

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

IN THE MATTER OF: *

Zachary Mannes *

and * Securities Division Case No. 2015-0128

Raphi Capital Management, LLC, *

Respondents. *

* * * * *

CONSENT ORDER

WHEREAS, the Maryland Securities Division (the “Securities Division”), pursuant to the authority granted in §11-701 of the Maryland Securities Act, Md. Ann. Code, Corps. & Ass’ns, §§ 11-101, *et seq.* (2014 Repl. Vol. and Supp. 2016) (the “Securities Act”), initiated an investigation into the activities of Respondents Zachary Mannes (“Mannes”) and his company, Raphi Capital Management LLC (“Raphi Capital”) (collectively “Respondents”); and

WHEREAS, on the basis of that investigation, on June 8, 2015, the Securities Commissioner issued a Summary Order to Cease and Desist and Order to Show Cause (“Summary Order”) against Respondents, finding that grounds existed for her to allege that Respondents violated and may continue to violate §§ 11-301, 11-302 and 11-401 of the Securities Act; and

WHEREAS, on July 8, 2016, the Securities Commissioner issued an Amended Order to Show Cause and Order Vacating Summary Order against Respondents, ordering them to show cause why a final order should not be entered against them to cease and desist from violating

sections 11-301, 11-302 and 11-401 of the Securities Act; and

WHEREAS, on July 27, 2016, in response to the Securities Commissioner's Amended Order to Show Cause and Order Vacating Summary Order, Respondents filed a Motion to Dismiss, Answer, and Request for a Hearing; and

WHEREAS, the Securities Commissioner and Respondents have reached an agreement in this action whereby Respondents, by way of compromise, and without admitting or denying any findings of fact or conclusions of law except to admit to the jurisdiction of the Securities Commissioner and over them in this matter, consent to the terms of this Order; and

WHEREAS, Respondents waive their right to a hearing and any rights they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

WHEREAS, the Securities Commissioner has determined that it is in the public interest to issue this Consent Order;

NOW, THEREFORE, it is hereby agreed, and the Commissioner orders:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to § 11-701 of the Securities Act.

II. PARTIES

2. Melanie Senter Lubin is the Securities Commissioner for the State of Maryland.

3. RAphi Capital is a Delaware limited liability company owned by Mannes. From September 4, 2013 to December 14, 2014, RAphi Capital was registered with the Securities Division as an investment adviser.

4. Mannes is a resident of Olney, Maryland.

5. At various times prior to December 31, 2014, Mannes was registered with the Securities Division as an investment adviser representative, first with MetLife Securities, Inc. (“MetLife”), then with LPL Financial LLC (“LPL Financial”), and eventually, RAphi Capital.

6. Between March 30, 2009 and October 9, 2013, Mannes also was registered with the Securities Division as a broker dealer agent affiliated with MetLife and LPL Financial. During that same period of time, Mannes was registered with FINRA as a general securities representative.

7. Respondents conducted business from Mannes’ residence located in Olney, Maryland.

III. FINDINGS OF FACT

8. Respondents failed to renew their investment adviser registrations with the Securities Division for 2015, and therefore the registrations expired effective December 31, 2014.

9. After December 31, 2014, to the date of their receipt of the Summary Order in this matter, Respondents maintained a website at www.aphicapital.com, advertising RAphi Capital’s investment management business and Mannes’ investment advisory experience, and investment philosophies and methodologies.

10. Respondents’ website also permitted investors to download copies of the disclosure document required under the “Brochure Rule” that applies to investment advisers. The document stated that Respondents were registered investment advisers.

Respondents' Customer Accounts

11. Respondents conducted their investment management business through online brokerage accounts, first at TD Ameritrade and later at Interactive Brokers.

12. As recently as April 2015, Respondents had discretionary authority over customers' investment advisory accounts at Interactive Brokers.

13. Respondents had a total of five investment advisory customers: three individuals, SES, MS and ES; a school; and a Trust for the benefit of an individual.

14. Until July 2014, Respondents had TD Ameritrade accounts on behalf of those same customers, and for Mannes and RPhi Capital.

