

**BEFORE THE  
DEPARTMENT OF FINANCIAL PROTECTION  
AND INNOVATION  
STATE OF CALIFORNIA**

**In the Matter of the Accusation and  
Claim for Ancillary Relief Against:  
MARK RANDALL PETERS, Respondent.**

**Agency Case Nos. 149453, 4182580**

**OAH No. 2021110076**

**PROPOSED DECISION**

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on February 2, 2022, by videoconference and telephone.

Senior Counsel Alexander M. Calero and Counsel Jari Binder represented complainant Clothilde V. Hewlett, Commissioner of the California Department of Financial Protection and Innovation.

Respondent Mark Randall Peters appeared representing himself.

The record was held open for the parties to provide written closing argument. Complainant and respondent provided timely arguments. The matter was submitted for decision on March 4, 2022.

## **FACTUAL FINDINGS**

1. Respondent Mark Randall Peters holds a certificate from the Commissioner of the Department of Financial Protection and Innovation authorizing him to act in California as an investment adviser.

2. The Commissioner first issued the certificate respondent holds in 2009, to a limited liability company in which respondent was the managing member. Respondent later dissolved the limited liability company and renewed the certificate, naming himself as the certificate holder.

3. The Financial Industry Regulatory Authority (FINRA) identifies respondent's certified firm (Mark Randall Peters) in its Central Registration Depository (CRD) with CRD No. 149453. FINRA also identifies respondent personally with CRD No. 4182580.

4. On August 31, 2021, acting in his official capacity as Acting Commissioner of the Department of Financial Protection and Innovation, Christopher S. Shultz served respondent with an accusation. Complainant Clothilde V. Hewlett later replaced Shultz as Commissioner of the Department.

5. The accusation alleges that respondent entered into a business transaction with an investment advising client that was unsuitable for the client, that was an unlawful client loan, and that was fraudulent. In addition, the accusation alleges that respondent failed to make mandatory disclosures to the Department regarding his financial affairs, to make a mandatory annual disclosure to the Department, and to keep required books and records for his investment advising business. For these reasons, complainant seeks orders revoking respondent's authority to act as an

investment adviser, barring him from the financial services industry, and requiring him to pay restitution to his client. Respondent requested a hearing.

### **Transaction With Investment Advising Client**

6. Respondent acted as an investment adviser, for compensation, for clients [REDACTED] was born in or before 1945; the evidence did not establish [REDACTED] age. The [REDACTED] told respondent that they wanted investments with a moderate to conservative risk profile.

7. Neither Mr. nor Mrs. [REDACTED] is a broker-dealer or a financial institution. Their only relationship with respondent was as investment advising clients.

8. In December 2018, respondent persuaded [REDACTED] to invest in or loan money to Ens Commune, LLC. Respondent received a check for \$200,000 from Mr. [REDACTED] payable to Ens Commune, LLC. In exchange, respondent gave Mr. [REDACTED] a receipt that read,

Received for value \$200,000 from [REDACTED] by  
Mark R. Peters, Managing Member on behalf of Ens  
Commune, LLC[,] with an interest only rate per annum of  
8% and \$1,333.33 payable on the first of each month . . . .  
The principle [sic] sum is due and payable on December 1,  
2019.

9. No evidence established how Mr. [REDACTED] expected Ens Commune, LLC, to use his money, although he stated in a declaration that he did not expect to have any personal responsibility for any aspect of the business. Respondent testified that he did

not tell Mr. [REDACTED] precisely how he intended to use the money, but reassured the [REDACTED] that he would repay them in accordance with the terms on the receipt.

10. Respondent used Ens Commune, LLC, as his alter ego. He needed money because of personal financial challenges, and he could not obtain a loan from a conventional lender. Respondent used the \$200,000 he received from Mr. [REDACTED] through Ens Commune, LLC, "to save my house."

11. Respondent did not explain what source of funds he intended to use to make monthly payments to Mr. [REDACTED]. He testified that he hoped to repay the \$200,000 principal with proceeds he expected his wife to receive if and when her family sells some overseas real estate. Respondent testified further that he expects as well to receive other money very soon from which he may repay Mr. [REDACTED]. As to his past and current intent regarding repayment of Mr. [REDACTED] principal, respondent's testimony is not credible.

12. Under all circumstances, and particularly considering the matters stated in Findings 10 and 11, neither an unsecured personal loan to respondent nor a membership stake in Ens Commune, LLC, was an investment with a moderate or conservative risk profile.

13. As of the hearing date (February 2, 2022), respondent had not repaid, or caused Ens Commune, LLC, to repay, Mr. [REDACTED] principal. Respondent had paid, or had caused Ens Commune, LLC, to pay, \$22,666.61 in interest to Mr. [REDACTED] (17 months' worth at \$1,333.33 per month).

14. By the terms of the receipt described above in Finding 8, and in light of the matters stated in Finding 10, on February 2, 2022, respondent and Ens Commune, LLC, jointly and severally, still owed Mr. [REDACTED] \$227,999.93: the \$200,000.00 principal

plus \$27,999.93 as 21 months' interest. In addition, respondent and Ens Commune, LLC, will continue to owe Mr. [REDACTED] 0.667 percent ( $0.08 \div 12$ ) of the outstanding principal on the first day of each month until full payment of the principal.

## **Recordkeeping and Reporting**

15. Certified investment advisers must file annual disclosures regarding their business organization and financial activities, using a standard form (Form ADV). For all years relevant to this matter, this form has asked the investment adviser to disclose "any unsatisfied judgments or liens against you, any advisory affiliate, or any management person."

16. When respondent initially received his certificate, in 2009, he was an "advisory affiliate" and a "management person" for his certified firm, by virtue of the matters stated in Finding 2. After respondent dissolved the limited liability company that initially had received the certificate and became that limited liability company's successor, he personally was the "you" about whom Form ADV required disclosures.

17. In October 2014, a credit card issuer recorded a judgment lien against respondent for more than \$6,000. In March 2015, a debt collection firm recorded a second judgment lien against respondent for about \$3,500.

18. Respondent did not disclose either of the judgment liens identified in Finding 17 on any Form ADV between October 2014 and July 2019.

19. The annual disclosures described in Finding 15 are due each year within 90 days after the end of the previous fiscal year. Respondent uses a calendar fiscal year. His annual disclosures were due each year before March 31.

20. Respondent did not file an updated Form ADV between January 1, 2019, and March 31, 2019. A Department staff member asked respondent in April 2019 about the liens described in Finding 17, and reminded him that an update was necessary, but respondent did not make any update until July 9, 2019.

21. Respondent has never kept books and records regarding his investment adviser business. In particular, respondent does not have and has never had a journal or general ledger. Because respondent does not have and has never had a journal or general ledger, respondent has never prepared any (1) balance sheet, (2) income statement, or (3) trial balance for his investment adviser business.

## **LEGAL CONCLUSIONS**

1. The Commissioner may issue certificates authorizing persons to act as investment advisers in California. (Corps. Code, §§ 25009, 25230.)

2. When the Commissioner proposes to take disciplinary action against any person holding an investment adviser's certificate, the Commissioner has the burden in any hearing to produce clear and convincing evidence proving the facts warranting disciplinary action. The factual findings above rest on clear and convincing evidence.

### **Certificate Revocation**

3. The Commissioner may revoke an investment adviser's certificate for violating Title 4 of the Corporations Code or regulations implementing Title 4. (Corps. Code, § 25232, subds. (e), (h).)

## **BORROWING FROM CLIENT**

4. "No investment adviser licensed under this chapter and no natural person associated with the investment adviser shall engage in investment advisory activities, or attempt to engage in investment advisory activities, in this state in contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles." (Corps. Code, § 25238.)

5. By regulation, the Commissioner has forbidden investment advisers from recommending "sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the adviser after reasonable examination of such of the client's records as may be provided to the adviser." (Cal. Code Regs., tit. 10, § 260.238, subd. (a).)

6. The matters stated in Findings 8 and 9 confirm that respondent arranged Mr. [REDACTED] investment in a security. (*Moreland v. Dept. of Corps.* (1987) 194 Cal.App.3d 506, 513.) The matters stated in Findings 6 and 12 show this investment to have been unsuitable for Mr. [REDACTED], and show that respondent lacked reasonable grounds to believe otherwise. All together, the matters stated in Findings 6 through 12 constitute a violation by respondent of section 260.238, subdivision (a), of title 10 of the California Code of Regulations.

7. By regulation, the Commissioner also has forbidden "[b]orrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the adviser, or a financial institution engaged in the business of loaning funds or securities." (Cal.

