

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of:

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

v.

JAMES W. DARDEN III, dba
INTEGRITY FINANCIAL
MANAGEMENT,
and
JAMES W. DARDEN III, as an individual,

Respondent.

File No. 927-6689

OAH No. 2009080216

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on October 27, 2009.

Edward Kelly Shinnick, Corporations Counsel, represented Complainant Preston Du Fauchard, Commissioner of the California Department of Corporations.

Respondent James W. Darden represented himself and Integrity Financial Management.

The record closed on October 27, 2009.

FACTUAL FINDINGS

1. On April 29, 1999, the California Corporations Commissioner (Commissioner) issued an investment adviser certificate to James Darden III, dba Integrity Financial Management (Respondent). Respondent's current business address is: 2047 Price Street, Suite B, San Luis Obispo, California.

2. On July 13, 2009, the Commissioner issued an Amended Statement of Issues in Support of Notice of Intention to Issue Orders. The first intended order revokes Respondent's investment adviser certificate and the second bars Respondent from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser. Respondent filed a Notice of Defense and this hearing followed.

3. The securities industry is highly regulated. Licensed investment advisers in California are subject to the provisions of Corporations Code section 25000, et seq. and the corresponding regulations. Investment advisors are required to disclose information to regulatory bodies and the general public electronically via the Web-Based Investment Advisory Registration Depository (IARD). Investment advisors must initially disclose information about themselves and their business and subsequently update this information at least annually. The Form ADV is completed by the firm and the U4 is completed by the individual. Only the Form ADV is accessible by the public; the U4 is accessible only by regulators.

4. Beginning October 30, 1996, Respondent was registered in the State of Vermont as an investment adviser and investment advisor representative. On a date not clear in the record, Respondent moved his residence and business to Vermont. On October 16, 2005, Respondent James Darden and his wife Joanna Darden filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court, District of Vermont. The court discharged their debts on February 14, 2006, and issued a final decree on October 16, 2006.

5. On May 3 and 4, 2007, the Securities Division of Vermont's Department of Banking, Insurance, Securities and Health Care Administration conducted an on-site examination of Respondent's Vermont office. At that time, Respondent reportedly provided discretionary supervisory or management services for eight clients with reported assets under management of approximately \$1.7 million. As a result of the Securities Division's findings, on May 16, 2007, a Cease and Desist Order and Summary Revocation of Respondent's investment adviser registration was issued. The Order stated that Respondent had violated Vermont law by failing to: keep required books and records; maintain a minimum net worth of \$10,000; and to amend the Form U-4 to report his bankruptcy filing. The overall concern was Respondent's insolvency, evidenced by the bankruptcy, his failure to maintain the minimum net worth, and the fact that he lost his home to a foreclosure action.

6. Respondent did not contest the Vermont action and on June 4, 2007, he signed a Consent to the Entry of Order. At a time not clear in the record, Respondent moved back to California.

7. The provisions of Vermont law that formed the basis for that state's actions are substantially related to California provisions. Title 10, California Code of Regulations, section 260.241.2 requires that registered investment advisers keep verified annual financial reports; section 260.237.2, subdivision (a), requires that an investment adviser with discretionary authority over client accounts maintain a minimum net worth of \$10,000, and section 260.237.2, subdivision (c), requires an investment adviser to notify the Department

by the close of the next business day when his net worth is less than the minimum, and, as a condition of the right to continue to transact business, requires him to file a report and other financial records. Section 260.241.1 provides that a Form ADV is to be promptly amended upon any change in the information contained therein and section 260.241.4, subdivision (e), requires investment advisors to annually update the Form ADV within 90 days of the end of each fiscal year. Section 260.236.1 provides that a licensed investment adviser file a Form U-4, and amend it within 20 days of any changes to the information contained therein. Among other things, the Form U-4 requires investment advisors to disclose any bankruptcy filings within the last ten years and any finding by a federal or state regulatory agency of violations of investment-related regulations.

8. Sometime following the Vermont action, Respondent amended the “Regulatory Action Disclosure Reporting Page” on his Form ADV and provided partial information regarding the Vermont action and his bankruptcy. On December 12, 2008, however, he deleted the information.

