July 2017, and that he had submitted no documents reflecting payment of the arbitration award
4 and/or discharge of penalties.

5 15. On September 30, 2018, DBO learned that Cortina had appealed the adverse
6 arbitration award but lost. DBO learned that the claimant in the FINA arbitration did not cancel
7 Cortina’s penalties but rather allowed him to file a 1099 “bad debt write off.” Cortina still is
8 obligated to pay the arbitration award. The complainant in the FINRA arbitration reported that
9 Cortina made no attempt to pay off the debt or set up a payment plan.

10 III.

11 **Revocation of Avelino Cortina, III’s, Investment Adviser’s License is Proper Because He** 12 **Was Suspended from FINRA.**

13 16. Corporations Code section 25212 provides in pertinent part:

14 The commissioner may, after appropriate notice and opportunity for
15 hearing by order censure, deny a certificate to, or suspend for a period not
16 exceeding 12 months or revoke the certificate of, a broker-dealer, if the
17 commissioner find that the censure, denial, suspension, or revocation is in
the public interest and that the broker-dealer . . . has done any of the
following:

18 (d) Is or has been subject to . . . (2) any order of any national securities
19 association or national securities exchange (registered under the Securities
20 Exchange Act of 1934) suspending or expelling him or her from
21 membership in that association or exchange or from association with any
member thereof . . .

22 17. Corporations Code section 25213 provides in pertinent part:

23 The commissioner may, after appropriate notice and opportunity for
24 hearing by order censure, or suspend for a period not exceeding 12
25 months, or deny or bar from any position of employment, management or
26 control of any broker-dealer or investment adviser, . . . if the
27 commissioner finds that the censure, suspension, denial, or bar is in the
28 public interest and that person has committed any act or omission
enumerated in subdivision . . . (d) of Section 25212.

18 18. 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 find that the censure, denial, suspension, or revocation is in the public interest and the investment adviser . . . has done any of the following:

(d) Is or has been subject to . . . (2) any order of any national securities association or national securities exchange (registered under the Securities Exchange Act of 1934) suspending or expelling him or her from membership in that association or exchange or from association with any member thereof . . .

19. Therefore, pursuant to Corporations Code sections 25212, 25213, and 25232, grounds exist to revoke Cortina’s investment adviser’s license because Cortina has been suspended by FINRA for failure to make the required payment and/or have the arbitration award in FINRA arbitration matter, 12-00068.discharged.

IV.

An Order Suspending Avelino Cortina, III’s, From Any Position of Employment, Management or Control of Any Investment Adviser, Broker-Dealer or Commodity Adviser is Proper Because He Made Untrue Statement Of Material Facts To The Commissioner.

20. Corporations Code section 25245 provides in pertinent part:

It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice, or report filed with the commissioner 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. Cortina is in violation of Corporations Code section 25245 when he made the following misstatements:

- a) Cortina’s “No” to question 14E, that he was not suspended became an untrue statement of material fact when he was suspended by FINRA and failed to update Form U4,
- b) when Cortina represented on June 6, 2018 that the claimant in the FINRA arbitration had cancelled his debt when in fact the debt was not cancelled, and
- c) when Cortina stated that he was in contact with FINRA to clear up the suspension when in fact he was not in communication with FINRA to clear up the suspension.

1 22. Corporations Code section 25232.1, provides that:

2 The commissioner may, after appropriate notice and opportunity for
3 hearing, by order censure, or suspend for a period of not exceeding 12
4 months, or bar from any position of employment, management or control
5 of any investment adviser, broker-dealer or commodity adviser, any
6 officer, director, partner, employee of, or person performing similar
7 functions for, an investment adviser, or any other person, if he or she finds
8 that such censure, suspension or bar is in the public interest and that the
9 person has committed any act or omission enumerated in subdivision
10 (a) , , , of Section 25232[.]

11 23. Here, Cortina should be suspended from any position of employment,
12 management or control of any investment adviser, broker-dealer or commodity adviser because
13 Cortina has made material misstatements of fact in violation of Corporation Code section 25232
14 (a) which provides the Commissioner authority to “order censure, deny a certificate to, or
15 suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser,
16 if the commissioner find that the censure, denial, suspension, or revocation is in the public
17 interest and the investment adviser . . . has done any of the following: (a) Has willfully made or
18 caused to be made in any application for a certification or report filed with the commissioner . . .
19 any statement which was at the time and in light of the circumstances under which it was made
20 false or misleading with respect to any material fact or has willfully omitted to state in the
21 application or report any material fact which is required to be stated therein.”

22 V.

23 **Because Cortina Solely Owns AC3 Capital, LLC’s Investment Adviser’s, Its License**
24 **Should Be Revoked As Well.**

25 24. Grounds exists to revoke AC3 Capital, LLC’s investment adviser’s license
26 because Cortina is the only owner and IAR of AC3 Capital, LLC and the Commissioner is of the
27 opinion that Cortina should be suspended for: 1) failure to make the required payment and/or
28 have the arbitration award discharged; and 2) willfully making an untrue statement of a material
fact when Cortina failed to update Form U4 to reflect that FINRA suspended him.

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1 VI.

2 **Prayer for Relief**

3 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public
4 interest to revoke Avelino Cortina, III and AC3 Capital, LLC investment adviser and broker-
5 dealer licenses, pursuant to Corporations Code sections 25212, 25213, and 25232; and to
6 suspend Avelino Cortina, III from any position of employment, management, or control of any
7 investment adviser, broker-dealer, or commodity adviser pursuant to Corporation Code section
8 25232.1.

9 WHEREFORE, IT IS PRAYED that Respondent Alvino Cortina, III and AC3 Capital,
10 LLC investment adviser and broker dealer license be revoked because Cortina is in violation of
11 Corporations Code sections 25212, 25213, and 25232 and has been suspended by FINRA for
12 failure to make the required payment and/or have the arbitration award discharged; and to
13 suspend Avelino Cortina, III from any position of employment, management, or control of any
14 investment adviser, broker-dealer, or commodity adviser pursuant to Corporation Code section
15 25232.1.

16
17 Dated: March 4, 2019

JAN LYNN OWEN
Commissioner of Business Oversight

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19
20 By _____
21 PAUL YEE
22 Senior Counsel
23 Enforcement Division
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