15. From the beginning of 2014 until July 2014, the TD Ameritrade accounts all lost significant amounts, from \$18,000 to \$121,000 per account during that period.

16. In June 2014, three of Respondents' advisory customers' TD Ameritrade accounts, SES, MS and the school, were transferred over to Interactive Brokers.

17. The accounts transferred to Interactive Brokers lost additional amounts from the date of the transfer until February 2015, with additional losses ranging from \$20,000 to \$37,000 per account during that period.

Customer SES

18. Mannes was the MetLife representative for SES' 403(b) account. When Mannes moved from MetLife to LPL Financial, SES agreed to move her IRA account to LPL Financial with him.

19. In late 2013, after SES had retired, SES agreed to transfer her IRA account to RPhi Capital, under Mannes' management.

20. In June 2014, SES executed an Account Application form to transfer her account from TD Ameritrade to Interactive Brokers. The transfer was complete in July 2014, with RAphi Capital as the investment adviser on the account.

21. Mannes filled out the information on the Interactive Brokers Account Application form for SES, and SES signed the completed form.

22. SES's account form at Interactive Brokers listed her financial objectives as "growth and trading profits." The form represented that her knowledge of trading stocks, bonds, and options was "good."

23. In fact, SES' experience with trading and investing in stocks and bonds was limited to ownership of those securities on the advice of a broker-dealer agent or investment adviser representative. SES had no knowledge of trading or investing in options.

Respondents' Trading for SES and Other Customers

24. Respondents' trading on behalf of advisory clients at TD Ameritrade and Interactive Brokers was not suitable for the customers. Both SES and MS were retired persons whose financial objectives should have been more conservative, seeking the preservation of capital.

25. Respondents engaged in highly speculative and risky trading on behalf of customers, including options transactions and trading on margin, and those clients lost significant amounts of money.

26. During part of the time that Respondents were engaged in trading and advisory activities at Interactive Brokers, from January 1, 2015 to June 8, 2015, Respondents were not properly registered as investment advisers or broker-dealer agents.

27. Respondents had custody of clients' funds because they directly deducted client fees without sending an invoice.

IV. CONCLUSIONS OF LAW

For the purpose of this Consent Order, the Securities Commissioner concludes that:

28. Respondent Mannes transacted business as a broker-dealer or agent in violation of § 11-401 (a) of the Securities Act.

29. Respondents Mannes and RAphi Capital transacted business as unregistered investment advisers or investment adviser representatives in violation of § 11-401(b) of the Securities Act.

30. Respondents Mannes and RAphi Capital violated § 11-301 of the Securities Act by, among other things, engaging in unsuitable trading on behalf of advisory clients.

31. Respondents Mannes and RAphi Capital violated § 11-301 of the Securities Act by misrepresenting information in one customer's new account forms regarding that customer's investment objectives, liquid net worth and investment experience.

32. Respondents Mannes and RAphi Capital violated § 11-302 of the Securities Act and COMAR 02.02.05.03B, and failed to comply with their respective fiduciary duties to clients, by making investment recommendations that were unsuitable for those clients' age, level of experience, and financial goals.

33. Respondent RAphi Capital violated § 11-302 of the Securities Act by having custody of clients' funds without fully complying with the custody regulations of COMAR 02.02.05.04, 02.02.05.15 and 02.02.05.17.

V. SANCTIONS

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

34. Respondents shall permanently cease and desist from violating §§ 11-301, 11-302, and 11-401 of the Securities Act.

35. RAphi Capital shall not seek registration with the Division as an investment adviser.

36. If Mannes applies or reapplies for registration with the Division as a broker-dealer agent or investment adviser representative, the approval of Mannes' registration will be determined after consideration of this proceeding and the then-current circumstances relevant to the application. In the event the application is approved, the registration, for a period of five years from the approval of the registration, will be subject to conditions, including, but not limited to:

a. Not serving in a supervisory capacity, including acting as a branch manager for a broker-dealer or investment adviser; and

b. Not exercising discretionary authority over client accounts; and

c. Special enhanced supervision and/or monitoring, approved by the Securities Division and implemented by a broker-dealer or investment adviser principal responsible for supervision and compliance.