9. On March 19, 2009, Respondent again amended his Form ADV. In the “Miscellaneous” section of the form he describes the Vermont action as follows:

My R.I.A. was suspended in Vermont because at that time, I was behind in my record keeping, and did not have the sufficient amount required in reserve because of my discretionary business. Also, apparently, I was not aware that my I.A.R.D. had not been successfully saved properly. I am proud of my thirty year’s of ethical conduct, with my client’s in the financial industry, and I am making every attempt to correct these clerical errors. [*Sic.*]

This posting was inaccurate and incomplete. Respondent’s certificate was revoked, not suspended, and it was not primarily because of record-keeping problems. It is unclear what he means by clerical errors that he is attempting to correct; that statement implies that once these corrections are made, the Vermont action will somehow be terminated. And most importantly, there is no mention of bankruptcy or insolvency, the primary grounds for the Vermont action. Further, instead of describing what happened in the section of the form designated for disclosing regulatory actions, Respondent placed this information in the “Miscellaneous” section.

10. At the hearing, Respondent presented Form ADV printouts dated October 20, 2009, that he represents show additional information he disclosed concerning various matters that occurred between 1991 and 2007. The printouts do not reveal, however, when the entries were made, and another document contradicts Respondent’s assertion that he made one of the entries on May 16, 2007.

The entries include statements by Respondent that he was forced to declare bankruptcy as a result of his decision to move to Vermont and descriptions of events that

occurred in conjunction with and as a result of that move. Regarding Vermont's action against him, he reported that he agreed to the order of revocation because of many personal tragedies that caused him to be "behind on my books," and because he did not have "the required finances in my reserve account to meet the discretionary requirements." This exhibit had little probative value.

11. Respondent testified that he is a very ethical person who has been in the financial services business for 31 years. Respondent specialized in municipal bonds, a very conservative investment, and worked in the past for various brokerage firms. He resigned from Prudential after concluding that the firm was misleading him and his clients. Respondent has seven clients now, many of whom have been with him the entire 31 years. He represents that they are all aware of "what happened in Vermont," the bankruptcy and the various regulatory issues he has dealt with over the years.

Respondent attributes his problems with the reporting requirements to his lack of computer savvy. He has been late in entering updates into the system. And he "disclosed everything but somehow missed the part having to do with the bankruptcy," which he describes as a personal tragedy. Respondent continues to describe the issues in this matter as wholly clerical in nature. In addition, Respondent professed that he was unaware that the disciplinary action taken against him in Vermont would have any effect elsewhere.

12. Respondent presented letters of reference from clients Paula L. Powers and Willard W. Davis, M. Div. They are in the same format and express satisfaction with Respondent's services as a financial advisor.

LEGAL CONCLUSIONS

1. Corporations Code section 25232, subdivision (d), provides that the certificate of an investment advisor may be revoked if the adviser's certificate has been revoked by another state. Corporations Code section 24256, subdivision (a), provides that a disciplinary action against an investment advisor taken by another state "for an action substantially related to the activity regulated under this division may be grounds for disciplinary action" in California.

Cause to make final the Commissioner's Order revoking the investment adviser certificate of Respondent pursuant to Corporations Code sections 25232, subdivision (d), and 25256 exists by reason of the matters set forth in Findings 3 through 10.

2. Corporations Code section 25232.1 provides, in pertinent part, that if an investment adviser has been subject to any order under section 25232, subdivision (d), and it is in the public interest, that person may be barred "from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser . . ."

Cause to make final the Commissioner's Order barring Respondent from any position of employment, management or control of any investment adviser, broker-dealer or

commodity adviser pursuant to Corporations Code sections 25232.1 and 25256 exists by reason of the matters set forth in Findings 3 through 10.

3. The regulatory scheme designed to protect investors in California depends upon the full disclosure of required information by licensees. Despite the Vermont Order, Respondent failed to timely and completely update his information in the IARD system. His delay was left unexplained. Also of concern was Respondent's professed ignorance that the Vermont Order would have consequences outside that state. Given Respondent's long history in the securities industry, this assertion was incredible. Respondent is either unaware of the laws and regulations or is misrepresenting his knowledge of them. In either event his continued licensure as an investment adviser in California presents an unacceptable risk to the public.

ORDERS

1. The Order Revoking Investment Adviser Certificate of James W. Darden III, pursuant to Corporations Code sections 25232 and 25256, signed by the Commissioner on July 13, 2009, is final.

2. The Order Barring James W. Darden III from any position of employment, management, or control of any investment adviser, broker-dealer or commodity adviser, pursuant to Corporations Code sections 25232.1 and 25256, signed by the Commissioner on July 13, 2009, is final.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

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DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated November 30, 2009, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on March 15, 2010.

IT IS SO ORDERED this 11th day of March 2010.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard