
*
IN THE MATTER OF: *
*
HERON BAY CAPITAL, LLC *
IARD NO. 311176 *

CONSENT ORDER
MATTER NO. CO-22-202237-S

I. PRELIMINARY STATEMENT

WHEREAS, the Banking Commissioner (“Commissioner”) is charged with the administration of Chapter 672a of the General Statutes of Connecticut, the Connecticut Uniform Securities Act (“Act”), and Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies (“Regulations”) promulgated under the Act;

WHEREAS, Heron Bay Capital, LLC (“HBC”) is a Delaware limited liability company formed in June 2015 and having its current principal place of business at 112 Southfield Avenue, Apt. PH01, Stamford, Connecticut 06902. From approximately October 13, 2020 to February 5, 2021, HBC’s reported principal office was located at 262 Harbor Drive, 2nd Floor, Stamford, Connecticut 06902-7438;

WHEREAS, (1) on November 12, 2020, HBC became registered as an investment adviser with the Securities and Exchange Commission (“SEC”); (2) while registered with the SEC as an investment adviser, HBC failed to file with the Commissioner the state notice filing required by Section 36b-6(e) of the Act; (3) on March 4, 2021, HBC filed a Form ADV-W (Notice of Withdrawal From Registration as an Investment Adviser) to withdraw its SEC registration and indicated that HBC was switching from SEC registration to state registration; (4) HBC’s investment adviser registration was terminated by the SEC on March 4, 2021; (5) on December 26, 2021, over nine months following the termination of HBC’s SEC

registration, HBC filed an initial application to register as an investment adviser under the Act. Other than Connecticut, HBC has not applied for investment adviser registration in any other state; (6) HBC's application for investment adviser registration is currently pending in Connecticut; (7) on September 14, 2022, HBC filed with the Commissioner a Form ADV-W seeking to withdraw HBC's pending Connecticut registration as an investment adviser; and (8) in its September 14, 2022 Form ADV-W filing, HBC represented to the Commissioner that (a) it had ceased conducting advisory business in the jurisdictions from which it was withdrawing (*i.e.* Connecticut); (b) it ceased conducting advisory business in those jurisdictions effective August 31, 2022; and (c) it was no longer conducting advisory activities;

WHEREAS, the Commissioner, through the Securities and Business Investments Division ("Division") of the Department of Banking ("Department"), conducted an investigation of HBC pursuant to Sections 36b-8 and 36b-26(a) of the Act ("Investigation") to determine if HBC had violated, was violating or was about to violate provisions of the Act or Regulations and if a basis existed to deny HBC's pending application for investment adviser registration under Section 36b-15(a) of the Act; impose conditions on the withdrawal pursuant to Section 36b-15(e)(1) of the Act; and/or to initiate proceedings under Section 36b-27 of the Act seeking the imposition of an administrative fine and the entry of an order to cease and desist;

WHEREAS, as a result of the Investigation, the Commissioner has reason to believe that HBC violated: (1) Section 36b-6(c)(1) of the Act by transacting business as investment adviser in Connecticut prior to its initial registration with the SEC; (2) Section 36b-6(e) of the Act by failing to make the required investment advisory notice filing and pay the fees required by such section; and (3) Section 36b-6(c)(1) of the Act by continuing to transact business as an investment adviser in Connecticut after its SEC registration was terminated on March 4, 2021 and at a time when it was not registered as an investment adviser under the Act;

WHEREAS, as a result of the Investigation, the Commissioner has reason to believe that the foregoing conduct violates certain provisions of the Act and would support administrative proceedings against HBC under Sections 36b-15 and 36b-27 of the Act;

WHEREAS, Section 36b-31(a) of the Act provides, in relevant part, that “[t]he commissioner may from time to time make . . . such . . . orders as are necessary to carry out the provisions of sections 36b-2 to 36b-34, inclusive”;

WHEREAS, Section 36b-31(b) of the Act provides, in relevant part, that “[n]o . . . order may be made . . . unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to 36b-34, inclusive”;

WHEREAS, an administrative proceeding initiated under Sections 36b-15 and 36b-27 of the Act would constitute a “contested case” within the meaning of Section 4-166(4) of the General Statutes of Connecticut;

WHEREAS, Section 4-177(c) of the General Statutes of Connecticut and Section 36a-1-55(a) of the Regulations provide that a contested case may be resolved by consent order, unless precluded by law;

WHEREAS, without holding a hearing and without trial or adjudication of any issue of fact or law, and prior to the initiation of any formal proceeding, the Commissioner and HBC reached an agreement, the terms of which are reflected in this Consent Order, in full and final resolution of the matters described herein;

WHEREAS, HBC expressly consents to the Commissioner’s jurisdiction under the Act and to the terms of this Consent Order;

WHEREAS, the Commissioner finds that the entry of this Consent Order is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act;

WHEREAS, HBC acknowledges that it has had the opportunity to consult with and be represented by independent counsel in negotiating and reviewing this Consent Order and executes this Consent Order freely;

AND WHEREAS, HBC, through its execution of this Consent Order, specifically represents and agrees that none of the violations alleged in this Consent Order shall occur in the future.

