

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
SECURITIES DIVISION**

IN THE MATTER OF:)	
)	
)	
)	
EDUARDO GUILLERMO DIAZ)	Administrative Proceeding
DIAZ RETIREMENT CONSULTANTS)	Number LS-13-0862
)	
)	
Respondent)	

**NOTICE OF INTENT TO
DENY REGISTRATION APPLICATION AND IMPOSE CIVIL PENALTY**

COMES NOW Jessica Leigh Long, Senior Attorney for the Securities Division of the Mississippi Office of the Secretary of State (“Division”), on behalf of Secretary of State C. Delbert Hosemann, Jr. and issues this Notice of Intent to Deny Registration Application and Impose Civil Penalty against Eduardo G. Diaz (“Respondent”, “Diaz”) for violating provisions of the Mississippi Securities Act (“Act”) codified at Mississippi Code Annotated Sections 75-71-101 *et. seq.* In support thereof the Division submits the following:

JURISDICTION

The Act gives authority to the Secretary of State to administer and enforce the Act and regulate the offer and sale of securities in Mississippi including the firms and persons who offer or sell securities or who provide investment advice regarding securities.

Respondent is currently seeking registration in Mississippi for his sole proprietorship, Diaz Retirement Consultants, as an Investment Adviser, and for himself as an Investment Adviser Representative of Diaz Retirement Consultants.

FINDINGS OF FACT

1. Eduardo G. Diaz ("Diaz") is an individual with a last known residence at 107 San Souci Avenue in Biloxi, Mississippi. The Central Registrations Depository ("CRD") number for Diaz is 1621873.

2. From December 19, 2008 to October 19, 2012, Diaz was employed at NEXT Financial Group, Incorporated ("NEXT") as a broker-dealer agent at their branch office located at 2635 Pass Road in Biloxi, Mississippi.

3. Diaz Retirement Consultants, located at 2113 Government Street, Suite D2, in Ocean Springs, Mississippi, is a sole proprietorship formed in or around February 2013 with Diaz as sole proprietor and Chief Compliance Officer. The CRD number for Diaz Retirement Consultants is 166935.

4. On or about October 19, 2012, NEXT terminated Diaz's employment for, according to Diaz's U5 filed by NEXT on the CRD system, accepting an unapproved loan from a customer.

5. On or about December 12, 2012, the Division received information that the Financial Regulatory Authority (FINRA) had received a complaint from a Mississippi resident, Sasha Hickman ("Hickman") regarding Diaz and had begun an investigation into the matter. The complaint alleged that Diaz borrowed money from Hickman for his personal real estate venture plus convinced Hickman to invest additional money into Diaz's real estate venture.

6. On January 14, 2013, the Division issued a notice to Diaz informing him that the Division had opened an investigation into the Hickman matter.

7. On January 31, 2013, the Division conducted a conference call with Diaz and made a verbal request for all documents that Diaz submitted to FINRA pursuant to its investigation of the Hickman matter.

8. On February 25, 2013, Diaz applied through the CRD system for registration of his firm, Diaz Retirement Consultants, as an investment adviser in Mississippi and for registration as an investment adviser representative in Mississippi.

9. In the registration application, Diaz responded “no” to the Uniform Application for Securities Industry Registration or Transfer (Form “U4”) Question 14 G which asks:

Have you been notified, in writing, that you are now the subject of any:

(1) regulatory complaint or proceeding that could result in a “yes” answer to any part of 14C, D, or E? (If yes, complete the Regulatory Action Disclosure Reporting Page.)

(2) investigation that could result in a “yes” answer to any part of 14A, B, C, D, or E? (If yes, complete the Regulatory Action Disclosure Reporting Page.)

10. Questions 14C, D, and E ask if any regulatory entity has ever found the registrant to have made a false statement or omission, to have been involved in a violation of its regulations or statutes, or to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted or has the regulatory entity entered an order against the registrant in connection with investment-related activity.

11. In the registration application, Diaz responded “no” to the Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers (Form ADV) Item 11 Disclosure Information, subpart G that asks, “Are you or any advisory affiliate now the subject of any regulatory proceeding that could result in a “yes” answer to any part of Item 11.C, 11.D, or 11.E?”