37. Respondents, jointly and severally, are assessed a civil monetary penalty pursuant to § 11-702 of the Securities Act in the amount of \$430,700 for the alleged violations set forth in this Consent Order. The civil monetary penalty shall be reduced by the amount of restitution

Respondents make to SES, MS, ES, BCI and the RP Trust (“RAphi Clients”) as well as the amounts of offered restitution, if any, that RAphi Clients do not accept after being offered the opportunity to receive restitution, as described below:

- A. Promptly after execution of this Consent Order, Respondents shall send an offer of restitution to each RAphi Client in a form approved by the Securities Division, advising that investor of the total amount of restitution owed to the investor as described in the Amended Order to Show Cause and giving that investor two weeks to respond to the offer under this Consent Order.
- B. Upon receipt of responses from all RAphi Clients, or the expiration of the time for all RAphi Clients to respond, whichever is later, Respondents shall provide the Securities Division with the documents evidencing acceptance or rejection of the restitution offered to each of the RAphi Clients and the total amount of restitution claimed by all of the RAphi Clients (“Restitution Fund”).
- C. Respondents may make payments of the Restitution Fund in installments. The first installment towards the Restitution Fund shall be made by certified check or wire transfer made payable to the Office of the Attorney General in an initial amount of \$10,000. That first installment shall be paid within 30 days from the date of this Consent Order. Thereafter, additional payments toward the Restitution Fund, in installments of at least 1/36 of the balance due of the Restitution Fund shall be made to the Office of the Attorney General by the end of each fiscal quarter (March 30, June 30, September 30 and December 31) for the next nine (9) successive years or until the remaining balance is paid in full, whichever shall first occur.

- D. The Restitution Fund will be distributed to the RAphi Clients by the Office of the Attorney General in a manner within its discretion.
- E. Upon the timely receipt by the Office of the Attorney General of the last installment payment of restitution due under this paragraph, the remaining amount of the civil monetary penalty due under this Consent Order shall be waived.
- F. If Respondents fail to make timely payments to the Office of the Attorney General as required under this paragraph, and payments are delinquent for more than sixty (60) days, and the Office of the Attorney General refers collection of the monies due under this Consent Order to the Central Collections Unit (“CCU”) of the State of Maryland, the amount of monies due under this Consent Order shall be increased by the amount of fees and interest assessed by CCU for collection of these funds.

VI. JURISDICTION RETAINED

38. Jurisdiction shall be retained by the Securities Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Consent Order.

39. If a Respondent fails to comply with any term of this Consent Order, the Securities Commissioner may institute administrative or judicial proceedings against that Respondent to enforce this Consent Order and or to sanction that Respondent for violating an Order of the Securities Commissioner, and may take any other action authorized under the Securities Act or under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding, the Division may also seek other

sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Findings of Fact and violations of the Securities Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against that Respondent.

40. In the event that judicial intervention in this matter is sought by the Securities Commissioner or a Respondent, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to § 11-702 of the Securities Act. The Circuit Court for Baltimore City will have personal jurisdiction over that Respondent pursuant to § 6-103(b) of the Courts and Judicial Proceedings Article, Title 6, Annotated Code of Maryland (2013 Repl. Vol. and 2014 Supp.). Venue will be properly in that Court pursuant to § 6-201(a) and 6-202(11) of that article.

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

SO ORDERED:

**Commissioner's Signature on File
w/Original Documents**

Date: January 23, 2017

Melanie Senter Lubin
Securities Commissioner

BY CONSENT:

Zachary Mannes, formerly doing business
as RAphi Capital Management, LLC

_____, 2017
Date

Subscribed and sworn to before me
this _____ day of _____, 2017

Notary Public
My Commission expires _____

Zachary Mannes

_____, 2017
Date

Subscribed and sworn to before me
this _____ day of _____, 2017

Notary Public
My Commission expires _____