II. CONSENT TO WAIVER OF PROCEDURAL RIGHTS

WHEREAS, HBC, through its execution of this Consent Order, voluntarily waives the following rights:

1. To be afforded notice and an opportunity for a hearing within the meaning of Section 36b-15(f) of the Act, Section 36b-27 of the Act, and Section 4-177(a) of the General Statutes of Connecticut;
2. To present evidence and argument and to otherwise avail itself of Section 36b-15(f) of the Act, Section 36b-27 of the Act, and Section 4-177c(a) of the General Statutes of Connecticut;
3. To present its position in a hearing in which it is represented by counsel;
4. To have a written record of the hearing made and a written decision issued by a hearing officer; and
5. To seek judicial review of, or otherwise challenge or contest, the matters described herein, including the validity of this Consent Order.

III. ACKNOWLEDGEMENT OF THE COMMISSIONER'S ALLEGATIONS

WHEREAS, HBC, through its execution of this Consent Order, acknowledges the following allegations of the Commissioner:

1. HBC violated Section 36b-6(c)(1) of the Act by transacting business as an unregistered investment adviser; and
2. HBC violated Section 36b-6(e) of the Act by failing to make the required investment advisory notice filing and pay the fees required by such section.

WHEREAS, the Commissioner would have the authority to enter findings of fact and conclusions of law after granting HBC an opportunity for a hearing;

AND WHEREAS, HBC acknowledges the possible consequences of an administrative hearing and voluntarily agrees to consent to the entry of the sanctions described below.

IV. CONSENT TO ENTRY OF SANCTIONS

WHEREAS, HBC, through its execution of this Consent Order, consents to the Commissioner's entry of an order imposing on it the following sanctions:

1. HBC, its members, officers, representatives, agents, employees, affiliates, assigns and successors in interest shall cease and desist from engaging in conduct constituting or which

would constitute a violation of the Act or any regulation, rule or order adopted or issued under the Act, either directly or through any person, organization or other device, including without limitation, violations of Sections 36b-6(c)(1) and 36b-6(e) of the Act; and

2. No later than the date this Consent Order is entered by the Commissioner, HBC shall remit to the Department by cashier's check, certified check or money order made payable to "Treasurer, State of Connecticut" the sum of six thousand five dollars (\$6,005), five thousand dollars (\$5,000) of which shall constitute an administrative fine and one thousand five dollars (\$1,005) of which shall constitute reimbursement for past due registration and notice filing fees.

V. CONSENT ORDER

NOW THEREFORE, the Commissioner enters the following:

1. The Sanctions set forth above be and are hereby entered;
2. Entry of this Consent Order by the Commissioner is without prejudice to the right of the Commissioner to take enforcement action against HBC based upon a violation of this Consent Order or the matters underlying its entry if the Commissioner determines that compliance with the terms herein is not being observed or if any representation made by or on behalf of HBC in connection with its Connecticut investment adviser registration application or in conjunction with the Investigation is subsequently discovered to be untrue;
3. Nothing in this Consent Order shall be construed as limiting the Commissioner's ability to take enforcement action against HBC based upon: (i) evidence of which the Division was unaware on the date hereof relating to a violation of the Act or any regulation or order under the Act; or (ii) evidence indicating that HBC withheld material information from, or made any material misstatement or omission to, the Commissioner in connection with this matter;
4. HBC shall not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, that the Commissioner had a basis to pursue the allegations set forth in Section III of this Consent Order, or create the impression that this Consent Order is without factual basis;
5. HBC shall not take any position in any proceeding brought by or on behalf of the Commissioner, or to which the Commissioner is a party, that is inconsistent with any part of this Consent Order. Nothing in this Consent Order affects HBC's (i) testimonial obligations; or (ii) right to take any legal or factual position in litigation, arbitration, or other legal proceedings in which the Commissioner is not a party; and
6. This Consent Order shall become final when entered.

So ordered at Hartford, Connecticut,
this 7th day of December 2022.

_____/s/_____
Jorge L. Perez
Banking Commissioner

CONSENT TO ENTRY OF ORDER

I, Sean James Gambino, state on behalf of Heron Bay Capital, LLC (“HBC”), that I have read the foregoing Consent Order; that I know and fully understand its contents; that I am authorized to execute this Consent Order on behalf of HBC; that HBC agrees freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that HBC consents to the entry of this Consent Order.

Heron Bay Capital, LLC

By: _____/s/_____
Sean James Gambino
Managing Member

State of: CT

County of: Fairfield

On this the 17th day of November 2022, before me, the undersigned officer, personally appeared Sean James Gambino, who acknowledged himself to be the Managing Member of Heron Bay Capital, LLC, a limited liability company, and that he, as such Managing Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Managing Member.

In witness whereof I hereunto set my hand.

_____/s/_____
Notary Public
Date Commission Expires: 06/30/2025