12. Form ADV Item 11.C, 11.D, and 11.E ask if a regulatory entity has ever found the registrant or advisory affiliate has made a false statement or omission, has been involved in a

violation of the entity's regulations or statutes, or has been the cause of an investment related business having its authorization to do business altered, or has the entity entered an order against the registrant or advisory affiliate in connection with investment related activity, imposed a civil money penalty on the registrant or advisory affiliate, or ordered the registrant or advisory affiliate to cease and desist from any activity.

13. In the registration application, Diaz filed a firm brochure pursuant to Form ADV Part 2A that stated "Item 9 is not applicable to this Disclosure Brochure because there are no legal or disciplinary events that are material to a client's or prospective client's evaluation of our business or integrity."

14. Item 9 of Form ADV Part 2A requires disclosure of disciplinary events that are material to an evaluation of the advisory business or the integrity of management, specifically including an administrative proceeding before the Security and Exchange Commission, any other federal regulatory agency, state regulatory agency, or financial regulatory authority. Item 9 states, "If your advisory firm or a management person has been involved in one of these events, you must disclose it under this Item for ten years following the date of the event..."

15. On February 25, 2013, FINRA issued a letter to Diaz informing him that, as the subject of a FINRA investigation, he had an obligation to update his U4 form if he was registered or was seeking registration.

16. On March 25, 2013, the Division issued a letter to Diaz, reminding him that in order to proceed with the consideration of his application, the Division must receive the previously requested documentation.

17. On April 24, 2013, the Division again contacted Diaz through an e-mail to remind him that in order to proceed with consideration of his application, the Division must receive the previously requested documentation.

18. On June 28, 2013, FINRA began a proceeding against Diaz by filing complaint number 2012034594402 regarding Diaz and created a U6 disclosure filing on the CRD system. The FINRA complaint alleges Diaz borrowed money from a client, Hickman, and convinced Hickman, through untrue or reckless statements, to invest in his personal real estate venture of restoring several residential properties on the Mississippi Gulf Coast.

19. On September 30, 2013, the Division received the documents from Diaz that it first requested in January 2013.

20. As of November 18, 2013, Diaz had not updated his U4 form to reflect that he is the subject of any regulatory investigation or that he is named as a respondent in a regulatory proceeding.

21. As of November 18, 2013, Diaz had not updated Form ADV to reflect that he is the subject of any regulatory proceeding.

22. As of November 18, 2013, Diaz had not updated Form ADV Part2A to reflect that he is the respondent of any regulatory proceeding.

APPLICABLE LAW

23. Miss. Code Ann. §75-71-406(b) sets forth:

Amendment. If the information or record contained in an application filed under subsection (a) is or become inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

24. Miss. Code Ann. §75-71-406 promulgates Mississippi Securities Act Rule 617

which states:

Change of Material Information; Amendments: The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as a investment adviser or representative changes in a material way or is or become inaccurate or incomplete in any respect. Events requiring notification shall include, but are not limited to, the following:

* * *

- E. The naming of an investment adviser, principal, officer, and/or employee as a defendant or respondent in one or more of the following instances:
 - (3) Administrative allegations involving a security or any aspect of the securities business or any activity alleging a breach of a fiduciary trust, or fraud.

25. Miss. Code Ann. § 75-71-412(a) sets forth:

§ 75-71-412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

- (a) **Disciplinary conditions-applicants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

26. Miss. Code Ann. § 75-71-412(d) sets forth:

- (d) **Grounds for discipline.** A person may be disciplined under subsections (a) through (c) if the person:
 - (1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

27. The Division may employ remedies set out in Miss. Code Section 75-71-604 of the Act which sets forth:

Administrative enforcement.

(a) Issuance of an order or notice. If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;
- (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 75-71-401(b)(1)(D) or (F) or an investment adviser under Section 75-71-403(b)(1)(C); or
- (3) Issue an order:
 - (A) Under Section 75-71-204;
 - (B) Imposing a civil penalty in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, or other person who violated this chapter;
 - (C) Barring or suspending the person from association with a broker-dealer or investment advisor registered in this state; or
 - (D) Requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including interest.

* * *

(d) Civil penalty. In a final order under subsection (c), the administrator may impose a civil penalty in an amount set forth in Section 75-71-613 for each violation and each violation shall be considered a separate offense in a single proceeding or a series of related proceedings.

