BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA, Complainant, v. PAUL GERARD HITCHCOCK, Respondent.	OAH No. 2014090283

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated February 27, 2015, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on July 13, 2015.

IT IS SO ORDERED this 11th day of June 2015.

/s/
JAN LYNN OWEN
Commissioner of Business Oversight

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Accusation of the Commissioner of Business Oversight Against: PAUL GERARD HITCHCOCK, Respondent.	Case No. 20194 OAH No. 2014090283

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on February 3, 2015, in Los Angeles.

Uche L. Enenwali, Senior Corporations Counsel, appeared on behalf of complainant Jan Lynn Owen, Commissioner of Business Oversight, State of California.

David R. Calderon, Attorney at Law, represented respondent Paul Gerard Hitchcock, who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted on February 3, 2015.

FACTUAL FINDINGS

Jurisdiction

1. On August 20, 2014, while acting in her official capacity, complainant filed and served the Accusation in this matter, accompanied by a Notice of Intention to Issue Order Pursuant to California Corporations Code Sections 25232.1 and 25232 (d)(3) Barring Paul Gerard Hitchcock From Any Position of Employment, Management or Control of Any Investment Adviser, Broker-Dealer or Commodity Adviser.

2. Respondent timely filed a notice of defense.

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Respondent Barred by the Financial Industry Regulatory Authority (FINRA)

3. In May 2008, the Department of Enforcement of FINRA (formerly known as the National Association of Securities Dealers, or NASD) filed a complaint against respondent, alleging that respondent was a member of FINRA and had worked for Wachovia Securities, LLP, from which he was discharged for violating firm policy. The complaint alleged that FINRA requested that respondent produce financial records in connection with FINRA's investigation of customer complaints that respondent misappropriated funds, and that respondent violated NASD rules by failing to produce the documents and failing to appear to testify before the Department of Enforcement.

4. On November 6, 2008, FINRA issued a Default Decision holding that "Respondent is barred from associating with any FINRA member firm for failure to provide requested information . . . ." (Ex. 19.)

Respondent's Alleged Association With Investment Advisers

5. Complainant alleges that respondent has been "associated with a California state registered investment advisor firm, Goldberg Advisers LLC dba Capital Trust Advisors (CTA). CTA . . . has been licensed as a California state registered investment advisor since November 28, 2011 . . . ." (Ex. 1.) Documents filed with the Secretary of State reflect that Goldberg Advisers LLC and Capital Trust Advisors are licensed "investment advisers." (Ex. 21.)

6. Complainant alleges that respondent has been "associated with a California state registered investment advisor firm, Barth Calderon Attorneys, LLP (BarthCalderon LLP). . . . BarthCalderon has been registered as an investment advisor since January 23, 1998 and is licensed under the name Barth Financial Advisors, LLC . . . ." (Ex. 1.)

7. BarthCalderon LLP is a law firm, and is not a member of FINRA. The firm provides legal advice regarding asset protection, but there was insufficient evidence on this record to show that BarthCalderon LLP provides investment advisor services.

8. Barth Financial Advisors, LLC, on the other hand, is a financial planning and wealth management firm, and the Department licenses Barth Financial Advisors, LLC, as an investment advisor. Harry Barth is a managing partner at BarthCalderon, and is also a managing member of Barth Financial Advisors, LLC. There was insufficient evidence on this record to show any other relationship between BarthCalderon and Barth Financial Advisors, LLC.

The Board's Investigation

9. In June 2014, in response to an anonymous complaint, the Board assigned corporate examiner Ramon Villalobos to investigate respondent's listing on the CTA website, an alleged violation of the FINRA bar.[1]

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[1] There was no evidence introduced to show that CTA is a FINRA member firm.

10. Villalobos examined the CTA website on May 22, 2014, and found that it identified respondent under a tab entitled "Advanced Planning." Under that tab, the webpage is entitled "CTA Consulting" and subtitled "Asset Protection Planning." The page recites that "CTA Consulting is dedicated to preserving and protecting our client's wealth through proper asset protection planning. Asset protection planning is the process of organizing one's business and personal assets and affairs in advance so as to guard them from loss by reason of some fiscal calamity." (Ex. 27.) The page states that the firm addresses asset protection, estate planning, business succession and transfer strategies, business structure choices, prudent asset diversification, and intergenerational wealth transfer. The website showed respondent's professional biography and activities, and stated that "[a]t CTA Consulting, [respondent] holds responsibility for market needs analysis and coordination of the advanced planning services." (Ex. 27.)

