

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND**

IN THE MATTER OF: \*

MARYLAND CAPITAL ADVISORS, INC. \* Case No. 2005-0445

and \*

MICHAEL DAMAS \*

Respondents. \*

\* \* \* \* \*

**CONSENT ORDER**

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Division”), pursuant to authority granted by Section 11-701 of the Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (1999 Repl. Vol. & Supp. 2004) (the “Securities Act”), reviewed the investment adviser registration application of Maryland Capital Advisors, Inc. (“MCA”) and its investment adviser representative, Michael Damas (“Damas”) (“respondents”); and

WHEREAS, without holding a hearing, without trial or adjudication of any issue of fact or law, and prior to the initiation of any formal proceeding, the Commissioner and respondents have reached an agreement to resolve this matter; and

WHEREAS, respondents, without admitting or denying any of the Commissioner’s statement of facts or conclusions of law, except that respondents expressly consent to the Commissioner’s jurisdiction in this proceeding pursuant to Section 11-701.1 of the Act, and to the terms of this Order; and

WHEREAS, Section 11-101 of the Securities Act defines “investment adviser” to mean a

person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; and

WHEREAS, Section 11-101 of the Securities Act defines an “investment adviser representative” to include an individual who has a place of business located in this State and is employed by or associated with an investment adviser, and who makes any recommendations or otherwise renders investment advice to clients; and

WHEREAS, Sections 11-401 and 11-402 of the Securities Act makes it unlawful for any person to transact business in this State as an investment adviser or investment adviser representative unless that person is registered as such; and

WHEREAS, Section 11-302(e)(1)(i) of the Securities Act provides that an investment adviser may not enter into a contract that provides for compensation to the investment adviser on the basis of a share of capital gains on or capital appreciation of the funds or any portion of the funds of the client; and

WHEREAS, the Code of Maryland Regulations (“COMAR”) .02.02.05.08B provides an exemption to Section 11-302(e)(1)(i) of the Securities Act that requires that compensation paid to the investment adviser under this regulation is based on the gains and losses (computed in accordance with §B(2)(a) and (b) of this regulation) in the client’s account for a period of not less than 1 year; and

WHEREAS, respondents consent to the terms of this Order as set forth below; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this

Consent Order.

NOW, THEREFORE, THE COMMISSIONER FINDS:

**I.**  
**JURISDICTION**

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 11-701.1 of the Securities Act.

**II.**  
**RESPONDENTS**

2. MCA is a Maryland corporation conducting business from Chester, Maryland. MCA filed an initial application for registration with the Division on April 5, 2005.

3. Damas is a resident of Grasonville, Maryland. He has never been registered as an investment adviser or investment adviser representative in Maryland. Damas is the President and owner of MCA.

**III.**  
**FINDINGS OF FACT**

4. From 1998 until 2002, respondents provided investment advice to Gabriella Management LLC. Respondents collected \$720,645 in performance fees from Gabriella Management LLC.

5. From 2004 to present, respondents provided investment advice to Mariner Investment Group. Respondents have collected \$120,000 in management fees from Mariner Investment Group.

6. From 2002 until 2004, respondents provided investment advice to Maryland Capital Partners LP. Respondents collected \$126,157 in performance fees and \$104,964 in management fees from Maryland Capital Partners LP. At the end of 2002, Respondents collected

a \$27,175 performance fee. The fee was only based on the performance of the limited partnership between March and December of 2002.

7. Respondents were neither registered as investment advisers or investment adviser representatives nor exempt from registration in the state of Maryland.

8. To date, none of the clients represented by the respondents have complained to the Division.

#### CONCLUSIONS OF LAW

THE COMMISSIONER, THEREFORE, CONCLUDES AS A MATTER OF LAW:

9. Respondents violated Sections 11-401 and 11-402 of the Securities Act by acting as an unregistered investment adviser or investment adviser representative.

10. Respondents violated Section 11-302(e) of the Securities Act by charging performance fees when they were not based on 1 year performance.

#### SANCTIONS

NOW, THEREFORE, IT IS HEREBY ORDERED, and Respondents expressly consent and agree:

A. Respondents shall permanently cease and desist from acting as unregistered an investment adviser or investment adviser representative in violation of Section 11-401 and 11-402 of the Securities Act.

B. Respondents shall permanently cease and desist from charging a performance based fee in violation of Section 11-302(e).

C. Contemporaneous with the signing of this Consent Order, respondents shall pay a civil monetary penalty in the amount of \$5,930.77, representing unpaid registration fees of

\$2,400 plus \$1,030.77 in interest and a \$2,500 fine.

E. Respondents shall in all future activities in Maryland comply fully with the Securities Act and regulations promulgated thereunder.

D. Upon execution of this Consent Order by the Commissioner the MCA investment adviser registration shall be made effective in this State.

If any respondent fails to comply with any term of this Consent Order, the Division may institute administrative or judicial proceedings against that respondent to enforce this Consent Order or to sanction respondent for violating an Order of the Commissioner, and may take any other action authorized under the Securities Act or any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. For purposes of determining those sanctions, the Findings of Fact and violations of the Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against that respondent.

The terms of this Consent Order may only be modified by a subsequent order issued by the Commissioner.

DATE OF THIS ORDER:

SO ORDERED:

\_\_\_\_\_

\_\_\_\_\_  
Melanie Senter Lubin  
Securities Commissioner

CONSENTED TO:

\_\_\_\_\_  
Title  
Name: Michael Damas  
On Behalf of Maryland Capital Management, Inc

\_\_\_\_\_  
Name: Michael Damas

On this \_\_\_ day of \_\_\_\_\_, 2005, personally appeared Michael Damas, signer of the foregoing Consent Order, who did duly acknowledge his/her signature to be his/her free act and deed.

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Notary Public

My Commission Expires: \_\_\_\_\_

Seal:

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