28. Miss. Code Ann. § 75-71-613 sets forth:

Amounts of civil and criminal penalties.

(d) Amount of civil penalty and further civil penalty under Section 75-71- 604--administrative enforcement.

(1) The amount of the civil penalty described in Section 75-71-604(d) is a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each violation, provided that an additional civil penalty may be imposed up to a maximum of Fifteen Thousand Dollars (\$15,000.00) for violations of the chapter committed against elders or disabled persons.

CONCLUSIONS OF LAW

The previous paragraphs are incorporated herein by reference.

Eduardo G. Diaz violated the Act in the following ways:

29. Respondent violated §75-71-412(d) by filing a statement that was false or misleading in the U4 section of the registration application when he stated that he was not the subject of a regulatory investigation.

30. Respondent violated §75-71-406(b) by failing to update the Diaz Retirement Consultants Form ADV Part 1A in which Diaz answered “No” on Item 11(G) that asked if the firm or any affiliates, which would include Diaz, were the subject of any regulatory proceeding that could lead to a “Yes” answer on Items 11(C, D, or E).

31. Respondent also violated 75-71-406(b) by failing to update Item 9 in the Diaz Retirement Consultants Form ADV Part 2A (The Firm’s Public Brochure) to reflect he was the subject of a regulatory investigation by FINRA and the Mississippi Secretary of State’s Office.

32. Respondent also violated 75-71-412(d) by making untrue statements of material fact by stating on Item 9 in the Diaz Retirement Consultants Form ADV Part 2A (The Firm’s Public Brochure) that, “Item 9 is not applicable to this Disclosure Brochure because there are no legal or disciplinary events that are material to a client’s or prospective client’s evaluation of our business or integrity.”

NOTICE OF INTENDED ACTIONS

The previous paragraphs are incorporated herein by reference. As provided in Miss. Code Ann. Section 75-71-604, the Secretary of State intends to take the following action:

33. Issue an Order denying the registration application of Diaz Retirement Consulting for registration in the state of Mississippi as an investment advisory firm.

34. Issue an Order denying the registration application of Eduardo G. Diaz for registration in the state of Mississippi as an investment adviser representative.

35. Issue an Order imposing a civil penalty up to \$25,000.00 for each of the four violations during the registration application process for a total of up to \$100,000.00.

This order shall remain in effect for a period of two (2) years from the date of the Final Order.

PUBLIC INTEREST

The actions taken and proposed to be taken herein by the Secretary of State are in the public interest and are consistent with the purposes set forth in Miss. Code Ann. §§75-71-101, *et seq.*

AMENDMENTS

The Division reserves the right to amend this Notice of Intent to Deny Registration Application and Impose Civil Penalty.

RIGHT TO AN ADMINISTRATIVE HEARING

An administrative hearing may be requested in this matter. NOTICE is hereby given that Respondent has thirty (30) days from the date of receipt of this Notice of Intent to Deny Registration Application and Impose Civil Penalty to provide written notice of its request for an

administrative hearing to Jessica Leigh Long, Senior Attorney, Securities Division, Office of the Secretary of State, Post Office Box 136, 700 North Street, Jackson, Mississippi 39205-0136.

If such hearing is requested, written notice of the date, time and place of such hearing, as well as a designation of the Hearing Officer, will be provided to all parties via certified mail, return receipt requested. Respondent may appear at the hearing with or without the assistance of counsel. Respondent will have the right to cross-examine witnesses and present testimony, evidence and argument relating to the matters contained herein. Upon request, subpoenas may be issued for the attendance of witnesses and for the production of books and papers on Respondent's behalf.

In the event such written notice for a hearing is not received within thirty (30) days, a FINAL ORDER, DENYING REGISTRATION APPLICATION may be entered in this proceeding without further notice.

ISSUED, this, the 3rd day of December 2013.

C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi

By:



JESSICA LEIGH LONG
Senior Attorney
Securities Division

CERTIFICATE OF SERVICE

I, Jessica Leigh Long, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document, via certified mail postage pre-paid, to the following:

Eduardo G. Diaz
107 San Souci Avenue
Biloxi, Mississippi 39564

This the 3rd day of December 2013.



JESSICA LEIGH LONG
Senior Attorney
Securities Division