

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

IN THE MATTER OF)
) No. 07-2018
Michelle Maccio and)
Maccio Financial)
)
Respondents)
_____)

ORDER

Whereas, Michelle Maccio is the sole principal doing business under the trade name of Maccio Financial, an investment advisory firm on the island of St. John; and both Maccio and Maccio Financial (collectively, “Maccio”), are registered to transact securities business in the U.S. Virgin Islands; and

Whereas, based on various reviews of Maccio’s business operations by the Division of Banking, Insurance and Financial Regulation (“the Division”), beginning in early 2017 and continuing to the present, it has been determined that regulatory action is warranted.

NOW THEREFORE, the Lieutenant Governor, in his capacity as Securities Administrator, hereby enters this Order.

I. FINDINGS OF FACT

1. Maccio was directed to file with the Division a balance sheet and income statement for calendar year 2017, delineating Maccio Financial’s assets, liabilities, net worth and net capital, and certified as to their correctness by a duly authorized executive of the company. In response, Maccio submitted an unsigned and uncertified financial document purportedly for the “Maccio Financial Group.” In light of

the document's lack of certification, the Division cannot give any legitimacy to the information set forth in the balance sheet and income statement. Moreover, because the assets of Maccio Financial appear to be commingled with the finances of Maccio's other business entities and subsumed under the umbrella of the "Maccio Financial Group", the Division cannot ascertain whether Maccio Financial meets the financial requirements for investment advisers registered in the Virgin Islands.

2. The renewal of the Surety Bond for Maccio Financial has been outstanding for more than a year; and Maccio submitted a copy of a partially executed bond to the Division a few months ago. In responding to this office's inquiries pertinent to the bond's authenticity, the Assistant Vice President of Operations for Guardian Insurance Company indicated, inter alia, that (i) Guardian still had possession of the original bond since there was still some paperwork outstanding; (ii) the original bond had not been formally released to Maccio; and (iii) Maccio convinced an employee of Guardian to provide her with a copy of the partially executed bond.

It should be noted that, at the time of Maccio Financial's approval to conduct business in the territory, and by correspondence dated January 17, 2014, Maccio was informed that her firm's registration was subject to the filing of a Surety Bond. Of particular import, the filing of a bond was necessary not only because Maccio would technically be in possession of client funds, but the bond also ensured Maccio Financial's compliance with the Division's minimum financial requirements.

3. In the correspondence of January 2014 cited above, Maccio was also directed to inform the Division about the employment of any individual by her firm, including a contractual relationship with a solicitor. A recent review of Maccio's filings on the FINRA system shows that there is another individual, other than herself, who is performing work on behalf of the firm. However, because of Maccio's failure to identify and provide the Division with particular

information with regard to this individual, it is impossible to determine whether the employee/contractor is qualified and registered to perform his employment/contractual functions.

4. The correspondence of January 2014 also directed Maccio to inform the Division of any "change in the nature of the firm's business or method of operation." However, in late 2016, Maccio established a hedge fund, Maccio Investments LP ("the Fund"), without advising the Division. It was only during an audit of Maccio Financial's business operations that Division examiners discovered the existence of the Fund, in which several of her advisory clients had become limited partners. As a point of information, although Maccio initiated a Regulation D filing with the SEC in January 2017, there is no proof that an amendment was filed in 2018 to evidence the continued operation of the Fund. It should also be noted that the planned audit, in which the Division examiners had invested several hours of preparatory work, had to be aborted because of Maccio's change of business operations.

Nonetheless, because hedge funds are high risk, unregistered and unregulated investments, the Division reviewed several documents to ascertain what information and safeguards were provided to Maccio's clients before their investment in the Fund. Significantly, this review unearthed various matters of concern. For example, the Subscription Agreement Signature Page, as well as the Limited Partnership Agreement Signature Page, was electronically signed by several of Maccio's clients subsequent to the commencement date of their investment in the Fund and only after the Division requested the submission of the documents. Maccio's explanation, that she was unable to locate the original subscription and other relevant documents because she was moving, is simply not credible; and the available evidence militates in favor of the finding that some of Maccio's clients did not have access to critical legal and other disclosure information prior to their investment in the Fund.

In concert with the above, the Fund's Offering Memorandum submitted to the Division indicated that the Brochure of Maccio

Financial, which Maccio is mandated by law to provide to her clients, was appended to the document as Exhibit C. However, the said Brochure was not attached to the Offering Memorandum. A review of FINRA's electronic filing system shows that Maccio's revised Brochure, wherein the hedge fund is discussed, is dated May 1, 2017 with a filing date of May 24, 2017, a circumstance from which one could deduce that those individuals who invested in the hedge fund before those dates would not have been privy to the information in the revised Brochure. Ironically, the revised Brochure not only cautions that prospective investors must receive the offering materials in order to invest in the hedge fund, but it also states that the Brochure is "included with the offering materials," a statement that is ostensibly false in light of the above revelations.

Moreover, as high risk and illiquid securities, hedge funds should only be sold to very wealthy and sophisticated investors with a minimum net worth of 1 million dollars and an annual income of \$200,000. It is not known how many of Maccio's clients meet these financial criteria; and it is doubtful that many of them, in fact, meet these basic thresholds. Of particular significance, Maccio's Brochure states that her firm has adopted a Code of Ethics "describing its high standard of business conduct, and fiduciary duty to its clients." The Brochure further states that all employees of the firm are required to follow the Code of Ethics "which places the interests of advisory clients first." However, by her own admission, Maccio waived the \$10,000 minimum investment in the Fund for several of her clients, triggering the questions as to whether the waiver, which enabled their investment in the Fund, was suitable for these individuals; and whether Maccio breached her fiduciary duty to act in the best interest of her advisory clients.

Finally, it is noted that a few of the initial investors in the Fund are no longer listed as limited partners. However, Maccio has neither responded to the Division's request to provide current information on the status of these investors nor has she provided specific data, as requested, on the current additions to and withdrawals from the Fund by Virgin Islands investors.

5. Maccio's limited partnership was originally formed and registered in the state of Delaware in 2016; and has been doing business in the Virgin Islands for more than a year. However, the entity is not registered as a foreign limited partnership with the Division of Corporations and Trademarks, Office of the Lieutenant Governor, as required by law.
6. Because Maccio is the Fund's Investment Manager and her company, Maccio Trading, LLC, is the fund's General Partner, there is considerable possibility that conflicts of interest, as well as financial self-dealing by Maccio, may occur.

Subsequent to an analysis of the annual financial statement of the Fund/limited partnership, for the calendar year ending December 31, 2017, the Division requested the submission of the following documents/information:

- (a) A copy of the promissory note negotiated between the Fund and Maccio on February 1, 2017, for principal up to \$500,000, and an explanation of the reason or purpose for this transaction.
- (b) Documentation pertinent to the Fund's purchase of real property in the Virgin Islands, and an explanation of the reason for and use of this purchase by the Fund.
- (c) Identification of the \$95,000 of property that the Fund purchased from a party related to the General partner / Maccio Trading, LLC, and an explanation of the reason for this purchase.
- (d) An explanation of the reason for the purchase and use of a jeep by the Fund.

As of the date of this Order, Maccio has not provided any of the documents or information requested by the Division.

7. The accounting firm, Richey May & Co., has indicated that the Fund has a substantial portion of its assets custodied on various digital asset exchanges, and has further opined that, given the volatility and high degree of risks associated with digital assets trading, a limited partner could incur substantial, or even total, loss of capital. As a corollary to this observation, the president of the North American Securities

Administrators Association, recently stated that “the persistently expanding exploitation of the crypto ecosystem by fraudsters is a significant threat to investors in the United States; and while not every cryptocurrency-related investment is fraudulent, investors should approach any initial coin offering or cryptocurrency related investment product with extreme caution.”

3. Of significant import to the above, a review of Maccio Financial's latest brochure, filed on the FINRA system and dated March 29, 2018, shows that Maccio has established a new hedge fund, Boston Digital Fund, LP. However, the Division did not find any evidence of this Fund's filing with the Securities and Exchange Commission.

II. CONCLUSIONS OF LAW

1. The Lieutenant Governor, in his capacity as Administrator of Securities, and the Division have jurisdiction over this matter pursuant to Chapter 23, 9VIC, Sections 602(1) and 661(a); and regulatory action may be taken against the respondents in concert with Chapter 23, 9VIC, Sections 664(a) (1).
2. Chapter 23, 9VIC, Section 641(a) and (b) authorizes the Division to (1) establish minimum financial requirements for investment advisers and (2) require the submission of financial reports by such entities/individuals as deemed appropriate. By failing to submit a certified balance sheet and income statement for Maccio Financial, for the period ending December 3, 2017, Maccio violated the above-referenced statutory provision.
3. Pursuant to Chapter 23, 9VIC, Section 641(e), the Division may require the filing of a bond by an investment adviser that has custody or discretionary authority over client funds. By not submitting an original, authenticated bond from an insurer, Maccio has allowed her firm's surety bond to lapse and is therefore in violation of the law.
4. Maccio contravened the Division's directive by not informing the office of the contractor/solicitor in her employ. Given this

circumstance, it is quite possible that the said individual is not a registered investment adviser representative, thereby giving rise to the violations of Chapter 23, 9VIC, Sections 633(d) and 634(a).

5. It is a universally accepted principle that investment advisers have “an affirmative obligation of utmost good faith and full and fair disclosure of all material facts to their clients, as well as a duty to avoid misleading them.” To that end, Section 206 of the Investment Advisers Act of 1940 (“the Advisers Act”) prohibits misstatements or misleading omissions of material facts and other fraudulent acts and practices in connection with the conduct of an investment advisory business. Maccio’s failure to provide some of her clients with copies of the Subscription and Limited Partnership Agreements, as well as other critical disclosure documents before their investment in the Fund, constitutes a violation of Section 206 of the Advisers Act.

Moreover, in contravention of Section 206 of the Advisers Act and her own firm’s Code of Ethics, Maccio breached her fiduciary duty to always act in the best interest of her clients by waiving the \$10,000 minimum investment in the Fund for a few individuals. This waiver makes it patently clear that they did not have the financial wherewithal to meet the basic eligibility requirements of the Fund; and their investment in a high risk venture such as a hedge fund was not suitable for their economic needs and circumstances.

6. Maccio violated Chapter 3, 26VIC, Section 522 by operating the Fund as a foreign limited partnership in the Virgin Islands without registration with the Office of the Lieutenant Governor as required by law.
7. Chapter 23, 9VIC, Section 641(d) authorizes the Division to conduct periodic, special or other audits or inspections of the books and records of an investment adviser. Maccio’s failure to provide the Division with those documents pertinent to her financial dealings with the Fund, as well as the current status of several of the Fund’s investors, is a violation of Section 641(d). Moreover, by failing to produce records that fall squarely within the statutory ambit of Section

641(d), not only has Maccio flouted the regulatory authority of the Division, but she has also impeded the office's ability to protect the interests of Virgin Island investors.

8. As a result of the foregoing, this Order is appropriate and in the public interest.

III. ORDER

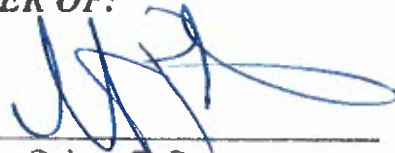
On the basis of the Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. Pursuant to Chapter 23, 9VIC, Section 642(b) and (d)(8), Maccio's registration as an investment adviser and an investment adviser representative in the U.S. Virgin Islands is **REVOKED**.
2. In concert with the above and Chapter 23, 9VIC, Section 664(a)(1), **MACCIO** shall **CEASE AND DESIST** from engaging in any activity as an investment adviser in the U.S. Virgin Islands.
3. Maccio's failure to comply with this Order may result in the imposition of fines and other penalties.

Dated this 21st day of September 2018.

BY ORDER OF:



Honorable Osbert E. Potter
Lieutenant Governor / Securities Administrator



NOTICE

Pursuant to Chapter 23, 9VIC, Section 664(b), and after receipt of this Order, you may request a hearing which will be scheduled within 15 days after receipt of such a request. Note that the request must be in writing and state the grounds to set aside or modify the Order. Failure to request a hearing within 30 days after the date of service of the Order will result in the Order becoming final.