Code Regs., tit. 10, § 260.238, subd. (f).) The matters stated in Findings 6 through 10 constitute a violation by respondent of this regulation.

8. An investment adviser may not engage in fraud or deceit with respect to a client. (Corps. Code, § 25235, subds. (a), (b), (d).) The matters stated in Findings 6 through 12 constitute a violation by respondent of this statute.

### **FAILURE TO MAKE COMPLETE AND TIMELY DISCLOSURES**

9. Certified investment advisers must make financial disclosures to the Department, including prompt disclosure of any material change in the investment adviser's answers to questions on Form ADV. (Corps. Code, § 25241, subd. (a); Cal. Code Regs., tit. 10, § 260.241.4, subds. (a), (d).) The matters stated in Findings 15 through 18 constitute violations by respondent of this statute and regulation.

10. Certified investment advisers also must make financial disclosures to the Department, within 90 days after the end of the adviser's fiscal year. (Corps. Code, § 25241, subd. (a); Cal. Code Regs., tit. 10, § 260.241.4, subd. (e).) The matters stated in Findings 19 and 20 constitute a violation by respondent of this statute and regulation.

### **FAILURE TO MAINTAIN BOOKS AND RECORDS**

11. Investment advisers must keep basic books of account. (Corps. Code, § 25241, subd. (a); Cal. Code Regs., tit. 10, § 260.241.3, subd. (a).) The matters stated in Finding 21 constitute a violation by respondent of this statute and regulation.



## **Industry Bar**

12. The Commissioner also may bar someone from participating in the investment advising industry if the person has committed willful violations of laws and regulations governing investment advising. (Corps. Code, § 25232.1.)

13. The matters stated in Findings 6 through 12, 15 through 20, and 21, and in Legal Conclusions 4 through 11, constitute willful violations of many laws and regulations governing investment advising. Moreover, these matters demonstrate gross disregard for respondent's clients, and for the Department's regulations requiring investment advisers to act prudently and transparently. These violations justify an order from the Commissioner barring respondent from the industry.

## **Restitution**

14. The Commissioner may order an investment adviser who has injured a client by violating laws and regulations governing investment advising to make restitution to the client. (Corps. Code, § 25254, subd. (a).)

15. The matters stated in Findings 13 and 14 establish that respondent owed [REDACTED] \$227,999.93 on February 2, 2022, because of the statutory and regulatory violations described in Findings 6 through 12 and in Legal Conclusions 4 through 8. In addition, respondent owes Mr. [REDACTED] 0.667 percent ( $0.08 \div 12$ ) of the outstanding principal of \$200,000 as interest, accruing on the first day of each month beginning March 1, 2022, and continuing until full payment of the principal.

16. Because of the matters stated in Finding 10, respondent owes the amounts identified in Finding 14 and in Legal Conclusion 15 jointly and severally with Ens Commune, LLC. Respondent must make restitution to Mr. [REDACTED].

## ORDER

1. Any and all investment adviser certificates issued by the Commissioner of the Department of Financial Protection and Innovation to respondent Mark Randall Peters are revoked.

2. Respondent Mark Randall Peters is barred from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser.

3. Respondent Mark Randall Peters shall pay or shall cause Ens Commune, LLC, to pay [REDACTED] \$227,999.93, comprising the principal sum of \$200,000.00 and interest of \$27,999.93. In addition, as long as any portion of the principal sum of \$200,000.00 remains outstanding, respondent shall pay or shall cause Ens Commune, LLC, to pay Mr. [REDACTED] 0.667 percent ( $0.08 \div 12$ ) of the outstanding principal on the first day of each month beginning March 1, 2022, and continuing until full payment of the principal.

DATE: 03/17/2022



JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
STATE OF CALIFORNIA

In the Matter of:

COMMISSIONER OF FINANCIAL PROTECTION  
AND INNOVATION,

Complainant,

v.

MARK RANDALL PETERS,

Respondent.

Agency No. 149453, 4182580

OAH No. 2021110076


DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Financial Protection and Innovation as its Decision in the above-entitled matter.

This Decision shall become effective on July 24, 2022

IT IS SO ORDERED THIS 24th day of June, 2022.



  
CLOTHILDE V. HEWLETT  
Commissioner of  
Financial Protection and Innovation