11. Villalobos again examined the website on June 16, 2014; it had been modified to remove any mention of respondent.

12. Villalobos met with CTA's operations manager Sandi Lowengard and CTA managing member John Goldberg on June 16, 2014. Lowengard and Goldberg told Villalobos that CTA pays respondent a fee for arranging asset protection seminars. They provided Villalobos with client information, an unsigned agreement between CTA and respondent, and tax forms showing amounts paid by CTA to respondent for his services in 2013. Villalobos again met with Goldberg on July 1, 2014, to inspect CTA's financial records.[2] A tax form Goldberg provided, Form 1096, shows that CTA paid respondent $16,720.36 in 2013; that figure is also reflected on a Form 1099-MISC, which identifies the payments as "nonemployee compensation." (Ex. 28.) Villalobos asked Goldberg why respondent's information no longer appeared on the CTA website; according to Villalobos, Goldberg said that respondent was barred by FINRA and CTA did not want to confuse the public.

13. Villalobos also investigated respondent's relationship with BarthCalderon LLP. He printed a screenshot of BarthCalderon LLP's website on July 2, 2014; he does not know whether the website has been modified since that date. On July 2, the website identified the firm as "Premier Asset Protection Attorneys," stating that "[w]e are known both locally and nationally for our unique and sound approach to asset protection and estate planning." The website had a professional biography of respondent, stating that he "holds responsibility for the business development efforts at BarthCalderon LLP." (Ex. 25.)

14. In the course of his investigation, Villalobos learned of an investment adviser firm called Barth Financial Advisors, LLC (Barth Financial); Barth Financial has been licensed by the Department since 1998. Villalobos learned that one of the managing members of BarthCalderon LLP is a manager of Barth Financial. Aside from their having a member in

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[2] Those records accord with the terms of an agreement between CTA and respondent that was signed on October 31, 2014, a copy of which Villalobos ultimately obtained. (See Factual Finding 18.)

common, Villalobos found no other connection between BarthCalderon LLP and Barth Financial.

15. Villalobos found that respondent maintains a LinkedIn page. The page identifies respondent and his company, HCS Advanced Planning, and lists his prior employment. According to respondent's LinkedIn page, he provides an "Executive Review (ER) with an asset protection focus" (Ex. 26); he addresses asset protection through the use of trusts and partnerships, preserving wealth through wills and trusts, business succession and transfer strategies, and "[f]inancial planning & portfolio diversification." (*Ibid.*)

16. Villalobos never met with respondent. Villalobos testified that he did not find a meeting necessary because he had obtained a sufficient understanding of respondent's professional activities from the web pages he reviewed and from his discussions with Goldberg and documents Goldberg provided. Villalobos concluded that respondent was receiving payments for services connected with asset protection; he testified that he was not interested in whatever respondent had to say.

Respondent's Activities on Behalf of BarthCalderon LLP and CTA

17. Respondent is the sole proprietor of a consulting company, HCS, LLC, created in 2013.[3] As HCS, LLC, respondent plans, markets, and organizes seminars for his client, BarthCalderon LLP. He is not an employee of BarthCalderon LLP, which pays respondent hourly for his services. The seminars are organized to allow BarthCalderon LLP to market its asset protection services. It is respondent's task to arrange for various business associations with large memberships, such as realtor groups and apartment owner associations, to attend seminars at which Harry Barth will speak. Respondent attempts to arrange for three seminars per quarter.

18. Respondent also entered into a written contract with CTA on October 31, 2014. Under the terms of the contract, respondent is required to invite CTA to the seminars he organizes for BarthCalderon LLP, deliver to CTA a copy of all invitations to the seminar, allow a CTA representative to attend all the seminars, and provide CTA with a copy of the attendee list. The contract requires respondent to permit the CTA representative to communicate with the attendees and distribute CTA advertising materials. The contract calls for CTA to pay respondent $5,000 per month. The contract recites that CTA acknowledges that "HCS has no role in developing the content of the seminar." (Ex. 17, p. 52.) The contract recites that it does not create a "business relationship" between respondent and CTA; the contract does not define the term "business relationship." (*Id.* at p. 53.)

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[3] Before starting HCS, respondent worked for Heffernan Insurance Brokers. Respondent was issued an accident and health-and-life-only insurance agent license by the California Insurance Commissioner on January 9, 2013. On June 20, 2014, the California Department of Insurance issued an order summarily revoking respondent's license due to the FINRA bar, under Insurance Code section 1669, subdivision (d), which allows license revocation without hearing in the event any other licensing authority has disciplined an insurance licensee.

19. In 2013, CTA paid respondent $16,720.36 for his work arranging seminars.

20. Respondent testified that he does not make any presentations at the seminars, that he sells no financial products, and that he makes no recommendations about investments. Respondent testified that he does not solicit business for his clients at the seminars or recommend that attendees hire CTA for financial planning, and that his compensation is not based on any product sales CTA may make to attendees. Any marketing activity following the seminars is conducted by CTA and BarthCalderon LLP. Respondent testified that he does not actually provide an attendee list to CTA, and that it is the CTA representative attending the seminars who obtains information about attendees. Respondent testified that he does not work for or manage or control any investment advisor and does nothing to violate the FINRA bar. Respondent testified that he is not "affiliated with" CTA, and that CTA placed information about him on its website without consulting him first. He does not know why CTA subsequently removed the information.

21. Respondent's LinkedIn page states that respondent provides financial planning and portfolio diversification services (Factual Finding 15), and information that was at one time posted on CTA's website reflects that he performed "market needs analysis." Nevertheless, there is insufficient evidence on the record as a whole to show that respondent at any time acted as an investment adviser on behalf of CTA or BarthCalderon LLP.

22. There is insufficient evidence to show that BarthCalderon LLP provided investment advice at the seminars arranged by respondent. Nor is there sufficient evidence to demonstrate that respondent had or has a financial relationship with Barth Financial Advisors or that he has performed any work for that entity.

23. The evidence does establish, however, that respondent contracted to provide and did provide to CTA, an investment adviser firm, access to and information about potential clients and the opportunity to sell its investment adviser services to persons attending seminars organized by respondent. (Factual Finding 17.)

LEGAL CONCLUSIONS

1. "The commissioner may, after appropriate notice and opportunity for hearing, . . . bar from any position of employment, management or control of any investment adviser . . . any officer director, partner, employee of, or person performing similar functions for, an investment adviser, *or any other person*, if he or she finds that the . . . bar is in the public interest and that the person . . . is subject to any order specified in subdivision (d) of Section 25232." (Corps. Code, § 25232.1, italics added.)

2. Respondent is subject to an order specified at Corporations Code section 25232, subdivision (d). That section permits the commissioner to censure, deny a certificate to, or suspend or revoke the certificate of an investment adviser, if the commissioner finds that the action is in the public interest and that the investment adviser:

> (d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other state denying or revoking or suspending his or her registration as an investment adviser, or investment adviser representative, or as a broker or dealer or agent, (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, or (3) *any other order of the commission or any administrator, association, or exchange referred to in this subdivision which is or has been necessary for the protection of any investor.*

(Corp. Code, § 25232, subd. (d) (italics added).)

3. The term "investment adviser" includes, among other things, "any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing or selling securities," or any person who uses the title "financial planner" and engages in those activities. (Corp. Code, § 25009, subds. (a), (b).) An "associated person of an investment adviser" means any individual "who is . . . associated with, or subject to the supervision and control of, an investment adviser . . ." and who, among other things, "solicits, offers, or negotiates for the sale or sells investment advisory services." (Corp. Code, § 25009.5, subd. (a).)

4. Cause exists to bar respondent from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser, under Corporations Code sections 25232, subdivision (d), and 25232.1. Respondent is subject to a FINRA order issued for the protection of investors and the public. (Factual Findings 3 & 4.) A bar is in the public interest, based on the reasons set forth in the FINRA bar order, and based on respondent's activities on behalf of CTA and his advertised activities providing financial planning and portfolio diversification services. (Factual Findings 3-20.)

ORDER

Paul Gerard Hitchcock is barred from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser.

DATED: February 27, 2015

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings