

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20586

In the Matter of

DANIEL B. KAMENSKY,
Respondent.

**DIVISION OF ENFORCEMENT'S MOTION
FOR SUMMARY DISPOSITION AGAINST
RESPONDENT DANIEL B. KAMENSKY AND
MEMORANDUM OF LAW IN SUPPORT**

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I. INTRODUCTION

Under Rule 250(b) of the Securities and Exchange Commission’s (“SEC” or “Commission”) Rules of Practice, the Division of Enforcement (“Division”) respectfully moves for summary disposition against Respondent Daniel B. Kamensky (“Kamensky”). This proceeding is a follow-on administrative proceeding arising from both a civil securities antifraud injunction imposed against Kamensky, the founder and managing partner and portfolio manager of a Commission-registered investment adviser, and his criminal conviction for the same conduct, both in the United States District Court for the Southern District of New York. Because Kamensky has been permanently enjoined and convicted and the sole determination concerns the appropriate sanction against him under Section 203(f) of the Investment Advisers Act of 1940 (the “Advisers Act”), 15 U.S.C. § 80b-3, this motion for summary disposition should be granted, and full and permanent associational bars against Kamensky should be imposed against him.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

From 2015 through at least August 1, 2020, Kamensky was the founder and managing partner and portfolio manager of New York-based and Commission-registered investment

adviser, Marble Ridge Capital LP (“MRC”). Corrected Order Instituting Administrative Proceedings (“Corrected OIP”), Release No. 5869, Section II, at ¶ 1; Answer of Respondent Daniel B. Kamensky (“Answer”) ¶ 1. Kamensky, who is 48 years old, is also an attorney who has been admitted to practice law in the state of New York since 2000. Order of Suspension Pursuant to Rule 102(e)(2) of the Commission’s Rules of Practice (“Order of Suspension”), Release No. 93090, Section II, at ¶ 1; Answer ¶ 1.

A. The Civil and Criminal Actions against Kamensky in the District Court

On September 3, 2020, the Commission brought a civil injunctive action against Kamensky, charging him with securities fraud under Section 17(a)(1) of the Securities Act of 1933 (“Securities Act”). *SEC v. Kamensky*, No. 1:20-cv-07193 (VEC) (S.D.N.Y.) (the “Civil Action”). *See generally* Division Ex. (“Div. Ex.”) 1 (Civil Action’s Docket Sheet)¹ and Div. Ex. 2 (Commission’s Complaint, ECF No. 1).²

The crux of the Commission’s complaint alleges that, as founder of MRC, a then-registered investment adviser to private funds, including Marble Ridge Master Fund LP (collectively, the “Fund”), which specialized in distressed investment opportunities, Kamensky engaged in misconduct in the offer of certain securities (the MyTheresa Series B preferred shares) being disposed of as part of the bankruptcy estate in the Neiman Chapter 11 bankruptcy proceedings. Corrected OIP, Section II. B., at ¶ 3 (summarizing the complaint’s allegations against Kamensky). Specifically, on July 31, 2020, Kamensky, after learning that Jefferies Financial Group Inc.

¹ All Division exhibits (“Div. Ex. __”) are attached to the Declaration of Richard Hong, filed concurrently herewith.

² Under Rule 323, a hearing officer may take notice of “any material fact which might be judicially noticed by a district court of the United States....” 17 C.F.R. § 201.323. Thus, official notice may be taken of the Commission’s public official records and of the docket reports in the Civil Action.

(“Jefferies”) submitted a bid for the securities that was higher than his bid, contacted Jefferies to coerce it into withdrawing its bid. *Id.* Kamensky told Jefferies that he would use his position as co-chair on the UCC [the Official Committee of Unsecured Creditors] to ensure that Jefferies’ bid was rejected and that, if Jefferies, nevertheless, proceeded with its bid, and thereby drove the price up for the securities, Kamensky would retaliate by having MRC cease doing business with Jefferies. *Id.* Kamensky abused his position of trust as a member of the UCC by improperly leveraging his position to scuttle an economic rival’s competing, higher, bid that was in the best financial interest of all unsecured creditors to consider. *Id.* Jefferies withdrew its competing bid in response to Kamensky’s coercive verbal threats, but also reported Kamensky’s misconduct to the UCC. *Id.* When Kamensky learned of this, he again reached out to Jefferies to cover up the fact that Kamensky tried to stop Jefferies from participating in Neiman’s securities offering through his coercive threats. *Id.* On a recorded telephone call, Kamensky openly admitted to Jefferies that he could go to jail if Jefferies did not adopt his (a false) version of their earlier conversation. *Id.* Jefferies, however, refused to cover up for Kamensky and his misconduct was ultimately revealed when it reported him to the UCC. *Id.*³

The United States Attorney’s Office for the Southern District of New York also filed its criminal complaint against Kamensky on September 2, 2020. *United States v. Daniel Kamensky*, No. 21-CR-67 (S.D.N.Y.) (the “Criminal Action”). Like the Commission’s complaint, the criminal complaint set forth Kamensky’s attempts to cover up his fraud, including the following

³ Pursuant to a Bankruptcy Court order, the Office of the United States Trustee for the Southern District of Texas (“UST”) investigated this matter and issued its Statement (the “UST Statement”) to the Bankruptcy Court. The UST found that “the substantial evidence collected to date clearly demonstrates that Mr. Kamensky breached his fiduciary duty to unsecured creditors on July 31, and his earlier conduct between July 4 and July 30 was problematic.” Div. Ex. 3 at 29 (UST Statement).

excerpts of the recorded telephone conversation between Kamensky and Jefferies' employee in which Kamensky asked Jefferies' employee to adopt his false version of their earlier conversation:

KAMENSKY: Why would you tell committee counsel that I threatened you? Why would you tell them that?

* * *

KAMENSKY: Do you understand . . . I can go to jail? I can go to jail. Do you understand that?

IB Employee-1 [Jefferies' employee]: *Dan. Do you understand I went in to them [the UCC] this morning telling them I was going to bid, okay? You then contact me on IB [Instant Bloomberg chat] and you say I need to talk to you now. Stand down. Do not bid. . . . Hold on. Hold on a second, Dan. Listen to me. And then you call me and you say, do not bid. It's going to be a relationship issue, and so I said okay. Dan's a good relationship. What he's asking me to do makes me a little bit uncomfortable. So, I thought about it and I said okay, I'm fine doing it, but I'm disclosing why I'm not bidding.*

KAMENSKY: Okay. Well . . . I might go to jail. Okay? If you had told me that The position I'm going to take is this is a huge misunderstanding and I hope you – *I pray you tell them that it was a huge misunderstanding, okay, and I'm going to invite you to bid and be part of the process. . . . me saying to you, okay, this is going to be my view on what happened okay, and you can decide if you don't want to agree or not.* But I'm telling you . . . this is going to the U.S. Attorney's Office. This is going to go to the court. Like, do you want to be dragged into this? Like, bid all you want but don't – don't – don't put me in jail.

Div. Ex. 4 (Criminal Complaint; available as ECF No. 1 of the Criminal Action) ¶ 131 (emphases supplied).

On February 3, 2021, Kamensky pled guilty to one felony count of extortion and bribery in connection with bankruptcy in violation of Title 18 United States Code, Section 152(6) in a criminal information. Div. Ex. 5 (Criminal Information); Div. Ex. 6 (Plea Hearing Tr.) (ECF Nos. 11 & 15 of the Criminal Action). The count of the information to which Kamensky pled guilty arises out of substantially the same facts and circumstances underlying the Commission's complaint described above, and, alleges, among other things, that Kamensky, while associated

with an investment adviser, pressured Jefferies to refrain from bidding to purchase securities from the unsecured creditors of Neiman in connection with its Chapter 11 bankruptcy proceedings by threatening to: (i) use his position on the UCC to ensure that Jefferies' bid would be rejected; and (ii) withhold MRC's future business from Jefferies, so that MRC, an investment adviser partially owned and managed by Kamensky, could obtain those securities at an artificially lower price for itself. *See* Corrected OIP, Section II. B., at ¶¶ 4-5 (summarizing the criminal information to which Kamensky pleaded guilty).

On May 7, 2021, the United States District Court sentenced Kamensky to imprisonment for six months, followed by six months of supervised release with home detention, and fined \$55,000. Div. Ex. 8 (Criminal Judgment) (ECF No. 35 of the Criminal Action).

As to the Civil Action, after initially filing a motion to dismiss and seeking to litigate, Kamensky agreed to settle, and on September 10, 2021, the United States District Court entered a final judgment on consent against Kamensky, permanently enjoining him from future violations of Section 17(a) of the Securities Act). *See* OIP, Section II. B., at ¶ 2 and Div. Ex. 9 (Final Judgment, ECF No. 40 of the Civil Action).

B. The Follow-on Proceeding

On September 21, 2021, the Commission instituted this follow-on OIP under Section 203(f) of the Adviser's Act against Kamensky.⁴ Release No. 5869. On September 29, 2021, the Commission issued, and the Division served, a corrected OIP, which remedied non-substantive scrivener's errors in the OIP. *See* Corrected Order Instituting Administrative Proceedings ("OIP"), Release No. 5869.

⁴ On the same day, September 21, 2021, the Commission also initiated the Order of Suspension against Kamensky pursuant to Commission Rule of Practice 102(e)(2), forthwith suspending him from appearing or practicing before the Commission. *See* File No. 3-20588.

On October 12, 2021, Kamensky filed and served his Answer to the Corrected OIP. In his Answer, Kamensky admitted: (1) that at all relevant times, he was associated with MRC, a Commission-registered investment adviser, as its founder and managing partner and portfolio manager; (2) that he was convicted of 18 U.S.C. § 152(6); (3) he was enjoined from future violations of Section 17(a)(1) of the Securities Act; and (4) that the criminal information that “he pleaded guilty to arises from substantially the same conduct described in the SEC’s complaint.” Answer at 1-3 (¶¶ 1-2, 4-5).

Pursuant to Rule 250(b) of the Commission’s Rules of Practice, the Division has provided the relevant, non-privileged documents to Kamensky.

III. SUMMARY DISPOSITION STANDARD

Rule 250(b) of the Commission’s Rules of Practice provides that after a respondent’s answer has been filed and documents have been made available to the respondent for inspection and copying, a party may move for summary disposition. 17 C.F.R. § 201.250(b). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. *Id.*

The Commission has repeatedly upheld the use of summary disposition in cases such as this, where the respondent has been enjoined and or convicted and the sole determination concerns the appropriate sanction. *See In re Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717 (Feb. 4, 2008) (collecting cases). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate “will be rare.” *Efim Aksanov*, Initial Dec. Rel. No. 1000, 2016 WL 1444454, at *2 (Apr. 12, 2016) (citing *John S. Brownson*, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *petition for review denied*, 66 F. App’x 687 (9th Cir. 2003)).

Further, “[f]ollow-on proceedings are not an appropriate forum to revisit the factual basis for, or legal challenges to, an order issued by a federal court, and challenges to such orders do not present genuine issues of material fact in our follow-on proceedings.” *John W. Lawton*, Investment Advisers Act Release No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012).

IV. SUMMARY DISPOSITION AGAINST KAMENSKY IS APPROPRIATE

Section 203(f) of the Advisers Act authorizes administrative proceedings to determine whether certain remedial measures – namely, limitations on a respondent’s association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, including a bar or a suspension not exceeding twelve months, or a censure – are appropriate against a person, such as Kamensky, who was associated with an investment adviser at the time of the alleged misconduct. Such remedial measures are appropriate where the Commission finds, after notice and opportunity for hearing, that they are in the public interest and that respondent has been convicted of any offense specified in paragraph (2) or (3) of Section 203(e) within ten years of the commencement of the proceedings under Section 203(f), or is enjoined from any action, conduct, or practice specified in paragraph (4) of Section 203(e).

A. There Is No Genuine Issue of Material Fact.

Kamensky admits in his Answer that: (1) he was associated with an investment adviser at the time of the alleged misconduct (that is, he was associated with MRC on July 31, 2020); (2) he was convicted of a criminal offense specified in paragraph (2) of Section 203(e) in 2021 (that is, he was convicted of 18 U.S.C. § 152(6) within ten years of this proceeding); and (3) he was enjoined from any action, conduct, or practice specified in Section 203(e)(4) (that is, he was enjoined from future violations of an antifraud provision [Section 17(a)(1) of the Securities Act] of

the federal securities laws). Answer at 1-3 (¶¶ 1-4). Thus, there is no genuine issue on any material fact, and, the only remaining determination is the appropriate sanction against Kamensky under Section 203(f) of the Advisers Act, which, as discussed above, is appropriate for summary disposition.

B. Kamensky Should be Permanently Barred from the Securities Industry.

The public interest requires that Kamensky, who is also a licensed bankruptcy attorney, be permanently barred from association with any investment adviser, broker-dealer, or other industry professionals enumerated in Advisers Act Section 203(f).

The Commission has “repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws.” *Peter Siris*, Exchange Act Rel. No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). *See also Chris G. Gunderson, Esq.*, Exchange Act Release No. 61234, 2009 WL 4981617, at * 5 (Dec. 23, 2009) (“An antifraud injunction ‘ordinarily’ warrants barring participation in securities industry”).

Similarly, “plea agreement and criminal conviction are substantial evidence supporting the SEC's conclusion that it is in the public interest to permanently bar” a respondent from association with a broker or dealer or investment adviser. *Michael C. Pattison, CPA*, Exchange Act Release No. 3407, 2012 WL 4320146, at *7 n. 39 (Sept. 20, 2012) (quoting *Brownson v. SEC*, 66 F. App'x 687, 688 (9th Cir. 2003)) (unpublished). Indeed, “the importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business.” *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *7 (Feb. 13, 2009).

When considering whether an administrative sanction serves the public interest, the Commission considers the factors identified in *Steadman v. SEC*:

[T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Kornman, 2009 WL 367635, at *6 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

While the Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive, *Kornman*, 2009 WL 367635, at *6, consideration of the foregoing factors strongly favors imposing permanent securities industry bars against Kamensky.

1. Kamensky committed egregious and multi-faceted misconduct.

Kamensky extorted a rival market participant/investor to gain an unfair advantage in Neiman's securities offering. Abusing his position as a co-chair on the UCC, and in breach of his fiduciary obligations to other unsecured creditors, Kamensky coerced Jefferies, another market participant/investor, into withdrawing its competing bid for securities. *See also* Ex. 3 at 29 (UST Statement) (concluding that "the substantial evidence collected to date clearly demonstrates that Mr. Kamensky breached his fiduciary duty to unsecured creditors" and that "this type of coercion by a Committee fiduciary is highly inappropriate."). Kamensky explicitly told Jefferies that he would use his position to ensure that Jefferies' bid was rejected and that, if Jefferies, still proceeded

with its bid, and thereby drove the price up for the securities, Kamensky would retaliate by having MRC terminate its business relationship with Jefferies.⁵

Kamensky did not stop there, however. As the District Court in the Criminal Action found at Kamensky's sentencing, "when the enormity of the criminal activity in which he had just engaged became clear to him including the risks that he faced of going to jail, the defendant *doubled-down*. He tried to rewrite history. He tried to get another person to lie for him. He tried to obstruct justice and that's the recorded call." Div. Ex. 7 at 29:7-14 (Sentencing Tr.) (emphasis supplied).

Finally, Kamensky's egregious misconduct affected not just the integrity of the securities market, but the integrity of the United States bankruptcy system. As the United States Trustee for Region 2, William K. Harrington, the federal official responsible for supervising the bankruptcy process in New York, explained in his April 14, 2021 victim impact statement filed in the Criminal Action, "[t]he harm that resulted from Kamensky's abuse of the bankruptcy system cannot be overstated." Div. Ex. 10 (the UST/Harrington letter) at 4 (explaining how Kamensky's misconduct affected the bankruptcy system).

2. Kamensky's misconduct was not isolated.

As noted by the District Court in the Criminal Action, Kamensky's recent misconduct was more than just making a coercive threat to another market participant/investor. Kamensky's conduct included a series of lies to cover up his extortion.

The UST investigation showed that before Kamensky tried to pressure Jefferies to adopt Kamensky's false version of their earlier conversation, Kamensky had also falsely told counsel to MRC (Edward Weisfelner) about what had occurred with Jefferies' withdrawal of its bid. Div. Ex.

⁵ According to the UST Statement, Jefferies was MRC's ninth largest trading partner and MRC had paid Jefferies about \$200,000 in trading commissions during the first six months of 2020. Div. Ex. 3 at 10 n.7.

3 at 21 (UST Statement). According to the UST Statement, Kamensky advised counsel to MRC that:

Mr. Kamensky did contact Jefferies about its potential bid, but there was a misunderstanding about his intention in doing so. According to Mr. Weisfelner, Mr. Kamensky had told Jefferies to bid if it was serious. If it was not serious, it should back off to avoid disruption to the Neiman Marcus bankruptcy.

Id. at 21. The UST Statement, however, explains that “[i]n fact, there had been no misunderstanding between them. Mr. Kamensky had made no inquiry whether Jefferies was ‘real,’ *i.e.*, a serious bidder, and had certainly not said it should bid if Jefferies was ‘real.’ Mr. Kamensky had just demanded that Jefferies pull its bid.” *Id.* at 22-23. In short, Kamensky made multiple and successive intentional efforts to cover up his original extortion attempt.

3. Kamensky acted with a high degree of scienter.

Kamensky acted with a high degree of scienter. *First*, Kamensky pled guilty to one count of extortion and bribery in connection with bankruptcy, in violation of 18 U.S.C. § 152(6), which, as he admitted in his Answer, arose out of substantially the same facts and circumstances underlying the Commission’s complaint. As the District Court in the Criminal Action explained during a change of plea hearing, “the charge against you [Kamensky] is that you knowingly and fraudulently gave, received, or attempted to obtain money or property for acting or forbearing to act in a case filed pursuant to Title 11 of the United States Code, that refers to the bankruptcy code.” Ex. 6 at 15 (Plea Hearing Tr.). *Second*, the District Court in the Civil Action entered a final judgment on consent enjoining Kamensky from future violations of an antifraud provision [scienter-based Section 17(a)(1) of the Securities Act] of the federal securities law. Div. Ex. 8 (Final Judgment).

4. Kamensky recognized the wrongful nature of his conduct and provided assurances in the Criminal Action.

The Division acknowledges that in his plea and sentencing proceedings in the Criminal Action, Kamensky recognized the wrongful nature of his conduct and made assurances against future violations. Kamensky, however, has made no similar effort in matters involving the Commission or the Division – whether in the underlying Civil Action or in this administrative proceeding.

Even if Kamensky had recognized the wrongful nature of his conduct and made assurances against future violations here, such efforts do not preclude imposing a permanent bar against him. *Kornman*, 2009 WL 367635, at *7 (“Notwithstanding the lack of recurrence and Kornman’s [respondent’s] expressions of remorse and assurances against future violations, which for purposes of considering a summary disposition we accept as sincere, such factors do not outweigh our concern that Kornman will present a threat if we permit him to remain in the securities industry.”) (footnote omitted).

5. Defendant’s occupation will likely present opportunities for future violations.

Kamensky is a sophisticated, experienced bankruptcy attorney whose former firm, MRC, served as an investment adviser to private funds for more than five years. Indeed, before his incarceration, Kamensky had been working in the securities industry for decades. Despite his recent criminal record, Kamensky presumably continues to enjoy a robust professional network, and it appears that he may be re-branding himself for a return to the securities industry after his release from prison. For example, in a June 11, 2021 interview (barely a month after his sentencing), it

appears that Kamensky was already thinking of a “Milken-style come back.”⁶ Div. Ex. 11 at unmarked page 5/7 (*Exclusive: Daniel Kamensky Speaks. Part II* in Petition newsletter (June 11, 2021), <https://www.petition.substack.com/Danielkamenskypartii>).

Thus, if Kamensky is not permanently barred, he will likely be presented with new opportunities for future violations in the securities industry. “This risk is particularly significant here because opportunities for similar misconduct arise in each of the associational capacities covered by the collateral bar and [Kamensky’s recent] conduct demonstrates fundamental and ongoing unfitness for any such association.” *John W. Lawton*, 2012 WL 6208750, at *12.

6. Kamensky should be permanently barred for general deterrence purpose.

Finally, besides the consideration of the *Steadman* factors, imposing permanent associational bars would deter others from engaging in similar misconduct. *See Ralph W. LeBlanc*, Exchange Act Rel. No. 48254, 2003 WL 21755845, at *7 (July 30, 2003) (explaining that the sanctions will deter others). As the Commission explained,

[t]he proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure. Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors.

John W. Lawton, 2012 WL 6208750, at *11.

Here, the District Court in the Civil Action entered a final judgment on consent enjoining Kamensky from future violations of an antifraud provision of the federal securities law. Kamensky

⁶ We should note that former financier Michael Milken, who had a permanent bar from the securities industry issued by the Commission, violated his bar and was required to pay \$47 million to the Commission in 1998. *SEC v. Milken*, 98 Civ. 1398-MP (S.D.N.Y.). *See also* Sharon Walsh, Milken to Pay \$47 Million to Settle Charge of Violating Securities Ban, *Washington Post* (Feb. 27, 1998), <https://www.washingtonpost.com/archive/business/1998/02/27/milken-to-pay-47-million-to-settle-charge-of-violating-securities-ban/>.

also was convicted of a criminal offense of extortion and bribery in connection with bankruptcy, in violation of 18 U.S.C. § 152(6). On these facts, Kamensky is unfit to be associated in *any* way with the securities industry, and imposing permanent industry bars against him would deter others. *See Bartko v. SEC*, 845 F.3d 1217, 1220-21 (D.C. Cir. 2017) (“Under Dodd-Frank, then, the Commission is now able to bar a securities market participant from the six listed classes -- broker-dealers, investment advisers, municipal securities dealers, transfers agents, municipal advisors and NRSROs -- based on misconduct in only one class.”).

V. CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition against Kamensky be granted, and that Kamensky be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization.

Dated: October 29, 2021
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Respectfully submitted,

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Certificate of Service

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that true and correct copy of the foregoing motion with attachments (declaration and exhibits) was served on the following persons on October 29, 2021, and otherwise sent, by the method indicated:

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**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:20-cv-07193-VEC**

Securities and Exchange Commission v. Kamensky
Assigned to: Judge Valerie E. Caproni
Cause: 12:22 Securities Fraud

Date Filed: 09/03/2020
Date Terminated: 07/16/2021
Jury Demand: Plaintiff
Nature of Suit: 850
Securities/Commodities
Jurisdiction: U.S. Government
Plaintiff

Plaintiff

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V.

Defendant

Daniel B. Kamensky
TERMINATED: 09/10/2021

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United States of America

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Date Filed	#	Docket Text
09/03/2020	<u>1</u>	COMPLAINT against Daniel Kamensky. Document filed by Securities and Exchange Commission..(Berger, Marc) (Entered: 09/03/2020)
09/03/2020	<u>2</u>	CIVIL COVER SHEET filed..(Berger, Marc) (Entered: 09/03/2020)
09/03/2020	<u>3</u>	NOTICE OF APPEARANCE by Alexander Mircea Vasilescu on behalf of Securities and Exchange Commission..(Vasilescu, Alexander) (Entered: 09/03/2020)
09/03/2020	<u>4</u>	REQUEST FOR ISSUANCE OF SUMMONS as to Daniel B. Kamensky, re: <u>1</u> Complaint. Document filed by Securities and Exchange Commission..(Vasilescu, Alexander) (Entered: 09/03/2020)
09/04/2020		***NOTICE TO ATTORNEY REGARDING CIVIL CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Marc Peter Berger. The following case opening statistical information was erroneously selected/entered: Fee Status code none (no fee required);. The following correction(s) have been made to your case entry: the Fee Status code has been modified to ww (waived);. (jgo) (Entered: 09/04/2020)
09/04/2020		***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Marc Peter Berger. The party information for the following party/parties has been modified: Daniel Kamensky. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error;. (jgo) (Entered: 09/04/2020)
09/04/2020		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Valerie E. Caproni. Please download and review the Individual Practices of the assigned District Judge, located at https://nysd.uscourts.gov/judges/district-judges . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and

		Instructions, located at https://nysd.uscourts.gov/rules/ecf-related-instructions ..(jgo) (Entered: 09/04/2020)
09/04/2020		Magistrate Judge Kevin Nathaniel Fox is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (jgo) (Entered: 09/04/2020)
09/04/2020		Case Designated ECF. (jgo) (Entered: 09/04/2020)
09/04/2020	5	ELECTRONIC SUMMONS ISSUED as to Daniel B. Kamensky..(jgo) (Entered: 09/04/2020)
09/04/2020	6	NOTICE OF APPEARANCE by Joseph Peter Ceglio on behalf of Securities and Exchange Commission..(Ceglio, Joseph) (Entered: 09/04/2020)
09/14/2020	7	NOTICE OF INITIAL PRETRIAL CONFERENCE: In light of the COVID-19 situation, the Court will conduct the Initial Pretrial Conference ("IPTC") in accordance with Rule 16 of the Federal Rules of Civil Procedure on October 30, 2020 at 10:30 a.m. by teleconference. At the scheduled time, counsel for all parties should call 888-363-4749, Access code 3121171#, Security code 7193. Counsel should submit their proposed case management plan and joint letter as outlined below. This Court encourages plaintiffs to serve defendants promptly. The parties are directed to submit a joint letter of no more than five pages by October 22, 2020, addressing the following in separate paragraphs: as set forth herein. Plaintiff's counsel, or the defendant's counsel in removed cases, is responsible for distributing copies of this Notice to all parties. And as set forth herein. SO ORDERED., (Telephone Conference set for 10/30/2020 at 10:30 AM before Judge Valerie E. Caproni.) Initial Conference set for 10/30/2020 at 10:30 AM before Judge Valerie E. Caproni. (Signed by Judge Valerie E. Caproni on 9/14/2020) (ama) (Entered: 09/14/2020)
09/17/2020	8	NOTICE OF APPEARANCE by Lawrence Gerschwer on behalf of Daniel B. Kamensky..(Gerschwer, Lawrence) (Entered: 09/17/2020)
09/17/2020	9	NOTICE OF APPEARANCE by Joseph Andrew Matteo on behalf of Daniel B. Kamensky..(Matteo, Joseph) (Entered: 09/17/2020)
09/17/2020	10	NOTICE OF APPEARANCE by David Steven Slovick on behalf of Daniel B. Kamensky..(Slovick, David) (Entered: 09/17/2020)
09/18/2020	11	REQUEST FOR WAIVER OF SERVICE sent to Lawrence Gerschwer, Esq.. Document filed by Securities and Exchange Commission. Request for Waiver Mailed on 9/15/2020. Waiver of Service due by 11/16/2020..(Ceglio, Joseph) (Entered: 09/18/2020)

09/18/2020	12	WAIVER OF SERVICE RETURNED EXECUTED. Daniel B. Kamensky waiver sent on 9/15/2020, answer due 11/16/2020. Document filed by Securities and Exchange Commission..(Ceglie, Joseph) (Entered: 09/18/2020)
10/15/2020	13	NOTICE OF APPEARANCE by Joon Hyun Kim on behalf of Daniel B. Kamensky..(Kim, Joon) (Entered: 10/15/2020)
10/15/2020	14	NOTICE OF APPEARANCE by Alexander Javad Janghorbani on behalf of Daniel B. Kamensky..(Janghorbani, Alexander) (Entered: 10/15/2020)
10/15/2020	15	NOTICE OF APPEARANCE by Ariel Mestel Fox on behalf of Daniel B. Kamensky..(Fox, Ariel) (Entered: 10/15/2020)
10/19/2020	16	NOTICE OF MOTION. Document filed by the Government. (ama) Modified on 10/20/2020 (ama). (Entered: 10/20/2020)
10/19/2020	17	THE GOVERNMENT'S MEMORANDUM OF LAW IN SUPPORT OF ITS APPLICATION TO INTERVENE AND FOR A STAY OF DISCOVERY re: 16 MOTION to Intervene. Document filed by the Government. (ama) Modified on 10/20/2020 (ama). (Entered: 10/20/2020)
10/20/2020	18	ORDER: granting 16 Motion to Intervene. IT IS HEREBY ORDERED that the Government's Motion to Intervene is GRANTED. IT IS FURTHER ORDERED that the Government's Motion for a Stay of Discovery is GRANTED. The parties must file a joint status report every six months updating the Court on the status of the criminal proceedings. The next such report is due no later than Friday, April 23, 2021. Additionally, the parties must notify the Court immediately if the Defendant pleads guilty or a verdict has been reached after trial. The Clerk of Court is respectfully directed to close docket entry 16. SO ORDERED. (Signed by Judge Valerie E. Caproni on 10/20/2020) (ama) (Entered: 10/20/2020)
10/21/2020	19	JOINT LETTER addressed to Judge Valerie E. Caproni from Alexander M. Vasilescu, Esq. dated 2020.10.21 re: The Court's Order dated October 20, 2020. Document filed by Securities and Exchange Commission..(Ceglie, Joseph) (Entered: 10/21/2020)
10/21/2020	20	MEMO ENDORSEMENT: on re: 19 Letter filed by Securities and Exchange Commission. ENDORSEMENT: This matter in its entirety is STAYED pending the conclusion of Defendant's criminal proceedings. The Clerk of Court is respectfully directed to stay the case. The parties must file a joint status report every six months updating the Court on the status of the criminal proceedings. The next such report is due no later than Friday, April 23, 2021. Additionally, the parties must notify the Court immediately if the Defendant pleads guilty or a verdict has been reached after trial. See Dkt. 18. SO ORDERED. (Signed by Judge Valerie E. Caproni on 10/21/2020) (ama) (Entered: 10/21/2020)
10/21/2020		Case Stayed (ama) (Entered: 10/21/2020)

02/05/2021	21	LETTER addressed to Judge Valerie E. Caproni from Joon H. Kim and Lawrence Gerschwer dated February 5, 2021 re: status report and guilty plea. Document filed by Daniel B. Kamensky..(Kim, Joon) (Entered: 02/05/2021)
02/05/2021	22	MEMO ENDORSEMENT: on re: 21 Letter filed by Daniel B. Kamensky. ENDORSEMENT: The stay in this matter is extended through May 7, 2021. A telephonic initial pretrial conference is hereby scheduled on Friday, May 21, 2021, at 11:00 A.M. Pre-conference submissions are due no later than Thursday, May 13, 2021. For the dial in information and a description of the pre-conference submissions, see the Notice of Initial Pretrial Conference at docket entry 7. SO ORDERED., (Initial Conference set for 5/21/2021 at 11:00 AM before Judge Valerie E. Caproni.) (Signed by Judge Valerie E. Caproni on 2/05/2021) (ama) (Entered: 02/05/2021)
05/11/2021	23	NOTICE OF APPEARANCE by Richard S. Hong on behalf of Securities and Exchange Commission..(Hong, Richard) (Entered: 05/11/2021)
05/14/2021	24	PROPOSED CASE MANAGEMENT PLAN. Document filed by Securities and Exchange Commission. (Attachments: # 1 Exhibit A, # 2 Exhibit B).(Vasilescu, Alexander) (Entered: 05/14/2021)
05/21/2021	25	ORDER: IT IS HEREBY ORDERED that Mr. Kamensky must answer, move, or otherwise respond to the Complaint by no later than Friday, June 18, 2021. The SEC's deadline to respond in opposition or to file an amended complaint is Friday, July 16, 2021. If the SEC responds in opposition, Mr. Kamensky's reply in support of his motion is due no later than Friday, July 30, 2021. IT IS FURTHER ORDERED that fact discovery must be complete by no later than Friday, December 31, 2021. Expert discovery must be complete by no later than Thursday, March 31, 2022. IT IS FURTHER ORDERED that the next pretrial conference in this matter is scheduled for Friday, January 7, 2022 at 10:00 A.M. The conference will be held in Courtroom 443 of the Thurgood Marshall United States Courthouse, located at 40 Foley Square, New York, New York 10007. (As further set forth in this Order.) Daniel B. Kamensky answer due 6/18/2021.(Amended Pleadings due by 7/16/2021., Expert Discovery due by 3/31/2022., Fact Discovery due by 12/31/2021., Responses due by 7/16/2021, Replies due by 7/30/2021., Pretrial Conference set for 1/7/2022 at 10:00 AM in Courtroom 443, 40 Centre Street, New York, NY 10007 before Judge Valerie E. Caproni.) (Signed by Judge Valerie E. Caproni on 5/21/2021) (cf) (Entered: 05/21/2021)
05/21/2021	26	CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER: All parties do not consent to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). All fact discovery shall be completed no later than 12/31/2021. All expert discovery, including reports, production of underlying documents, and depositions, shall be completed no later than 3/31/2022. This case is to be tried to a jury. The next pretrial conference is scheduled for 1/7/2022 at

		10:00 A.M. in Courtroom 443 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York York 10007. (As further set forth in this Order.) Deposition due by 3/31/2022. (Signed by Judge Valerie E. Caproni on 5/21/2021) (cf) (Entered: 05/21/2021)
05/21/2021		Minute Entry for proceedings held before Judge Valerie E. Caproni: Telephone Conference held on 5/21/2021. Attorney Alexander Vasilescu present for the plaintiff. Attorney Joon Hyun Kim present for the defendant. Court Reporter Andrew Walker present. (anc) (Entered: 05/21/2021)
06/01/2021	27	TRANSCRIPT of Proceedings re: CONFERENCE held on 5/21/2021 before Judge Valerie E. Caproni. Court Reporter/Transcriber: Andrew Walker, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/22/2021. Redacted Transcript Deadline set for 7/2/2021. Release of Transcript Restriction set for 8/30/2021..(McGuirk, Kelly) (Entered: 06/01/2021)
06/01/2021	28	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 5/21/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days....(McGuirk, Kelly) (Entered: 06/01/2021)
06/18/2021	29	NOTICE OF APPEARANCE by Sean Aaron O'Neal on behalf of Daniel B. Kamensky..(O'Neal, Sean) (Entered: 06/18/2021)
06/18/2021	30	MOTION to Dismiss . Document filed by Daniel B. Kamensky..(Kim, Joon) (Entered: 06/18/2021)
06/18/2021	31	DECLARATION of Joon H. Kim in Support re: 30 MOTION to Dismiss .. Document filed by Daniel B. Kamensky. (Attachments: # 1 Exhibit A - 7/24/20 UCC Report, # 2 Exhibit B - 8/20/20 UCC Statement, # 3 Exhibit C - 9/18/18 NMG 10-K, # 4 Exhibit D - 8/19/20 U.S. Trustee Statement, # 5 Exhibit E - 7/30/20 First Amended Plan of Reorganization, # 6 Exhibit F - 7/30/20 Disclosure Statement, # 7 Exhibit G - 9/25/20 Status Conference Transcript, # 8 Exhibit H - 8/6/20 Solicitation Materials, # 9 Exhibit I - 8/2/20 Jefferies Letter of Intent, # 10 Exhibit J - 8/28/20 Status Conference Transcript, # 11 Exhibit K - 8/3/20 MRC Term Sheet, # 12 Exhibit L - 8/11/20 MRC Term Sheet).(Kim, Joon) (Entered: 06/18/2021)
06/18/2021	32	MEMORANDUM OF LAW in Support re: 30 MOTION to Dismiss . . Document filed by Daniel B. Kamensky..(Kim, Joon) (Entered: 06/18/2021)

07/15/2021	33	STATUS REPORT. (<i>Joint Monthly Report on the Status of Discovery</i>) Document filed by Securities and Exchange Commission..(Hong, Richard) (Entered: 07/15/2021)
07/16/2021	34	LETTER MOTION to Continue (<i>all outstanding court deadlines because of proposed settlement</i>) addressed to Judge Valerie E. Caproni from Plaintiff SEC dated 7/16/2021. Document filed by Securities and Exchange Commission..(Hong, Richard) (Entered: 07/16/2021)
07/16/2021	35	LETTER MOTION to Continue (<i>all outstanding court deadlines because of proposed settlement</i>) (<i>corrected version</i>) addressed to Judge Valerie E. Caproni from Plaintiff SEC dated 7/16/2021. Document filed by Securities and Exchange Commission..(Hong, Richard) (Entered: 07/16/2021)
07/16/2021	36	ORDER: IT IS HEREBY ORDERED that all previously scheduled conferences and other deadlines are CANCELED. IT IS FURTHER ORDERED that this case is DISMISSED with prejudice and without costs (including attorneys' fees) to either party. The Clerk of Court is respectfully directed to terminate all open motions and to CLOSE the case. Within 60 days of this order, the parties may apply to reopen this case. Any such application must show good cause for holding the case open in light of the parties' settlement and must be filed within 60 days. Any request filed after 60 days or without a showing of good cause may be denied solely on that basis. Additionally, if the parties wish for the Court to retain jurisdiction to enforce their settlement agreement, they must submit within the same 60-day period: (1) their settlement agreement to the Court in accordance with Rule 7(A) of the Court's Individual Practices and (2) a request that the Court issue an order expressly retaining jurisdiction to enforce the settlement agreement. See <i>Hendrickson v. United States</i> , 791 F.3d 354 (2d Cir. 2015). SO ORDERED. (Signed by Judge Valerie E. Caproni on 7/16/2021) (ama) (Entered: 07/18/2021)
07/16/2021		Case Stay Lifted. (ama) (Entered: 07/18/2021)
07/16/2021		Terminate Transcript Deadlines (ama) (Entered: 07/18/2021)
09/10/2021	37	FILING ERROR - DEFICIENT DOCKET ENTRY - PROPOSED JUDGMENT. Document filed by Securities and Exchange Commission. (Attachments: # 1 Consent, # 2 Proposed Final Judgment).(Ceglio, Joseph) Proposed Judgment to be reviewed by Clerk's Office staff. Modified on 9/10/2021 (dt). (Entered: 09/10/2021)
09/10/2021		***NOTICE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Notice to Attorney Ceglio, Joseph to RE-FILE Document 37 Proposed Judgment. ERROR(S): Documents have to be filed separately. File the Letter, then separately file the Judgment with the Consent attached to the back of the Judgment. (dt) (Entered: 09/10/2021)

09/10/2021	38	LETTER addressed to Judge Valerie E. Caproni from Joseph P. Ceglio dated September 10, 2021 re: Kamensky Proposed Final Judgment and Consent. Document filed by Securities and Exchange Commission..(Ceglio, Joseph) (Entered: 09/10/2021)
09/10/2021	39	PROPOSED JUDGMENT. Document filed by Securities and Exchange Commission..(Ceglio, Joseph) Proposed Judgment to be reviewed by Clerk's Office staff. (Entered: 09/10/2021)
09/10/2021		***NOTICE TO COURT REGARDING PROPOSED JUDGMENT. Document No. 39 Proposed Judgment was reviewed and approved as to form. (dt) (Entered: 09/10/2021)
09/10/2021	40	FINAL JUDGMENT AS TO DEFENDANT DANIEL B. KAMENSKY: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: as set forth herein. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a). IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendantshall comply with all of the undertakings and agreements set forth therein. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment., Daniel B. Kamensky terminated. (Signed by Judge Valerie E. Caproni on 9/10/2021) (ama) (Entered: 09/10/2021)
09/10/2021		Terminate Transcript Deadlines (ama) (Entered: 09/10/2021)

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Billable Pages:	7	Cost:	0.70

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION,	:	20 Civ. _____ ()
	:	
Plaintiff,	:	ECF CASE
	:	
- against -	:	COMPLAINT
	:	
DANIEL B. KAMENSKY,	:	
	:	JURY TRIAL
Defendant.	:	DEMANDED
	:	
-----	:	

Plaintiff Securities and Exchange Commission (“Commission”) for its Complaint against Defendant Daniel B. Kamensky (“Kamensky” or the “Defendant”) alleges as follows:

SUMMARY OF THE ALLEGATIONS

1. This case involves Kamensky—founder of New York-based registered investment adviser, Marble Ridge Capital LP (“Marble Ridge”), which specialized in distressed investment opportunities—and his conduct in the offer of certain shares being disposed of as part of the Neiman Marcus Group Ltd. LLC (“Neiman”) bankruptcy proceedings. Kamensky used his position on the bankruptcy committee that facilitated the offering of securities for the bankruptcy estate to manipulate the offering so Kamensky’s fund could purchase the securities at an artificially lower price.

2. Specifically, on July 31, 2020, Kamensky, after learning that Jefferies Financial Group Inc. (“Jefferies”) submitted a bid for the shares that was higher than his, contacted Jefferies to coerce it into withdrawing its bid. Kamensky told Jefferies that he would use his position on the Official Committee of Unsecured Creditors (“UCC”) to ensure that Jefferies’ bid was rejected and that, if Jefferies nevertheless submitted a bid and drove the price up, Marble Ridge would cease doing business with Jefferies. By doing so, Kamensky abused his position of trust as a member of the UCC by leveraging it to scuttle a competing bid that was in the interests of all unsecured creditors but not in his personal interests.

3. Jefferies withdrew its bid in response to Kamensky’s threat but reported the misconduct to the UCC. When Kamensky learned of this, he again reached out to Jefferies to have it cover up that Kamensky tried to prevent Jefferies from participating in Neiman’s offering of securities. Kamensky candidly admitted to Jefferies that he could go to jail if Jefferies did not adopt a false version of their previous conversation. Jefferies refused to cover up for Kamensky and his conduct was ultimately revealed.

VIOLATIONS

4. By virtue of the conduct alleged herein, the Defendant, directly or indirectly, violated and is otherwise liable for violations of the federal securities laws as follows: Section 17(a)(1) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)(1)].

5. The Defendant will continue to violate Section 17(a)(1) of the Securities Act unless restrained or enjoined by the Court.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to the authority conferred upon it by Sections 20(b), 20(d), and 22(a) of the Securities Act of 1933 [15 U.S.C. §§ 77t(b), and 77v(a)].

7. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(b), 20(d)(1), and 22 of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v]. The Defendant, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of a facility of a

national securities exchange, in connection with the transactions, acts, practices, or courses of business alleged herein, certain of which occurred in this District. For example, during the relevant period, Marble Ridge maintained an office at 1250 Broadway Suite 2601, New York, New York 10001 and Kamensky resided in the District. Jefferies also maintained an office at 520 Madison Avenue, New York, New York 10022. Kamensky also exchanged instant messages, texts, emails, and placed phone calls with Jefferies employees in its New York City office who are assigned to, and work in, that office and were also physically present in the District during certain of these communications.

DEFENDANT

8. **Kamensky**, age 47, resides in New York, New York. Kamensky founded Marble Ridge Capital LP and serves as the Managing Partner and Portfolio Manager for the firm. Kamensky previously served as a partner of a prominent advisor and hedge fund and started his career as a bankruptcy attorney. Kamensky has no disciplinary history.

OTHER RELEVANT ENTITIES AND INDIVIDUALS

9. **Neiman Marcus Group Ltd. LLC** is a Delaware limited liability company with its principal place of business in Texas that markets itself as a luxury, multi-branded retailer conducting integrated store and online operations under the Neiman Marcus, Bergdorf Goodman, Neiman Marcus Last Call, and Horchow brand names. On May 7, 2020 Neiman announced that it entered into a Restructuring Support Agreement (“RSA”) with a majority of its creditors to undergo a financial restructuring. To implement the RSA, Neiman commenced voluntary Chapter 11 proceedings in the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division.

10. **Marble Ridge Capital LP**, founded in 2015 by Kamensky, is a registered investment adviser to private funds, including the Marble Ridge Master Fund LP, with around \$1 billion in assets under management. Marble Ridge, with its principal place of business in New York, New York, specializes in distressed debt investments and restructuring of troubled issuers.

11. **Jefferies Financial Group, Inc.** is a diversified financial services company. Jefferies has been registered as a broker-dealer with the Commission since September 17, 1969. Jefferies is a member of Financial Industry Regulatory Authority. Its primary office is in New York, New York. The broker-dealer markets itself as a global investment bank that offers mutual funds, variable insurance products, stocks, bonds and options.

FACTS

A. Pre-Bankruptcy Background

12. Marble Ridge holds around \$65 million of Neiman’s unsecured debt in two series of bonds, as well as approximately a \$9 million interest in an unsecured loan it made to Neiman. At a certain point, Marble Ridge believed that Neiman’s bankruptcy was inevitable and that a 2018 transfer of Neiman’s interests in MyTheresa, an e-commerce retailer, to Neiman’s parent (the “MyTheresa Distribution”) was actually a fraudulent conveyance to divert a valuable asset away from Neiman creditors.

13. Under Kamensky’s management, Marble Ridge initiated two state court lawsuits challenging the MyTheresa Distribution.

14. In 2019, Neiman entered into a recapitalization agreement that essentially resolved potential claims arising out of the MyTheresa Distribution with many of its creditors—though not with Marble Ridge, which declined to participate in the exchange.

15. Those negotiations also created a “waterfall” that governed distribution of MyTheresa proceeds in the event of a sale or other monetization. Under that waterfall, the first \$450 million of any sale would go to certain secured lenders and to the holders of Series A preferred stock in the holding company for the MyTheresa assets, while the next \$250 million would go to the holders of Series B preferred stock (the “Series B Shares”).

B. Neiman Files a Voluntary Chapter 11 Bankruptcy Petition on May 7, 2020

16. Neiman filed a voluntary Bankruptcy Petition on May 7, 2020 in the U.S. Bankruptcy Court for Southern District of Texas. At the time the bankruptcy was filed, Marble Ridge held approximately 50% of Neiman’s unsecured debt.

17. The same day Neiman filed its bankruptcy petition, the United States Trustee solicited interest in serving on the UCC and informed prospective members that they would be required to act as “fiduciaries who represent all unsecured creditors as a group.”

18. On May 10, Marble Ridge expressed its interest and willingness to serve on the UCC. In its cover email, Marble Ridge stated that:

If appointed to the Committee, Marble Ridge would be represented by Dan Kamensky. Mr. Kamensky has more than 20 years of bankruptcy and investing experience and fully understands the fiduciary responsibilities associated with membership on the Committee. Mr. Kamensky is committed to devote the time and energy necessary to earnestly represent all unsecured creditors.

19. On May 19, the United States Trustee appointed nine-members to the UCC, which included Marble Ridge. Marble Ridge, represented by Kamensky, subsequently was elected as one of the UCC’s three co-chairs.¹

20. As an experienced bankruptcy lawyer, Kamensky knew or was reckless in not knowing that his role on the UCC was that of a fiduciary and that he accordingly had an obligation to work to protect the claims of all unsecured creditors. Generally, this meant that members of the UCC would work to ensure that Neiman’s assets were liquidated for as much money as possible so there would be a greater chance that Neiman’s bankruptcy estate had sufficient funds to pay the claims of unsecured creditors.

¹ The dispute over the MyTheresa Distribution played a prominent role in many of the contested matters brought before the bankruptcy court in the first months of the case. Marble Ridge has been active in the bankruptcy proceedings. In May, Marble Ridge sought to have the court appoint an examiner to investigate the MyTheresa pre-bankruptcy transfer. Then, in July, Marble Ridge submitted an offer to buy MyTheresa-related litigation claims. In response to efforts to appoint an examiner, the bankruptcy judge remarked that “I came out today prepared to talk about whether or not Marble Ridge ought to continue on the [creditors] committee ... [if a good faith requirement existed] I would find that the [examiner] motion was not filed in good faith [by Marble Ridge].” With respect to the offer to buy litigation claims in July, at the time of the offer, Marble Ridge was still on the UCC and in possession of confidential information about MyTheresa. When the UCC learned about the offer, Kamensky agreed to withdraw Marble Ridge’s bid and not submit another one without prior UCC approval.

C. Kamensky Has Marble Ridge Bid for the Series B Shares

21. By late July 2020, the major creditor constituencies and the debtors made progress towards the framework of a plan of reorganization that incorporated settlement of the MyTheresa disputes. Because any settlement would likely involve the transfer of 140 million of the Series B MyTheresa Shares to the bankruptcy estate, the UCC began to explore possible alternatives for a “cash out” option.

22. On July 28, Kamensky, as part of his plan to maximize the value of Marble Ridge’s Neiman holdings, emailed the outline of a Marble Ridge proposal to the UCC, including counsel for the UCC (“UCCP1”). Among other things, the proposal provided that Marble Ridge would guarantee, or “backstop,” the purchase of 60 million Series B Shares at \$0.20 per share from other unsecured creditors wishing to sell their shares.

23. At a meeting held on July 29, the UCC voted to support the global settlement. The UCC then excused Marble Ridge from the meeting, and the members of the UCC discussed Kamensky’s bid. The UCC agreed to continue negotiations with Marble Ridge.

24. These negotiations were apparently time-sensitive, because any last-minute changes to an upcoming bankruptcy filing (the Disclosure Statement) would need to be presented to the court at a hearing set for August 3, in order to be included in the Disclosure Statement and then mailed to all creditors. The UCC also considered a potential auction of the securities.

D. The Events of July 31

1. Jefferies Proposes a Higher Bid

25. JE1 is the global head of Jefferies Distressed and Special Situations Group, which trades on its own behalf and for clients, one of whom was Marble Ridge.

26. On July 30, the subscription service, Reorg Research, disclosed the terms of a proposed settlement of the disputes within the Neiman bankruptcy estate and the assets that would be distributed in the bankruptcy case. Upon reviewing that and seeing that the proposed terms of a plan of reorganization that incorporated the settlement was also on the public docket of the Neiman bankruptcy case, JE1, based on his industry experience, understood that the

Series B Shares were being offered for sale at that point. He immediately began considering the terms of a bid by Jefferies.

27. At 8:10 AM ET on July 31, JE1 and another employee of Jefferies (“JE2”) had a call with the Jefferies client. The client informed Jefferies that it wanted to purchase the Series B Shares.

28. Between 9:00 AM ET and 10:00 AM ET on July 31, JE2 called the UCC’s financial adviser (“UCCP2”). JE2 told UCCP2 that Jefferies was interested in the Series B Shares for a price in “the thirties” range (between \$0.30 and \$0.40 per share). JE2 sent UCCP2 a follow up email at 10:22 AM ET confirming Jefferies’ interest in submitting a firm bid to purchase the shares and its capacity to complete the transaction if the UCC chose to accept a bid from Jefferies. JE2’s email requested that UCCP2 keep Jefferies’ bid confidential from any member of the UCC that was interested in making its own cash out offer for the Series B Shares.

2. The UCC’s Consideration of Bids

29. After speaking with JE2, UCCP2 contacted UCCP1. UCCP2 and UCCP1 discussed Jefferies’ potential bid and that the bid could produce a higher return for unsecured creditors than the pending offer from Marble Ridge.

30. At 12:15 PM ET, UCCP2 and UCCP1 spoke with JE2 and JE1 at Jefferies. UCCP1 engaged in a solicitation of an offer to buy the Series B Shares. UCCP1 explained that while Jefferies could make a bid for the 140 million shares as a block, some unsecured creditors wanted to keep their shares, so UCCP1 invited a proposal that allowed creditors to opt in or out of the sale. JE2 and JE1 had no issue proceeding along those lines and confirmed a price in the “thirties.”

31. UCCP1 and UCCP2 determined that the offering of the securities would continue and informed Kamensky that other bids were competing with Marble Ridge’s bid. UCCP1 and UCCP2 decided they needed to inform Kamensky of this competing bid.

3. Kamensky Learns of Jefferies' Rival Bid and Works to Kill It

32. At 3:15 PM ET on July 31, 2020, UCCP1 and UCCP2 informed Kamensky that Jefferies was the other bidder and it was at \$0.30 per share.

33. Unbeknownst to other members of the UCC, who understood that Kamensky had recused himself from the consideration of cash-out proposals for MyTheresa, Kamensky secretly called JE1 and pressured him to withdraw Jefferies's bid. At the time, Jefferies's bid was higher than Kamensky's bid and therefore clearly beneficial to the unsecured creditors of Neiman to whom Kamensky, as a member and co-chair of the UCC, owed a fiduciary duty.

34. Within minutes of learning that Jefferies was the competing bidder, Kamensky contacted Jefferies using Instant Bloomberg chat messages. Kamensky told JE1, among other things, to "Tell [JE2] to stand DOWN", asking, "Do I need to reach out to [JE2][?]", and "DO NOT SEND IN A BID" for the Series B Shares. Kamensky also contacted JE2 and asked to speak right away.

35. At approximately 3:45 PM ET, JE1 and JE2 spoke with Kamensky on the phone. Kamensky was very upset and told JE1 and JE2 to stand down and not put in a bid. Kamensky said he had been pursuing this matter for several years, amassed \$3.5 million in legal fees to do so, and that his efforts had made the MyTheresa settlement possible. Kamensky said that he was determined to acquire the MyTheresa shares, so all that Jefferies' bid would accomplish was driving up his final price and cost him money.

36. Kamensky further said that as co-chair of the UCC, he would prevent Jefferies from buying the shares. Finally, Kamensky stated that he had been a good partner to JE1 and Jefferies, but if JE1 persisted in moving forward with its bid for the Series B Shares, then they would not be partners going forward. At the time, Jefferies was Marble Ridge's ninth largest trading partner, and provided valuable information capital as well as commissions.

37. Immediately after the call ended, JE1 spoke to JE2 about his unease and discomfort with the circumstances, including that Kamensky was abusing his position as a fiduciary in the Neiman's bankruptcy case and that Kamensky's ultimatum for Jefferies not to

bid might involve JE1 and Jefferies in unethical and even illegal conduct. At the same time, JE1 was concerned about his business relationship with Kamensky and Marble Ridge. JE1 immediately decided to speak with Jefferies' general counsel and called him at approximately 3:55 PM ET.

38. Following JE1's call with Jefferies' general counsel, JE1 and JE2 called Kamensky at approximately 4:07 PM ET. JE1 explained that Marble Ridge was an important business relationship for Jefferies so it would withdraw from making any bid for the Series B Shares. JE1 further explained that Jefferies would be transparent with its client who sought to purchase the shares and the UCC about why it was withdrawing its bid.

39. Kamensky responded by thanking JE1 and JE2 and saying he would always be grateful to them.

40. Shortly after their 4:07 PM ET call with Kamensky, JE1 and JE2 contacted their original client for the purchase of the Series B Shares and told him they were withdrawing from making a bid for the Series B Shares. They explained they were withdrawing because of pressure from another client.

41. Thus, within an hour of learning of a competing bid for the MyTheresa shares, Kamensky had undermined and manipulated the offering of those securities by calling JE1 and pressuring Jefferies to withdraw its bid with a series threats. Kamensky had given the UCC the false impression that he would act appropriately during the bidding process in light of his fiduciary duty but then used information he obtained from his role on the UCC to intimidate a competing bidder and artificially reduce the price of the securities for Marble Ridge's financial gain. Kamensky's conduct operated as a fraudulent device within the offering process – simultaneously giving the UCC the impression that he was acting ethically by being recused but then threatening Jefferies that he would use his role as co-chair of the UCC to reject their bid – that artificially deflated the price of the MyTheresa securities offered for Marble Ridge's benefit. This fraudulent conduct violated Kamensky's fiduciary obligations to the UCC.

4. The UCC Learns of Kamensky's Conduct

42. UCCP1 spoke with JE1 and JE2 at approximately 5:00 PM ET on July 31, 2020. JE2 explained that Jefferies was withdrawing from making a bid and UCCP1 asked why. JE2 explained that a significant client had asked it to do so. UCCP1 asked if the client was Kamensky. JE2 said yes. UCCP1 responded by saying, "I've got a big problem."

43. After the call ended, UCCP1 informed UCCP2 of Jefferies' withdrawal and its stated reasons for doing so. UCCP1 then set a 6:00 PM ET conference call for UCC professionals to decide on the necessary steps in reaction to Kamensky's reported actions.

44. At the 6:00 PM ET conference call, the UCC professionals decided to reach out to Marble Ridge's bankruptcy counsel to determine if Jefferies' report about Kamensky's conduct was accurate.

45. At approximately 7:00 PM ET, several UCC professionals spoke to Marble Ridge's bankruptcy counsel, who said that he knew nothing about the allegations and would call them back after contacting Kamensky.

46. In another attempt to subvert the UCC's offer of the Series B Shares, Kamensky then misled Marble Ridge's bankruptcy counsel regarding his communications with JE1 and JE2. After speaking with Kamensky, Marble Ridge's bankruptcy counsel spoke again with UCC professionals at approximately 7:30 PM ET. Marble Ridge's bankruptcy counsel reported that Kamensky did contact Jefferies about its potential bid, but there was a misunderstanding about his intention in doing so. Passing on what Kamensky had told him, Marble Ridge's bankruptcy counsel told the UCC that Kamensky had told Jefferies to bid, if it was serious. If Jefferies was not serious, then it should back off to avoid disruption to the Neiman bankruptcy.

5. Kamensky Tries to Recruit JE1 to Bolster A Cover-Up

47. To keep the UCC from learning the truth about his attempt to manipulate the MyTheresa offering, Kamensky asked JE1 to adopt his fabricated account of their earlier conversation.

48. Kamensky specifically, at approximately 8:10 pm on July 31, 2020, Kamensky called JE1 and said, “[T]his conversation never happened.” Concerned by Kamensky’s opening remark, JE1, unknown to Kamensky, began recording their phone call. Kamensky asked why JE1 had told the UCC professional that Kamensky had threatened JE1 and asked if JE1 knew this could cause Kamensky to go to jail. JE1 responded that Kamensky demanded Jefferies stand down to preserve their business relationship.

49. Kamensky repeated that he could go to jail and urged JE1 to agree that Kamensky asking Jefferies to stand down was just a big misunderstanding. After JE1 pushed back, which threatened not only Kamensky’s attempted purchase of the Series B Shares at \$0.20 per share but also Kamensky’s ability to remain as a bidder for the shares at any price, Kamensky urged JE1 to now take part in the bidding process for the Series B Shares.

50. During his call with Kamensky, JE1 again pushed back against the plausibility of Kamensky’s innocent “misunderstanding” explanation, reminding Kamensky that JE2 had also been on the call and heard what Kamensky actually said.

51. JE1 urged Kamensky to just recuse himself from the whole matter. Kamensky again responded with a plea for JE1 to adopt his “version” of their earlier conversation, stressing again the dire punitive consequences for Kamensky if JE1 did not. Kamensky admitted his efforts to manipulate the UCC’s offering of securities:

. . . [I]f you’re going to continue to tell them what you just told me, I’m going to jail, okay? Because they’re going to say that I abused my position as a fiduciary, which I probably did, right? Maybe I should go to jail. But I’m asking you not to put me in jail.

52. JE1 responded that there was no possibility of his lying for Kamensky. Kamensky denied wanting JE1 to lie, but kept urging JE1 to adopt his “version” of their earlier conversation.

53. Kamensky then pleaded with JE1, imploring him to agree that Kamensky said something he purportedly intended to say, but never actually did say—that Jefferies should bid,

if it was serious. Kamensky closed out the conversation with JE1 by telling JE1 that adopting his (Kamensky's) position was necessary to preserve their business relationship:

I apologize. I apologize. I apologize, okay, and I'm telling you that what I intended to say, okay, is if you're not real don't bid but if you're real then you should bid, and, [JE1], for the relationship I would tell you that's exactly what I said and I apologize if I was upset or if it appeared as a threat.

54. As part of a preliminary investigation that commenced after Kamensky's conduct first came to light in the Neiman bankruptcy proceedings, the United States Trustee interviewed Kamensky concerning the above telephone call recorded by JE1. Kamensky admitted he had made the call to JE1 and said it was a serious mistake, one of the worst of his life.

55. Kamensky stated he made the call to JE1 out of fear and panic of the possible consequences of Jefferies' report to the UCC that he had pressured them to kill its bid.

56. Kamensky denied wanting JE1 to lie, but said he was trying to "manage the message" by talking with JE1.

57. Kamensky further acknowledged that: (1) Jefferies' bid might jeopardize Marble Ridge reaching an agreement on a cash out proposal for the Series B Shares; and (2) Jefferies' higher price for the shares would hurt Marble Ridge's ability to profit from any Series B purchase.

58. Kamensky nevertheless claimed that process concerns about endangering the agreement on a cash out provision were his primary motivation for contacting JE1 and JE2.

E. Kamensky's Uncovered Scheme Scuttles the Bidding Process

59. At 8:31 AM ET on August 1, still under Kamensky's management, Marble Ridge resigned from the UCC, advancing the "misunderstanding" explanation of Kamensky's conduct from the day before, and asserting that Kamensky had only contacted Jefferies to make sure it was truly committed to bidding, not discouraging a competing bid. Marble Ridge asked the UCC members to assure Jefferies that it was strongly encouraged to submit a bid.

60. Marble Ridge claimed it was resigning from the committee as a way to resolve the issue in the best interests of all concerned. At 1:15 PM ET, Marble Ridge wrote to the United

States Trustee to offer Marble Ridge's resignation from the committee and again provided its "misunderstanding" explanation of Kamensky's July 31 conduct.

61. At a 2:00 PM ET emergency meeting, the UCC decided that it should promptly disclose Kamensky's conduct to the United States Trustee.

62. Also on August 1, Jefferies decided to renew its bid to purchase the Series B Shares. JE1 explained to the United States Trustee that, given the fallout following Jefferies' withdrawal, the business reasons behind the withdrawal were no longer present. JE1 emphasized that Jefferies' decision to resume its proposal was not in response to Kamensky's request during their phone call the prior evening that Jefferies bid to help Kamensky's cover story. Rather, the renewed bid was motivated by Jefferies' own financial interest in a profitable transaction involving the Series B Shares.

63. At their 2:00 PM ET emergency meeting that day, the UCC agreed to consider any renewed Jefferies' rival bid.

64. Both Jefferies and Marble Ridge submitted competing bid proposals to the UCC. On August 2, Jefferies submitted a Letter of Intent to the UCC. On August 3, Marble Ridge provided a letter proposal to the UCC, and then, a revised proposal on August 11. Each of the Jefferies and Marble Ridge proposals offered a higher price per share than the \$0.20 of Marble Ridge's initial proposal. Marble Ridge's current proposal is at \$0.40 per share.

65. At present, the MyTheresa Series B Shares have not been sold and, in fact, now may never be sold, but instead, placed in a liquidating trust.

66. Following reports of Kamensky's misconduct, Marble Ridge told investors that it "made the difficult decision to commence an orderly wind-down of the Marble Ridge funds."

67. Neiman has also sued Marble Ridge for millions of dollars in alleged damages as well as equitable subordination of Marble Ridge's claims in the bankruptcy proceedings.

CLAIM FOR RELIEF
Violations of Section 17(a)(1) of the Securities Act

68. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 67.

69. By engaging in the conduct described above, defendant Kamensky directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, with scienter, employed devices, schemes and artifices to defraud. By virtue of the foregoing, defendant Kamensky violated and, unless restrained and enjoined, will continue violating, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment:

I.

Permanently restraining and enjoining Kamensky, his agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

II.

Ordering Kamensky to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]; and

III.

Granting such other and further relief as this Court deems just, equitable, and appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury.

Dated: New York, New York
September 3, 2020

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO.
§
NEIMAN MARCUS GROUP LTD, LLC, § 20-32519 (DRJ)
et al., § (Chapter 11)
§ Jointly Administered
DEBTORS¹ §

STATEMENT OF THE ACTING UNITED STATES TRUSTEE
PURSUANT TO COURT ORDER REGARDING THE CONDUCT
OF MARBLE RIDGE CAPITAL LP AND DAN KAMENSKY

TO THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Neiman Marcus Group LTD LLC (9435); Bergdorf Goodman Inc. (5530); Bergdorf Graphics, Inc. (9271); BG Productions, Inc. (3650); Mariposa Borrower, Inc. (9015); Mariposa Intermediate Holdings LLC (5829); NEMA Beverage Corporation (3412); NEMA Beverage Holding Corporation (9264); NEMA Beverage Parent Corporation (9262); NM Bermuda, LLC (2943); NM Financial Services, Inc. (2446); NM Nevada Trust (3700); NMG California Salon LLC (9242); NMG Florida Salon LLC (9269); NMG Global Mobility, Inc. (0664); NMG Notes PropCo LLC (1102); NMG Salon Holdings LLC (5236); NMG Salons LLC (1570); NMG Term Loan PropCo LLC (0786); NMG Texas Salon LLC (0318); NMGP, LLC (1558); The Neiman Marcus Group LLC (9509); The NMG Subsidiary LLC (6074); and Worth Avenue Leasing Company (5996). The Debtors’ service address is: One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

COMES NOW the Acting United States Trustee for Region 7 (the “United States Trustee”), by and through the undersigned counsel, who respectfully submits this statement in response to the Court’s order of August 5, 2020 [Dkt. No. 1442] (the “Order”), and represents as follows:

PRELIMINARY STATEMENT AND SUMMARY

This statement sets out the evidence gathered by the United States Trustee and his preliminary analysis pursuant to the Court’s order directing a statement of position “regarding the conduct of Marble Ridge and Mr. Kamensky in this case.” Dkt. No. 1442. Marble Ridge Capital LP (“Marble Ridge”) was until recently one of the three co-chairs of the Official Committee of Unsecured Creditors (the “Committee”) appointed in the jointly administered chapter 11 cases of the Neiman Marcus Group (the “Debtors”), and Dan Kamensky, the managing partner and principal of Marble Ridge, served as Marble Ridge’s representative on the Committee. The Court’s Order expressed concern over “alarming” allegations about the conduct of Marble Ridge and Mr. Kamensky and ordered the United States Trustee to review the allegations and file this statement within fourteen days of the Order. *Id.*

Based on the United States Trustee’s time-limited investigation, on July 31, Marble Ridge, through Mr. Kamensky, breached its fiduciary duty of loyalty to the creditors it represented by coercing an outside investor to refrain from bidding against Marble Ridge on a key transaction that was considered integral to a successful plan of reorganization.² Furthermore, Marble Ridge’s initial explanation of its own actions to the Court and to the United States Trustee was, at best,

² Nevertheless, after initially refusing to bid, the outside investor ultimately made a competing offer for the assets once information about Marble Ridge’s conduct became the subject of this investigation.

incomplete and misleading. Based on these facts, further proceedings before the Court may be appropriate to permit the Court to hear from the witnesses and receive evidence concerning Marble Ridge and Mr. Kamensky and to consider what remedial measures, if any, are appropriate.³

I. SCOPE AND LIMITATIONS OF UNITED STATES TRUSTEE'S INVESTIGATION

Immediately following the August 5 Order, the United States Trustee prepared requests for documents and interviews to individuals who appeared to have knowledge relating to the allegations against Marble Ridge and Mr. Kamensky.⁴ The United States Trustee sent document requests to: (i) Richard Pachulski, counsel to the Committee; (ii) Michael Warner, co-counsel to the Committee; (iii) Moshin Meghji, financial advisor to the Committee; (iv) Eric Geller, of Jefferies Financial Group, Inc. ("Jefferies"); (v) Mr. Kamensky; (vi) Edward Weisfelner, counsel to Marble Ridge; and (vii) Chad J. Husnick and Anup Sathy, counsel to the Debtors. These requests sought:

documents and media of any kind pertaining to the potential purchase or conversion to cash of MYT Series B Preferred Shares held or to be held by the unsecured creditors of the debtors Neiman Marcus Group LTD LLC, et al. and/or any potential conflict of interest arising therefrom.

The United States Trustee directed the requests both to the individuals as well as to their respective companies and requested responses by August 10. The United States Trustee also requested a

³ Because of the preliminary and non-adversarial nature of the United States Trustee's investigation, the United States Trustee does not comment on the availability or viability of any causes of action that might be asserted by particular parties in this case.

⁴ The United States Trustee, in coordination with the Executive Office for United States Trustees, assembled a team to undertake this investigation that, in addition to the undersigned, included, among others, a former Assistant United States Attorney.

litigation hold on responsive documents. Although in many cases documents were not produced until after the August 10 deadline, the United States Trustee nevertheless received and reviewed approximately 3,200 pages of documents.

Between August 14 and August 17, the United States Trustee also conducted voluntary individual interviews via videoconference with Mr. Pachulski, Mr. Meghji, and Mr. Kamensky. In place of Mr. Geller, the United States Trustee interviewed a different Jefferies employee who requested that his name be kept anonymous in this report as a condition of his voluntary interview and cooperation. The United States Trustee agreed to this condition with respect to this statement only, and this individual will accordingly be referred to as “Jefferies Employee No. 1” or “JE1” in this statement. Mr. Weisfelner also made a presentation to the United States Trustee that sought to explain the background of Marble Ridge’s involvement with the Debtors and these cases. Each interview lasted between ninety minutes and four hours. Except in the case of Mr. Weisfelner’s presentation, a court reporter transcribed all interviews, and all witnesses were accompanied by counsel and agreed to be sworn.

This investigation was conducted on a fully voluntary basis, and the United States Trustee commends each of the persons or firms interviewed or providing documents for their cooperation. Because the United States Trustee’s investigation was not ordered under Rule 2004, the United States Trustee did not have the power to compel testimony or production of documents. Although the understandable, but short, deadline for submission of this statement somewhat constrained the United States Trustee’s work, this statement nevertheless renders sufficient evidence for the Court and the parties to determine appropriate next steps. Due to these time constraints, the United States

Trustee was unable to provide any of the parties with an opportunity to review or respond to this statement prior to its submission to the Court.⁵

II. STATEMENT OF FACTS

A. Pre-Petition Background

Marble Ridge is the holder of certain of Neiman Marcus's debt and characterizes itself as the largest single unsecured creditor of the Debtors as of the petition date. Since 2018, Marble Ridge and the Debtors have been engaged in a protracted legal dispute involving the Debtors' interests in MyTheresa, an e-commerce retailer, which were transferred to the Debtors' (non-debtor) parent in 2018 as an equity distribution (the "MyTheresa Distribution"). This transaction, which Marble Ridge has characterized as a fraudulent transfer, was the subject of two state court actions filed before the petition date, one by Marble Ridge and another by an Indenture Trustee allegedly on Marble Ridge's behalf.

In 2019, Neiman Marcus entered into a recapitalization agreement that had the effect of resolving potential claims arising out of the MyTheresa Distribution with many of its creditors—though not with Marble Ridge, which declined to participate in the exchange. Of significance here, those negotiations also created a "waterfall" that governed how the proceeds of MyTheresa would be distributed in the event of a sale or other monetization. Under that waterfall, the first \$450 million of any sale would go to certain secured lenders and to the holders of Series A preferred stock in the holding company for the MyTheresa assets, while the next \$250 million would go to the holders of Series B preferred stock, which was initially distributed to a Neiman

⁵ For the same reasons, the United States Trustee was unable to cite specifically to documents and transcripts in this statement.

Marcus affiliate (the “Series B Shares”). The Series B Shares were apparently designed to represent an indirect source of recovery for Neiman Marcus’s owners in the event of a MyTheresa sale; they were also highly illiquid, because they would be payable only in the event of a sale or monetization and even then only if the amount realized was at least \$450 million.

On April 28, Neiman Marcus appointed Marc Beilinson⁶ and Scott Vogel as “disinterested managers” to its Board of Managers (the “Disinterested Managers”). The Disinterested Managers were charged with determining “whether a conflict exists with respect to any issue in connection with the Debtors’ chapter 11 cases,” as well as with investigating the MyTheresa Distribution.

B. Commencement of the Bankruptcy Case and the Appointment of the Committee.

On May 7, the Debtors filed voluntary petitions seeking relief under chapter 11 of the Bankruptcy Code. That same day, the United States Trustee sent out a standard questionnaire to the Debtors’ largest creditors in order to solicit interest in serving on the Committee. Among other things, that questionnaire informed prospective committee members that they would be required to act as “fiduciaries who represent all unsecured creditors as a group.”

On May 10, Marble Ridge, through its general counsel, submitted a completed questionnaire expressing its willingness to serve on the Committee. In its cover email, Marble Ridge stated that:

If appointed to the Committee, Marble Ridge would be represented by Dan Kamensky. Mr. Kamensky has more than 20 years of bankruptcy and investing experience and fully understands the fiduciary responsibilities associated with membership on the Committee. Mr. Kamensky is committed to devote the time and energy necessary to earnestly represent all unsecured creditors.

⁶ Mr. Beilinson resigned his position in June after a health emergency.

On May 19, the United States Trustee appointed a nine-member Committee that included Marble Ridge. Dkt. No. 455. Marble Ridge would subsequently be elected as one of three co-chairs of the Committee, which retained the law firms of Pachulski, Stang, Ziehl & Jones and Cole Schotz P.C. as its counsel, and M-III Advisory Partners L.P. as its financial advisor. Dkt. Nos. 1105, 1106, 1225.

C. The Examiner Motion and Motion to Terminate Exclusivity.

The dispute over the MyTheresa Distribution would play a prominent role in many of the contested matters that would be brought before the Court in the first months of these cases. On May 15, Marble Ridge filed the Expedited Motion to Appoint an Examiner, which sought appointment of an examiner under section 1104 of the Bankruptcy Code to investigate the MyTheresa Distribution (the “Examiner Motion”). Dkt. No. 424. The Committee supported the Examiner Motion, but the Debtors, the Disinterested Managers, and certain groups of ad hoc lenders opposed it. Following a hearing before the Court on May 29, Marble Ridge withdrew the Examiner Motion without prejudice. Dkt. No. 664.

On June 21, the Committee filed a motion to terminate exclusivity, which sought permission to file a plan substantially identical to the proposed plan filed by the Debtors, except that it would eliminate certain releases and preserve causes of action relating to the MyTheresa Distribution. Dkt. No. 1061.

Although the litigation positions of the Committee during the first months of the case were closely aligned with those of Marble Ridge, there is no evidence that this was because of any improper influence exercised by Marble Ridge on the other Committee members. Rather, Mr. Pachulski, Committee counsel, characterized the Committee as “great to work with” until the Marble Ridge-Jefferies issues arose on July 31. Mr. Pachulski noted that the Committee was

populated by a diverse group of experienced and highly sophisticated creditors in addition to Marble Ridge and characterized that diversity as a “good thing.”

D. Marble Ridge Submits an Offer to Purchase Estate Litigation Claims

On the morning of July 4, Mr. Kamensky told Mr. Pachulski that Marble Ridge would be willing to submit an offer to purchase the MyTheresa-related litigation claims from the Debtors’ estate. Mr. Kamensky raised this suggestion again on July 9, during a call between the Committee co-chairs, the Committee professionals, and Mr. Vogel. Mr. Pachulski advised Mr. Kamensky that he thought the offer would be premature given the state of negotiations but informed the rest of the Committee of Mr. Kamensky’s expression of interest at some point between July 11 and July 14. Mr. Pachulski stated his belief that Mr. Kamensky’s offer was designed either to obtain a fair settlement or to increase the chances of obtaining a plan with a settlement trust. He said that Mr. Kamensky had “zero interest” in actually buying the litigation claims.

On July 24, Mr. Kamensky, on behalf of Marble Ridge, submitted an offer to Mr. Vogel for the purchase of the Debtors’ MyTheresa-related litigation claims. At a Committee meeting that same day, Mr. Pachulski, who was not informed in advance of Marble Ridge’s offer, informed Mr. Kamensky that he had two options: he could either withdraw his offer and agree not to submit any other offer without prior Committee approval, or if he chose not to withdraw his offer, he would be recused from Committee discussions regarding a settlement. Mr. Kamensky chose to withdraw his offer. Neither the United States Trustee nor the Court was informed of Mr. Kamensky’s initial expression of interest, his offer to purchase the claims, or the withdrawal of his offer until after the events of July 31.

E. Marble Ridge Proposes to Fund a Cash Out Option for the Series B Shares

In late July, the parties made progress towards a global settlement of the MyTheresa disputes, which ultimately would be announced to the Court at the disclosure statement hearing of July 30. Because it was probable that any settlement would likely involve the transfer of the Series B Shares that Neiman Marcus's parent had retained, Mr. Pachulski began to explore alternatives for a "cash out" option, under which creditors could exchange the illiquid Series B Shares for cash. Mr. Pachulski believed that this was particularly important for the Debtors' trade creditors, who strongly prefer cash to securities, and he believed a cash out option would help pave the way for a consensual plan of reorganization.

On July 28, following discussions with Mr. Pachulski, Mr. Kamensky emailed the outline of a cash out proposal to the Committee's members and professionals. The most salient feature of this rough proposal was that Marble Ridge would guarantee, or "backstop," the purchase of 60 million Series B Shares at twenty cents per share from other unsecured creditors wishing to sell. Other noteholder creditors would have the right to participate in the purchase of the 60 million shares in proportion to their pro rata share of the overall noteholder group of claims. Marble Ridge would purchase the shares available to any noteholder that did not wish to participate.

At a meeting held on July 29, the Committee members voted to support the global settlement. Mr. Pachulski excused Marble Ridge from the meeting, and the members discussed the outline of the cash out proposal. While not affirmatively accepting Mr. Kamensky's proposal, the Committee agreed to continue negotiations with Marble Ridge. These negotiations appear to have been somewhat time-sensitive, since any last-minute changes to the Disclosure Statement would need to be presented to the Court at a hearing set for August 3, in order to be included in the Disclosure Statement mailed to creditors.

F. Events of July 30 and 31

1. The Jefferies Proposal

Even as the Committee worked on the Marble Ridge proposal, the financial firm Jefferies was considering its own cash out offer. Eric Geller is the senior analyst in the Jefferies Distressed and Special Situations section. The Distressed and Special Situations section in Jefferies trades on its own behalf and for clients, one of whom is Marble Ridge.⁷ On the evening of July 30, Mr. Geller learned of the amended Neiman Marcus plan of reorganization providing for the distribution of the Series B Shares to unsecured creditors. That same evening, another Jefferies client contacted Mr. Geller to express interest in purchasing the Series B Shares. Mr. Geller then sent texts around 9:00 PM ET to JE1 and another Jefferies employee to discuss the possibility of making an offer to buy the Series B Shares.

JE1 saw these texts the next morning on July 31, and talked to Mr. Geller at approximately 8:00 AM ET. At 8:10 AM ET, JE1 and Mr. Geller had a call with the Jefferies client. The client expressed an interest in purchasing through Jefferies 70 million of the 140 million Series B Shares set to be distributed. After the call with the Jefferies client, JE1 spoke with an additional client who indicated interest in purchasing 10 million Series B Shares. At that point, JE1 believed there was more than enough interest for Jefferies to move forward with a proposal to buy Series B Shares.

Between 9:00 AM ET and 10:00 AM ET on July 31, Mr. Geller called Mr. Meghji, the Committee's financial advisor. Mr. Geller informed Mr. Meghji that Jefferies was interested in

⁷ Mr. Kamensky later informed the United States Trustee that Jefferies was Marble Ridge's ninth largest trading partner and that Marble Ridge had paid Jefferies approximately \$200,000 in trading commissions during the first six months of 2020.

making a bid to purchase the 140 million Series B Shares set to be distributed to unsecured creditors as part of the amended plan of reorganization. He informed Mr. Meghji that the firm was considering offering to buy the shares for a price in the range in “the thirties”—in other words, between thirty and forty cents per share. Mr. Geller sent Mr. Meghji a follow up email at 10:22 AM ET confirming Jefferies’s interest in submitting a firm bid to purchase the shares and its capacity to complete the transaction if the Committee chose to accept a bid from Jefferies. Mr. Geller’s email requested that Mr. Meghji keep Jefferies’s bid confidential from any member of the Committee that was interested in making its own cash out offer for the Series B Shares.

After speaking with Mr. Geller, Mr. Meghji contacted Mr. Pachulski. Mr. Meghji and Mr. Pachulski decided the next necessary step was to schedule a further call with Jefferies to gauge the firm’s interest in the shares and the potential for a Jefferies bid to produce a higher return for unsecured creditors than the pending offer from Marble Ridge. At 12:15 PM ET, Mr. Meghji and Mr. Pachulski spoke with Mr. Geller and JE1. Mr. Pachulski explained that while Jefferies could make a bid for the 140 million shares as a block, some unsecured creditors wanted to keep their shares, so an offer that allowed creditors to opt in or out of the sale would be more likely to be successful. Mr. Geller and JE1 had no issue proceeding along those lines and confirmed a price in the “thirties.” They also indicated that Jefferies was prepared to submit a proposal by the end of the day.

After the 12:15 PM ET call with the Committee professionals, JE1 began putting together a formal bid to buy Series B Shares from those unsecured creditors who wished to sell them. He informed internal Jefferies legal counsel of the proposed offer, and Jefferies outside legal counsel was tasked to prepare documents for the bid. JE1 discussed the Series B proposal with senior Jefferies management.

Mr. Pachulski and Mr. Meghji came away from the 12:15 PM ET conversation satisfied Jefferies was serious about making a cash out offer for the Series B Shares. They determined they would need to halt work on finalizing the Marble Ridge proposal to allow consideration of a proposal from Jefferies. They decided they needed to inform Mr. Kamensky of this development.

2. *Mr. Kamensky Learns of the Jefferies's Proposal and Forces its Withdrawal*

At 3:15 PM ET, Mr. Pachulski and Mr. Meghji called Mr. Kamensky. They informed him that another possible bidder had come forward to discuss making a cash out offer on the Series B Shares. They informed him the possible price for this bid was in the range of \$0.30 per share. When Mr. Kamensky asked them who the new potential purchaser was, they informed him that it was Jefferies. Mr. Pachulski stated that he did not recall Jefferies's request to keep its potential bid confidential, and it may be that this request was made only to Mr. Meghji. In any event, according to both Mr. Pachulski and Mr. Meghji, Mr. Kamensky received this news calmly, without apparent anger or surprise. Mr. Kamensky stated that he believed the Jefferies's expression of interest was not serious and that nothing would come of it; he stated that Jefferies was likely just fishing for information.

Despite Mr. Kamensky's calm demeanor during his 3:15 PM ET call with Mr. Pachulski and Mr. Meghji, Mr. Kamensky engaged in a frenzy of activity once it concluded. Immediately thereafter, Mr. Kamensky via Instant Bloomberg chat told Christopher Bauer, Head Trader at Marble Ridge, to check his text messages on his iPhone. At 3:20 PM ET, Mr. Bauer received a text message from Mr. Kamensky on his iPhone, which started the text message exchange set out below:

Fri. Jul 31 3:20 PM

Kamensky: Eric Geller from Jefferies called the UCC counsel and offered to buy the units at 30 cents, that is a monumental mistake. I'm getting [JE1] now. he needs to talk me. let me know. They are threatening to put a bid in.

Bauer: For nmg??

Kamensky: yes i just texted [JE1]

Bauer: Yikes what did we bid. Those guys man I hope they were just ignorant to our interests

Consistent with the text exchange between Mr. Kamensky and Mr. Bauer, Mr. Kamensky began communicating with JE1 at 3:20 PM ET using Instant Bloomberg chat messages. Mr. Kamensky told JE1 not to put in a proposal for the Series B Shares. The message chain between Mr. Kamensky and JE1 starting at 3:20 PM ET and ending at 3:28 PM ET is set out in relevant part below:

(2020-07-31 03:20:13 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL) has invited [JE1] (JEFFERIES LLC)

Need you NOW

(2020-07-31 03:20:40 PM EDT)

[JE1] (JEFFERIES LLC)

Call me in 10min

(2020-07-31 03:20:52 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

Tell Geller to stand DOWN

(2020-07-31 03:20:55 PM EDT)

[JE1] (JEFFERIES LLC)

Im on an inernal call

(2020-07-31 03:20:55 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

And let's talk

(2020-07-31 03:20:59 PM EDT)

[JE1] (JEFFERIES LLC)

I can't get off of

(2020-07-31 03:21 :03 PM EDT)

[JE1] (JEFFERIES LLC)

Lets speak in 10 min pls

(2020-07-31 03:21 :28 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

Do I need to reach out to Geller

(2020-07-31 03:28:30 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

DO NOT SEND IN A BID

Mr. Kamensky also contacted Mr. Geller at 3:23 PM ET by Instant Bloomberg and asked to speak right away:

(2020-07-31 03:23:55 PM EDT) DKAMENSKY2 (MARBLE RIDGE CAPITAL) has invited EGELLER9 (JEFFERIES LLC)

What is your number? Need you now?

Mr. Kamensky later stated to the United States Trustee that his instant messages to Mr. Geller and JE1 were motivated by panic. He feared Jefferies's bid might jeopardize an agreement on a cash out proposal for the Series B Shares. Mr. Kamensky claimed that, in his call with Mr. Pachulski and Mr. Meghji, Mr. Pachulski had said words to the effect of "that would be a problem" in response to Mr. Kamensky saying Jefferies was not a serious bidder. Mr. Kamensky said he interpreted this to mean that Jefferies's potential bid might disrupt the process of including a cash out proposal in the Disclosure Statement and Plan by August 3, which he understood to be a firm deadline. He admitted that he did not further discuss this concern with Mr. Pachulski. Mr. Kamensky also conceded a fear that Jefferies's higher price for the shares, mentioned in his texts with Mr. Bauer, would hurt Marble Ridge's ability to profit from any Series B purchase. He nevertheless claimed that process concerns about endangering the agreement on a cash out provision were his primary motivation for contacting JE1 and Mr. Geller. Mr. Kamensky admitted that contacting and trying to influence a potential rival bidder for property of the bankruptcy estate was wholly inappropriate and a grave mistake. He stated he should have gone to Mr. Pachulski with his concerns about the effect of Jefferies on the cash out process and let Mr. Pachulski make any necessary inquiries.

Following Mr. Kamensky's chat messages, JE1 and Mr. Geller spoke with Mr. Kamensky on the phone at approximately 3:45 PM ET. According to JE1, Mr. Kamensky was very upset and told them to stand down and not put in a bid. JE1 responded that Jefferies was just engaging in its normal business of purchasing assets. Mr. Kamensky told them that they did not understand how deep his interest was in the Series B Shares. He said he had been pursuing this matter for several years and amassed \$3.5 million in legal fees. His efforts had made the MyTheresa settlement possible. He said he was determined to acquire the shares, so all that Jefferies's bid would accomplish was driving up his final price and costing him money. He said that as co-chair of the Committee, he would prevent Jefferies from acquiring the shares. Finally, Mr. Kamensky stated that he had been a good partner to JE1 and Jefferies, but if JE1 moved forward with the Series B bid, they would not be partners going forward. JE1 understood this last statement as Mr. Kamensky using a possible termination of the business relationship between Marble Ridge and JE1's section of Jefferies to pressure JE1 to drop the bid. JE1 ended the conversation with Mr. Kamensky by stating they would consider what to do and get back to him.

In his interview with the United States Trustee, Mr. Kamensky admitted that he made each of the coercive statements recounted by JE1, including the promise to use his position as Committee Co-Chair to prevent the Jefferies's bid from winning and the statement that Marble Ridge would end its business relationship with Jefferies if the bid went forward. As Mr. Kamensky remembered it, Mr. Geller at the start of the call said Jefferies was just pursuing its normal business of pursuing bankruptcy assets and wanted to buy half the Series B shares. According to Mr. Kamensky, this remark turned his panic into fury. He said he perceived Jefferies to be shaking him down for half the available assets by barging into a situation they knew nothing about at a sensitive time. Mr. Kamensky said he began to shout, curse, and demand that Jefferies stand down

on any bid, while making the coercive statements recounted by JE1. Mr. Kamensky admitted to the United States Trustee that these statements were entirely inappropriate.

According to Mr. Kamensky, JE1 then asked him why he was so angry. Mr. Kamensky said this led him to regain his composure, and the latter half of the call purportedly involved a calmer discussion of Mr. Kamensky's long history with Neiman Marcus and the complications involved with the Series B Shares.⁸ Mr. Kamensky stated to the United States Trustee that he believed at the end of the call JE1 and Mr. Geller would consider Jefferies's next steps in light of the information he provided in the "calm" latter half of the call, not the coercive statements he made in the "angry" first half of the call. Mr. Kamensky claimed that the intended message of the "calm" half of the call was that Jefferies should bid if it was a serious bidder but that it should back off if it was not serious to avoid disruption to the bankruptcy process. He admitted, however, that he never actually said to JE1 and Mr. Geller that Jefferies should bid if it was serious or refrain from bidding if it was not.

JE1 and Mr. Geller had no perception that any portion of their call with Mr. Kamensky had superseded his demands that Jefferies pull its bid or face the consequences. JE1 specifically denied Mr. Kamensky ever gave them any indication that all he wanted was for Jefferies to bid if it was serious. JE1 and Mr. Geller perceived a clear and singular message: Jefferies should withdraw its bid or Mr. Kamensky would exact consequences by terminating their relationship.

Immediately after the call, JE1 spoke with Mr. Geller about his discomfort with what had just happened. JE1 believed that Mr. Kamensky's actions were outside the bounds of normal

⁸ Because Mr. Kamensky was interviewed after JE1, the United States Trustee was unable to ask JE1 about the "calmer" portion of the conversation recounted by Mr. Kamensky.

trading behavior. He also believed that Mr. Kamensky was abusing his position as a fiduciary in the bankruptcy case. Furthermore, Mr. Kamensky's demand that Jefferies not bid might involve JE1 and Jefferies in unethical and even illegal conduct. At the same time, JE1 was concerned about his business relationship with Mr. Kamensky and Marble Ridge. JE1 decided to speak with Jefferies general counsel, Mike Sharp, about the situation and called him at approximately 3:55 PM ET.

JE1's discussion with Jefferies general counsel resulted in a two-part decision: (1) Jefferies would withdraw from making any bid to purchase the Series B Shares; (2) JE1 and Jefferies would be completely transparent with all interested parties about why it was withdrawing. JE1 and Mr. Geller called Mr. Kamensky at approximately 4:07 PM ET. JE1 explained that Mr. Kamensky was an important relationship, and Jefferies would withdraw from making any bid for the Series B Shares. Jefferies, however, would also be transparent about why it was withdrawing. Specifically, Jefferies would be transparent about its reason for withdrawing with both its client who sought to purchase the shares and with the advisors for the Committee. Mr. Kamensky responded by thanking JE1 and Mr. Geller and saying he would always be grateful to them. After the call, Mr. Geller remarked to JE1 that Mr. Kamensky appeared not to hear or understand JE1's statement that they would be transparent about their reasons for withdrawing. Mr. Kamensky later confirmed to the United States Trustee that he did not hear the statement about being transparent on what led them to withdraw.

At 4:08 PM ET, during or immediately after his call with JE1 and Mr. Geller about the withdrawal, Mr. Kamensky contacted Mr. Bauer by Instant Bloomberg chat to share the news:

(2020-07-31 04:08:10 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

They are standing down

(2020-07-31 04:08:13 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

See me

(2020-07-31 04:08:15 PM EDT)

CCBAUER13 (MARBLE RIDGE CAPITAL)

Yeah

(2020-07-31 04:08:19 PM EDT)

CCBAUER13 (MARBLE RIDGE CAPITAL)

Thank goodness

(2020-07-31 04:08:22 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

He took the high roadf

(2020-07-31 04:08:28 PM EDT)

DKAMENSKY2 (MARBLE RIDGE CAPITAL)

Thank gd

(2020-07-31 04:08:52 PM EDT)

CCBAUER13 (MARBLE RIDGE CAPITAL)

He got the call from H

(2020-07-31 04:08:56 PM EDT)

CCBAUER13 (MARBLE RIDGE CAPITAL)

"stand down!!"

Shortly after their 4:07 PM ET call with Mr. Kamensky, JE1 and Mr. Geller contacted their original client for the purchase of the Series B Shares and told him they were withdrawing from making a bid. They explained they were withdrawing because of pressure from another client. JE1 and Mr. Geller then tried to contact Mr. Pachulski and Mr. Meghji. After an initial attempt to reach them by phone, Mr. Geller sent an email at 4:13 PM ET to Mr. Pachulski and Mr. Meghji requesting they call him back.

3. *The Committee Learns of Mr. Kamensky's Actions*

Mr. Pachulski alone eventually talked with JE1 and Mr. Geller at approximately 5:00 PM ET. After Mr. Geller explained that Jefferies was withdrawing from making a bid, Mr. Pachulski asked why. Mr. Geller explained that Jefferies was withdrawing because a significant client had asked it to do so. Mr. Pachulski asked if that client was a member of the Committee. Mr. Geller said yes. Mr. Pachulski asked if the client was Mr. Kamensky. Mr. Geller said yes. According to JE1, Mr. Pachulski responded by saying, "I've got a big problem." After the call concluded, Mr. Pachulski informed Mr. Meghji of Jefferies's withdrawal and its stated reason for doing so. Mr. Pachulski set a 6:00 PM ET conference call for Committee professionals to decide on the necessary steps in reaction to Mr. Kamensky's reported actions. In the meantime, Mr. Meghji conducted his

own follow up call with Mr. Geller, who confirmed the basic account he had provided Mr. Pachulski about Jefferies's withdrawal.

At the 6:00 PM ET conference call, the Committee professionals decided as a first step to reach out to Mr. Weisfelner, counsel for Marble Ridge, to determine if Jefferies's report about Mr. Kamensky's conduct was accurate. At approximately 7:00 PM ET, Mr. Pachulski and several other Committee professionals spoke to Mr. Weisfelner. Mr. Weisfelner responded that he knew nothing about the allegations and would call them back after contacting Mr. Kamensky. Mr. Kamensky confirmed to the United States Trustee that Mr. Weisfelner called him at this time and informed him that Jefferies had reported to Committee counsel that it was withdrawing from bidding after pressure from Mr. Kamensky. Mr. Weisfelner spoke again with Mr. Pachulski and other Committee professionals at approximately 7:30 PM ET. After speaking with Mr. Kamensky, he reported that Mr. Kamensky did contact Jefferies about its potential bid, but there was a misunderstanding about his intention in doing so. According to Mr. Weisfelner, Mr. Kamensky had told Jefferies to bid if it was serious. If it was not serious, it should back off to avoid disruption to the Neiman Marcus bankruptcy. Mr. Pachulski ended the call by stating that he would need to schedule an emergency meeting of the Committee without Marble Ridge or its attorneys to consider the Committee's next steps.

Meanwhile, Mr. Kamensky was trying to contact JE1. At 7:42 PM ET, he sent an Instant Bloomberg chat message to JE1 asking "Are you there?" JE1 got the messages and reported being available at 8:08 PM ET. Mr. Kamensky and JE1 soon thereafter began a phone conversation. According to JE1, Mr. Kamensky began the call by saying, "this conversation never happened." Disturbed by this opening, JE1 began to record the phone call. Through counsel, JE1 later voluntarily provided a copy of the recorded call, an initial rough transcript, and then a final

transcript to the United States Trustee. In the recorded portion of the call, Mr. Kamensky asked why JEI had told Committee counsel that Mr. Kamensky had threatened JE1 and asked if JE1 knew this could cause Mr. Kamensky to go to jail. JE1 responded that he had planned to bid, then Mr. Kamensky demanded Jefferies stand down to preserve their business relationship:

Hold on. Hold on a second, Dan. Listen to me. And then you call me and you say, do not bid. It's going to be a relationship issue, and so I said okay. Dan's a good relationship. What he's asking me to do makes me a little bit uncomfortable.

Mr. Kamensky reiterated that he could go to jail and urged JE1 to agree that Mr. Kamensky asking Jefferies to stand down was just a large misunderstanding.

Mr. Kamensky also urged JE1 to now take part in the bidding process for the Series B Shares. JE1 denied any further interest in having anything to do with the matter. Mr. Kamensky responded:

It's too late now. They're going to report this to the U.S. Attorney's Office, okay? They're reporting this to the U.S. Attorney's Office. This is -- this is -- it's, not like, not like you can't bid. The U.S. Attorney is going to investigate this. My position to them is this. I said to them, this a huge misunderstanding, okay, humongous misunderstanding and I told them -- the only thing I said was if you're not real don't bid and if they're real then they should bid. Because otherwise the U.S. Attorney is investigating this then, okay? They're going to report it, okay, and my position is - - is -- going to be look, this is was a huge misunderstanding. I never in a million years would have told them not to do that. I -- all I told them was if they're not real they shouldn't bid.⁹

JE1 later explained to the United States Trustee that Mr. Kamensky was trying to get JE1 to agree to his account of their phone conversation earlier that day. In fact, there had been no misunderstanding between them. Mr. Kamensky had made no inquiry whether Jefferies was

⁹ Quotations of the phone call are based on the transcript provided by JE1's counsel. The transcript matches the audio recording also provided by JE1's counsel.

“real,” i.e. a serious bidder, and had certainly not said it should bid if Jefferies was “real.” Mr. Kamensky had just demanded that Jefferies pull its bid.

In the call, JE1 again pushed back against the plausibility of Mr. Kamensky’s explanation, reminding him that Mr. Geller had been on the call as well and heard what Mr. Kamensky actually said. He urged Mr. Kamensky to just recuse himself from the whole matter. Mr. Kamensky again responded with a plea for JE1 to adopt his version of their earlier conversations, stressing the dire consequences for Mr. Kamensky if JE1 did not. Mr. Kamensky also admitted to abusing his position as a member of the Neiman Marcus Committee:

. . . [I]f you're going to continue to tell them what you just told me, I'm going to jail, okay? Because they're going to say that I abused my position as a fiduciary, which I probably did, right? Maybe I should go to jail. But I'm asking you not to put me in jail.

JE1 responded that there was no possibility of lying for Mr. Kamensky. Mr. Kamensky denied wanting JE1 to lie but kept urging JE1 to adopt his version of their earlier conversations.

JE1 again reiterated that Mr. Kamensky had pressured him to withdraw the bid to preserve their business relationship:

I thought you were very upset about it, okay, and I thought that you -- I thought that you were basically pushing me very hard to not put a bid and I thought about it and frankly it's not even worth it. It's not even important enough for me. So that's why because of my relationship with you I said okay. I don't want anything to do with this.

Mr. Kamensky then pleaded with JE1 to agree that Mr. Kamensky said something he purportedly intended to say but never actually did—that Jefferies should bid if it was serious. He implied that adopting this position was necessary to preserve their relationship:

I apologize. I apologize. I apologize, okay, and I'm telling you that what I intended to say, okay, is if you're not real don't bid but if you're real then you should bid, and, [JE1], for the relationship I would tell you that's exactly what I said and I apologize if I was upset or if it appeared as a threat.

He also repeated what he had set at the start of the call, “this conversation never happened,” referring to his efforts to influence JE1 but not have anyone know about these efforts.

But I'm telling you that is exactly what I intended to say and I'm just begging you to please appreciate that's what I meant to say and that this conversation never happened.

The United States Trustee questioned Mr. Kamensky concerning the above call recorded by JE1. Mr. Kamensky freely admitted he had made the call and said it was a serious mistake, one of the worst of his life. The United States Trustee played the audio recording of the call, and Mr. Kamensky verified it accurately captured his call with JE1. He stated he made the call out of fear and panic of the possible consequences of Jefferies’s report to the Committee that he had pressured them to withdraw from bidding. He denied wanting JE1 to lie but said he was trying to “manage the message” by talking with him. His hope was that he and JE1 could find “common ground” around Mr. Kamensky’s notion that the “calm” second half of their earlier call was meant to communicate that Jefferies should bid if it was serious, even though he never actually said that to JE1 and Mr. Geller during their first call that day. Mr. Kamensky admitted that his repeated statement that “this conversation never happened” was a recognition that attempting to influence JE1 might be considered improper. When questioned by the United States Trustee, Mr. Kamensky had no explanation for his use of the phrase “for the relationship” in his statement: “I'm telling you that what I intended to say, okay, is if you're not real don't bid but if you're real then you should bid, and, [JE1], for the relationship I would tell you that's exactly what I said.”

G. Marble Ridge Resigns from the Committee on August 1

At 8:31 AM ET on August 1, in advance of an emergency Committee meeting set for 2:00 PM ET, Mr. Weisfelner emailed Committee counsel on behalf of Mr. Kamensky and Marble Ridge. He again advanced the “misunderstanding” explanation of Mr. Kamensky’s conduct from

the day before, asserting that Mr. Kamensky had only contacted Jefferies to make sure it was truly committed to bidding, not to discourage a bid. Mr. Weisfelner, on Mr. Kamensky's behalf, asked the Committee professionals to assure Jefferies that it was strongly encouraged to submit a bid. Mr. Weisfelner mentioned Mr. Kamensky's continuing work on Marble Ridge's own cash out proposal. Finally, even though he believed Mr. Kamensky's conduct had been grossly misconstrued, Mr. Weisfelner stated that Marble Ridge would be resigning from the Committee as a way to resolve the issue in the best interests of all concerned.

At 1:15 PM ET, Mr. Weisfelner wrote to the United States Trustee to offer Marble Ridge's resignation from the Committee. In discussing the reasons for the resignation, Mr. Weisfelner provided the United States Trustee the substantially same "misunderstanding" explanation of Mr. Kamensky's July 31 conduct that he had provided to the Committee.

At the 2:00 PM ET emergency Committee meeting, given Marble Ridge's resignation, the Committee decided that counsel should promptly disclose Mr. Kamensky's conduct to the United States Trustee. Later that afternoon, Mr. Pachulski and Mr. Warner spoke by phone to Hector Duran, an attorney for the United States Trustee, and explained what they knew of the situation involving Mr. Kamensky and Marble Ridge. They advised Mr. Duran that they would provide him what they knew in writing and that the Committee would also disclose the situation to the Court.

H. Jefferies Renews Its Bid

Also on August 1, Jefferies decided to resume pursuit of its proposal to purchase Series B Shares. JE1 later explained to the United States Trustee that, given the turmoil following Jefferies's withdrawal, the business reasons behind the withdrawal no longer held. JE1 stressed that Jefferies's resumption of its proposal was not in response to Mr. Kamensky's request during

their phone call the prior evening that Jefferies bid in aid of his cover story. Instead, the renewed bid was motivated by Jefferies's own financial interest in a profitable transaction. During the morning of August 1, Mr. Geller and JE1 contacted Mr. Pachulski to inquire if the Committee would still be interested in a Jefferies cash out proposal for the Series B Shares. Mr. Pachulski said the Committee would be interested in a Jefferies proposal. He also asked Mr. Geller to reaffirm his explanation that Jefferies withdrew the day before in response to pressure from Mr. Kamensky. Mr. Geller did so. Mr. Pachulski asked if Mr. Kamensky had requested that Jefferies resume its bid. Mr. Geller responded that at the advice of counsel Jefferies could not provide any additional explanation beyond what it had already provided.

Committee counsel subsequently spoke with Mr. Sharp, Jefferies general counsel, who reported that Mr. Kamensky had phoned a Jefferies employee the evening of July 31, and "seemed concerned." This was apparently a reference to Mr. Kamensky's call with JE1 at approximately 8:08 PM ET. Mr. Sharp did not provide any other details. At the 2:00 PM ET Committee meeting that day, the Committee agreed to consider any renewed Jefferies cash out proposal.

I. The Court Orders the United States Trustee to Investigate Marble Ridge and Mr. Kamensky

On August 3, the Committee filed under seal an August 2 letter by Mr. Pachulski to United States Trustee attorney Hector Duran, laying out the facts about Mr. Kamensky and the Jefferies cash out proposal as the Committee understood them. Dkt. No. 1427. The Committee did not offer any conclusions as to Mr. Kamensky's conduct, but its narrative is consistent with the facts the United States Trustee has been able to establish during its subsequent investigation.

On August 4, Mr. Weisfelner, counsel to Marble Ridge Capital, filed under seal a declaration in his own name that provided an account of Mr. Kamensky's conduct ("Weisfelner

Declaration”). Dkt. No. 1432. Once again, Mr. Weisfelner advanced the “misunderstanding” explanation of Mr. Kamensky’s actions. As discussed below, the Weisfelner Declaration in several material respects is not consistent with the facts that the United States Trustee has established during the subsequent investigation.

In response to these filings, the Court on August 5, ordered both the Committee’s letter and the Weisfelner Declaration unsealed. The Court then required the United States Trustee “to file a statement of position within 14 days regarding the conduct of Marble Ridge and Mr. Kamensky in this case.” The United States Trustee began work immediately.

J. The Committee is Currently Considering Cash Out Proposals from Marble Ridge and Jefferies

In the meantime, both Jefferies and Marble Ridge submitted cash out proposals to the Committee. Jefferies submitted a Letter of Intent to the Committee on August 2. Marble Ridge provided a letter proposal on August 3, and then a revised proposal on August 11. Although the proposals are complex, each offers a higher price per share than the twenty cents of Marble Ridge’s original proposal. The United States Trustee understands that the Committee has not made a decision on any cash out proposal, and the Marble Ridge and Jefferies offers remain pending.

III. LEGAL ANALYSIS

When a creditor accepts appointment to an official creditors’ committee in a chapter 11 case, it agrees to assume certain fiduciary duties to other creditors. *See Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3rd Cir. 2001) (noting that section 1103 of the Bankruptcy Code “impl[ies] a fiduciary duty on the part of members of a creditor's Committee”). Those duties include a duty of loyalty, a duty of care, and a duty of disclosure. *See In re Farrell*, 610 B.R. 317, 323 (Bankr. C.D. Cal. 2019). A committee member owes its duties to the

represented creditors collectively, rather than to particular creditors individually. *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 717, 722 (Bankr. S.D. N.Y. 1992).

Committee members differ from most other bankruptcy fiduciaries, however, in one important respect: committee members are not required to be disinterested, *see* 11 U.S.C. § 1102, and it is common for committee members to have individual economic interests that may be opposed to the debtor or to other creditors. *See In re Rickel & Assocs., Inc.*, 272 B.R. 74, 100 (Bankr. S.D.N.Y. 2002) (committee members are “hybrids who serve more than one master”). For this reason, a conflict of interest does not automatically prevent a creditor from serving on a committee—provided, however, that the creditor is otherwise able to exercise its fiduciary duties and provide adequate representation for the creditor body. *See In re First Republic Bank Corp.*, 95 B.R. 58, 61 (Bankr. N.D. Tex. 1988). In other words, committee members are not expected to abandon their personal interests, and are not prohibited from taking positions or actions that are adverse to other creditors or the estate outside the committee, so long as they do not take “unfair advantage” of their committee membership in order to do so. *In re El Paso Refinery, L.P.*, 196 B.R. 58, 75 (Bankr. W.D. Tex. 1996).

The United States Trustee has the statutory duty to monitor creditors’ committees, is responsible for soliciting and appointing members to committees, and may reconstitute or remove members from committees if necessary. 28 U.S.C. § 586(a)(3)(E), 11 U.S.C. § 1102(a). In the United States Trustee’s experience, the solicitation and appointment process itself can often forestall or mitigate many threats to the integrity of committees. Potential committee members are advised of their fiduciary duties in advance of their appointment, and potential members will be questioned extensively about any positions, interests, or status that may affect their behavior as fiduciaries before being appointed. Potential committee members are also advised of their

obligation to notify the United States Trustee of any changed circumstances that arise during the case that may affect their ability to serve. If there is doubt about a creditor's willingness or ability to act as a fiduciary, that creditor will typically not be appointed, and a creditor who violates these duties or becomes unable to perform those duties after appointment may be removed. *See In re America West Airlines*, 142 B.R. 901, 902 (Bankr. D. Ariz. 1992) (upholding United States Trustee's removal of creditor from committee).

IV. CONCLUSIONS

Although some details and interpretations remain in dispute, the substantial evidence collected to date clearly demonstrates that Mr. Kamensky breached his fiduciary duty to unsecured creditors on July 31, and his earlier conduct between July 4 and July 30 was problematic. After being told both of the existence of a rival bid and the identity of the bidder, Mr. Kamensky sought to exploit that information for his own benefit by contacting Jefferies and pressuring them to withdraw their initial bid, to the likely detriment of all other creditors.¹⁰ In the course of those conversations with JE1, Mr. Kamensky improperly suggested to JE1 that he could prevent a successful Jefferies bid because of his role as Committee co-chair. Regardless of whether Mr. Kamensky actually had the power to ensure that the Committee rejected any Jefferies bid, this type of coercion by a Committee fiduciary is highly inappropriate. Moreover, Marble Ridge's initial representations regarding the conversations between Mr. Kamensky and Jefferies, which

¹⁰ Marble Ridge's actions might have been prevented had the Court and the United States Trustee been notified that Marble Ridge intended to engage in a self-interested transaction as early as July 4. Wider awareness of Marble Ridge's intentions might have called into question its ability to continue serving on the Committee or at least led to more stringent procedures to avoid a breach of fiduciary duty.

minimized Mr. Kamensky's role in Jefferies's withdrawal of its initial offer and which suggested that Mr. Kamensky was surprised by that result, are inconsistent with the evidence regarding those same conversations, including Mr. Kamensky's own later testimony. His actions were a clear abuse of his Committee position and a breach of his duty.

As a number of courts have held—and, indeed, as Mr. Kamensky himself appears to have admitted in his conversation with JE1—his actions of July 31 are paradigmatic examples of a breach of a committee member's duties. *See Rickel*, 272 B.R. at 100 (committee member breaches its duty by using its position to monopolize negotiations, effectively freezing out other bidders, or by exploiting confidential information known only to it through its committee service in order to seize an advantage); *In re Refco Inc.*, 336 B.R. 187, 198 n.13 (Bankr. S.D.N.Y. 2006) (“a Committee member's fiduciary duties do not preclude it from representing its own interests, provided that in so doing it does not abuse its position on the Committee at the expense of the creditor class”). *See also In re Russo*, 762 F.2d 239, 243 (2d Cir. 1985) (directing bankruptcy court to consider whether asset sale was tainted due to former fiduciary's misuse of confidential information).

As this Court observed in its August 5 Order, effective committees are critical to a robust chapter 11 process, and any threats to their integrity and function must be resolved promptly and publicly:

A creditors' committee in a large commercial case serves an especially important role in the bankruptcy process. A properly functioning committee adds transparency and public confidence to a complicated and often confusing process. The Court relies on a committee's views to add depth and balance to the myriad of commercial issues that it considers. Any threat that endangers this delicate balance must be resolved promptly and in a public manner.

Order, Dkt. No. 1442.

Although the issues discussed and conclusions drawn in this statement are supported by substantial evidence, this investigation was preliminary, and no party has had an opportunity to respond to or rebut the United States Trustee's statement. In the Court's order of August 5, the Court cited possible remedial actions, including the creditors' remedy of subordination of claims under 11 U.S.C. § 510(c).¹¹ To the extent the Court believes that further relief may be appropriate under these or any other provisions, such relief should be considered in a formal proceeding in open court so that the Court may hear and consider all relevant evidence.

Dated: August 19, 2020

Respectfully Submitted,

HENRY G. HOBBS, JR.
ACTING UNITED STATES TRUSTEE
REGION 7, SOUTHERN and WESTERN
DISTRICTS OF TEXAS

By: /s/ Hector Duran
Hector Duran
Trial Attorney
Texas Bar No. 00783996
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic means on all PACER participants on this 19th day of August 2020.

/s/ Hector Duran
Hector Duran, Trial Attorney

¹¹ The Court also cited 18 U.S.C. § 152(6), and consistent with long-standing practice, the United States Trustee does not opine publicly about possible implications of title 18 in this statement.

Approved: /s Richard Cooper /s Daniel Tracer_
RICHARD COOPER/DANIEL TRACER
Assistant United States Attorneys

Before: HONORABLE SARAH L. CAVE 20 MAG 9381
United States Magistrate Judge
Southern District of New York

- - - - -	x	
	:	<u>SEALED COMPLAINT</u>
UNITED STATES OF AMERICA	:	
	:	Violations of
- v. -	:	15 U.S.C. §§ 77q, 77x; 18
	:	U.S.C. §§ 152(6), 1343,
DANIEL KAMENSKY,	:	1512 & 2.
	:	
Defendant.	:	COUNTY OF OFFENSE:
	:	New York
- - - - -	x	

SOUTHERN DISTRICT OF NEW YORK, ss.:

FATIMA HAQUE, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE
(Fraud in the Offer or Sale of Securities)

1. On or about July 31, 2020, in the Southern District of New York and elsewhere, DANIEL KAMENSKY, the defendant, willfully and knowingly, in the offer and sale of securities, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly employed a device, scheme, and artifice to defraud, to wit, KAMENSKY, in violation of his fiduciary duties, engaged in a scheme to defraud the unsecured creditors in the official bankruptcy proceeding of Neiman Marcus Group Ltd LLC ("Neiman Marcus") by pressuring a global investment bank (the "Investment Bank") to withdraw its bid to purchase certain securities from the unsecured creditors at a higher price than KAMENSKY's hedge fund, Marble Ridge Capital LP ("Marble Ridge"), had offered for those securities.

(Title 15, United States Code, Sections 77q(a)(1) and 77x; Title 18, United States Code, Section 2.)

COUNT TWO
(Wire Fraud)

2. On or about July 31, 2020, in the Southern District of New York and elsewhere, DANIEL KAMENSKY, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, KAMENSKY, in violation of his fiduciary duties, engaged in a scheme to defraud the unsecured creditors in Neiman Marcus's official bankruptcy proceeding by pressuring the Investment Bank to withdraw its bid to purchase certain securities from the unsecured creditors at a higher price than KAMENSKY's hedge fund, Marble Ridge, had offered for those securities.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE
(Extortion and Bribery In Connection With Bankruptcy)

3. On or about July 31, 2020, in the Southern District of New York and elsewhere, DANIEL KAMENSKY, the defendant, knowingly and fraudulently gave, offered, received, and attempted to obtain money and property, remuneration, compensation, reward, advantage, and promise thereof for acting or forbearing to act in any case under Title 11 of the United States Code, to wit, KAMENSKY pressured the Investment Bank to withdraw its bid to purchase certain securities from the unsecured creditors by threatening to (i) use his position on the creditors' committee to ensure that the Investment Bank's bid would be rejected, and (ii) withhold Marble Ridge's future business from the Investment Bank, so that Marble Ridge could obtain those securities at a lower price.

(Title 18, United States Code, Sections 152(6) and 2.)

COUNT FOUR
(Obstruction of Justice)

4. From at least on or about July 31, 2020 up to and including on or about August 4, 2020, in the Southern District of

New York and elsewhere, DANIEL KAMENSKY, the defendant, corruptly obstructed, influenced, and impeded an official proceeding, and attempted to do so, to wit, KAMENSKY sought to influence a senior employee at the Investment Bank ("IB Employee-1") into providing a false account of a conversation KAMENSKY had with IB Employee-1, in order to impede a criminal investigation of KAMENSKY's conduct.

(Title 18, United States Code, Sections 1512(c)(2) and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

5. I have been a Special Agent with the FBI for approximately two years. I am currently assigned to a squad that is responsible for investigating violations of the federal securities laws, as well as wire and mail fraud laws and related offenses. I have participated in numerous investigations of these offenses, and I have made and participated in making arrests of numerous individuals for committing such offenses.

6. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including documents provided by others, from speaking with witnesses, and from conversations with representatives of the Office of the United States Trustee (the "UST") and the United States Securities and Exchange Commission (the "SEC"). Because this affidavit is being submitted for a limited purpose, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part unless otherwise noted. Where dates, figures, and calculations are set forth herein, they are approximate.

Background

The Defendant, Marble Ridge, and the Investment Bank

7. At all times relevant to this Complaint, DANIEL KAMENSKY, the defendant, was the principal of Marble Ridge, a hedge fund that invests in securities in distressed situations, including bankruptcies. Marble Ridge, which had assets under management of more than \$1 billion as of at least early 2020, was based in Manhattan, New York. Prior to opening Marble Ridge, KAMENSKY worked for many years as a bankruptcy attorney at a well-known international law firm, and as a distressed debt

investor at prominent financial institutions.

8. At all times relevant to this Complaint, the Investment Bank was a diversified financial services company headquartered in New York, New York. Marble Ridge conducted business with the Investment Bank, including as a client.

The Bankruptcy Process and the
Office of the United States Trustee

9. The bankruptcy laws, or the bankruptcy code, allow a debtor to seek the aid of the United States Bankruptcy Court to restructure and reorganize its debt and thereby continue as a going concern. The Chapter 11 bankruptcy process typically begins with the filing of a bankruptcy petition in bankruptcy court and proceeds until the court approves a plan of reorganization (a "Plan").

10. Among the participants in a Chapter 11 bankruptcy are unsecured creditors. Unsecured creditors have claims that are not backed by any assets of the debtor, and therefore typically receive lesser pro rata recoveries of their claims, if they receive any recovery, than secured creditors.

11. The UST, a component within the U.S. Department of Justice, plays a critical role in bankruptcies throughout the United States by serving as a watchdog over the bankruptcy process. Among the duties entrusted to the UST in connection with bankruptcy proceedings, is the appointment of certain representatives of the unsecured creditors of a filing debtor to a "creditors' committee." A creditors' committee generally represents a wide range of unsecured creditors and is formed to obtain the largest possible recovery for the unsecured creditors in a Plan. By statute, members of the creditors' committee are required to act as fiduciaries to all unsecured creditors, thus requiring them to, among other things, act with the highest standards of honesty and integrity, and put the interests of the collective group of unsecured creditors above their own personal self-interest.

The Neiman Marcus Bankruptcy and MyTheresa

12. From my review of public filings in the United States Bankruptcy Court for the Southern District of Texas and my conversations with representatives of the UST, I have learned, among other things, that:

a. Neiman Marcus is an American chain of luxury department stores with stores located across the United States.

As of at least approximately 2013, Neiman Marcus was privately owned by two investment funds.

b. In or about May 2020, Neiman Marcus filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). Prior to its bankruptcy filing, Neiman Marcus transferred MyTheresa--an online luxury fashion retailer that was owned by Neiman Marcus--to another Neiman Marcus entity that did not file for bankruptcy. At the time of the bankruptcy filing, MyTheresa was considered one of the most valuable assets within the family of Neiman Marcus entities. Some of Neiman Marcus's creditors alleged that transfer to be a fraudulent conveyance for the purpose of removing that asset from the pool of available assets to creditors in the bankruptcy (the "Alleged Fraudulent Conveyance").

c. At the outset of the Neiman Marcus bankruptcy, the UST formed an Official Committee of Unsecured Creditors (the "Committee"), composed of nine entities who all were unsecured creditors of Neiman Marcus. Marble Ridge, through DANIEL KAMENSKY, the defendant, applied to be on the Committee and was thereafter appointed to be a member of the Committee. At the time, Marble Ridge was one of the largest unsecured creditor of Neiman Marcus.

d. In KAMENSKY's signed application to serve on the Committee, KAMENSKY attested that he agreed to a number of conditions, including that "[m]embers of the Committee are fiduciaries who represent all unsecured creditors as a group. . . ." In the cover email transmitting that application to the UST, the General Counsel of Marble Ridge wrote that "Mr. Kamensky has more than 20 years of bankruptcy and investing experience and fully understands the fiduciary responsibilities associated with membership on the Committee. Mr. Kamensky is committed to devote the time and energy necessary to earnestly represent all unsecured creditors."

e. During the bankruptcy process, the Committee had negotiated with the owners of Neiman Marcus (also known as the "Sponsors")--who also controlled the Neiman Marcus entity to which MyTheresa was transferred--to obtain Series B shares in MyTheresa (the "MYT Securities") in exchange for providing a release from potential claims against them for the Alleged Fraudulent Conveyance. Ultimately, the Committee was successful in coming to a settlement to obtain 140 million shares of MYT Securities for the benefit of certain unsecured creditors of the bankruptcy estate (the "Settlement"). The MYT Securities represented an ownership interest in MyTheresa and were considered highly illiquid (i.e., they did not trade on any public exchange). The Committee and the

Sponsors intended for the Settlement to be included in the final bankruptcy plan that was subject to confirmation by the Bankruptcy Court in or about early September 2020.

f. As further described below, the Committee also discussed the possibility of entertaining an offer from a financial firm interested in purchasing MYT Securities from certain unsecured creditors (the "Cashout Option"). Under the terms of the Cashout Option, a financial firm would offer to purchase MYT Securities from any unsecured creditor who preferred to receive cash as part of the Settlement rather than the illiquid MYT Securities. In particular, up until at least on or about July 31, 2020, KAMENSKY and the Committee were discussing the possibility of Marble Ridge providing the Cashout Option.

g. On or about August 5, 2020, after the Bankruptcy Court was advised by representatives of the Committee that KAMENSKY had pressured the Investment Bank not to bid on providing the Cashout Option for the MYT Securities, the Bankruptcy Court directed that the UST conduct an investigation (the "UST Investigation") and thereafter to file a report with the Bankruptcy Court.

The Fraudulent Scheme

13. As part of my investigation, I have reviewed the report filed by the UST, dated August 19, 2020 (the "Trustee Report"), as well as documents obtained by the UST during the UST Investigation and transcripts of interviews conducted by the UST with DANIEL KAMENSKY, the defendant, and other individuals. I have also interviewed IB Employee-1 as well as a senior analyst at the Investment Bank ("IB Employee-2," and collectively the "IB Employees"). As a result of that review and those interviews, I have learned, among other things, that:

KAMENSKY Learns that the Investment Bank Indicated Intent to
Make a Higher Bid for the MYT Securities

a. In or about late July 2020, KAMENSKY proposed to the Committee that Marble Ridge provide the Cashout Option by purchasing, for twenty cents per share, 60 million MYT Securities from any unsecured creditor wishing to sell MYT Securities it obtained under the Settlement. The Committee agreed to negotiate with Marble Ridge, which negotiations would have needed to be completed quickly and in advance of a court hearing scheduled for August 3, 2020, so that the agreement could be presented to the Bankruptcy Court for inclusion in the bankruptcy reorganization plan.

b. On or about July 30, 2020, the IB Employees were contacted by a client of the Investment Bank (the "Client") who expressed interest in making a bid to purchase MYT Securities from unsecured creditors who elected the Cashout Option. On the morning of July 31, 2020, the IB Employees discussed a plan for the Investment Bank to move forward with a proposal to the Committee to buy the MYT Securities for the Client and potentially for others.

c. That morning, the IB Employees informed the financial and legal advisors to the Committee that the Investment Bank was prepared to provide a Cashout Option to purchase MYT Securities for a price "in the thirties" (i.e., between thirty and forty cents per share), a price that was higher than the twenty cents per share that was offered by Marble Ridge.

d. At or about 3:15 p.m. on or about July 31, 2020, the financial and legal advisors to the Committee called KAMENSKY and informed him, in substance and in part, that the Investment Bank had made an offer for the MYT Securities in the range of thirty cents per share.

KAMENSKY Pressures the Investment Bank

e. Shortly after that call concluded, KAMENSKY sent a Bloomberg chat message to the head trader at Marble Ridge (the "MR Trader"), asking the MR Trader to check the text messages on his phone. Thereafter, KAMENSKY and the MR Trader had the following text message exchange about the need to prevent the Investment Bank from placing a bid for the MYT Securities:

KAMENSKY: [IB Employee-2] from [the Investment Bank] called the UCC counsel and offered to buy the [MYT Securities] at 30 cents,

that is a monumental mistake. I'm getting [IB Employee-1] now. he needs to talk me. let me know. They are threatening to put a bid in.

MR Trader: For nmg [Neiman Marcus]??

KAMENSKY: yes i just texted [IB Employee-1]

MR Trader: Yikes what did we bid. Those guys man I hope they were just ignorant to our interests

f. At or around the same time as the text message exchange above, KAMENSKY engaged in a Bloomberg chat message exchange with IB Employee-1 in which he pressed IB Employee-1 not to submit a bid for the MYT Securities:

KAMENSKY: Need you NOW

KAMENSKY: Where can I reach you

IB Employee-1: Call me in 10min

* * *

KAMENSKY: Tell [IB Employee-2] to stand DOWN

IB Employee-1: Im on an inernal [sic] call

KAMENSKY: And let's talk

* * *

KAMENSKY: Do I need to reach out to [IB Employee-2]

KAMENSKY: DO NOT SEND IN A BID

g. At or about 3:45 p.m. on or about July 31, 2020, the IB Employees spoke with KAMENSKY on the phone. According to the IB Employees, in that conversation, in substance and in part, KAMENSKY was highly agitated and told the Investment Bank to stand down and not put in a bid for the MYT Securities. In particular, KAMENSKY explained that he had been responsible for getting the MYT Securities as part of the Settlement for the unsecured creditors and had incurred \$3.5 million in legal fees in doing so. Accordingly, KAMENSKY believed that Marble Ridge should have the exclusive right to purchase MYT Securities from the unsecured

creditors. KAMENSKY further said that he would use his official role as co-chair of the Committee to prevent the Investment Bank from acquiring the MYT Securities. KAMENSKY also stated that Marble Ridge had been a good partner to the Investment Bank, but that if the Investment Bank moved forward with its bid for the MYT Securities, Marble Ridge would cease doing business with the Investment Bank. According to the IB Employees, at no point during that call did KAMENSKY ask whether the Investment Bank had been serious in making a bid for the MYT Securities or whether the Investment Bank had adequate financing to advance such a bid.

The Investment Bank Withdraws the Higher Bid

h. Following this phone call, on or about July 31, 2020, as a result of KAMENSKY's pressure, the Investment Bank decided to not make a bid to purchase the MYT Securities. Shortly thereafter, the IB Employees called KAMENSKY and informed him of the decision not to bid, but advised KAMENSKY that they would be transparent with other parties about the reason for withdrawing the bid. KAMENSKY responded, in substance and in part, that he was grateful for that decision and that he was indebted to them.

i. At approximately 5:00 p.m. on or about July 31, 2020, the IB Employees spoke with the legal advisor to the Committee and informed him, in substance and in part, that the Investment Bank was withdrawing from making a bid because KAMENSKY -- a client of the Investment Bank -- had asked it to do so.

j. At approximately 7:00 p.m. on or about July 31, 2020, the legal advisor to the Committee and other professional advisors to the Committee spoke with counsel for Marble Ridge (the "Marble Ridge Counsel") and informed him of the substance of the call from the IB Employees. The Marble Ridge Counsel said, in substance and in part, that he would have to speak with KAMENSKY. The Marble Ridge Counsel thereafter contacted advisors to the Committee and falsely informed them, in substance and in part, that KAMENSKY had not asked the IB Employees not to bid; but instead, had told the IB Employees to place a bid for the MYT Securities only if the Investment Bank was serious.

KAMENSKY Attempts to Cover-up the Fraud

k. Around this same time, KAMENSKY contacted IB Employee-1 and attempted to influence what IB Employee-1 would tell others (including the Committee and law enforcement) about KAMENSKY's attempt to block the Investment Bank's bid for the MYT Securities. At approximately 7:42 p.m., KAMENSKY sent a Bloomberg chat message to IB Employee-1 that read "Are you there?" The two

spoke shortly after 8:00 p.m. According to IB Employee-1, KAMENSKY began the call by saying, in substance and in part, "this conversation never happened." IB Employee-1, concerned that KAMENSKY would engage in unethical or unlawful behavior, then began recording the call.

1. During the recorded portion of the call, in substance and in part, KAMENSKY asked why IB Employee-1 had said that KAMENSKY threatened IB Employee-1 and asked if IB Employee-1 knew that could result in KAMENSKY going to jail. KAMENSKY further asked IB Employee-1 to falsely say instead that it was a misunderstanding and KAMENSKY had actually suggested that the Investment Bank only bid if it was serious. According to a draft transcript of that recording, during that call, the following was said, among other things:

KAMENSKY: Why would you tell committee counsel that I threatened you? Why would you tell them that?

* * *

KAMENSKY: Do you understand . . . I can go to jail? I can go to jail. Do you understand that?

IB Employee-1: Dan. Do you understand I went in to them [the Committee] this morning telling them I was going to bid, okay? You then contact me on IB and you say I need to talk to you now. Stand down. Do not bid. . . . Hold on. Hold on a second, Dan. Listen to me. And then you call me and you say, do not bid. It's going to be a relationship issue, and so I said okay. Dan's a good relationship. What he's asking me to do makes me a little bit uncomfortable. So, I thought about it and I said okay, I'm fine doing it, but I'm disclosing why I'm not bidding.

KAMENSKY: Okay. Well . . . I might go to jail. Okay? If you had told me that The position I'm going to take is this is a huge misunderstanding and I hope you - I pray you tell them that it was a huge misunderstanding, okay, and I'm going to invite you to bid and be part of the process me saying to you, okay,

this is going to be my view on what happened okay, and you can decide if you don't want to agree or not. But I'm telling you . . . this is going to the U.S. Attorney's Office. This is going to go to the court. Like, do you want to be dragged into this? Like, bid all you want but don't - don't - don't put me in jail.

* * *

IB Employee-1: I honestly . . . don't want anything to do with this.

KAMENSKY: . . . It's too late now. They're going to report this to the U.S. Attorney's Office, okay? . . . The U.S. Attorney is going to investigate this. My position to them is this. I said to them, this is a huge misunderstanding, okay, humongous misunderstanding and I told them - the only thing I said was if you're not real don't bid and if they're real then they should bid. Because otherwise the U.S. Attorney is investigating this then, okay? They're going to report it, okay, and my position . . . is going to be look, this was a huge misunderstanding. . . . [A]ll I told them was if they're not real they shouldn't bid.

* * *

KAMENSKY: [P]lease . . . help me out here. . . . I mean, like, talk to me here ,talk to me. How do we salvage this?

* * *

KAMENSKY: . . . Like, this is like, like, the committee counsel is going to report this. I can't stop that, okay? There's no question in my mind that they're going to report it. THE only thing that I can say to them is that this is a huge misunderstanding.

* * *

KAMENSKY: . . . [I]f you're going to continue to tell them what you just told me, I'm going to jail, okay? Because they're going to say that I abused my position as a fiduciary, which I probably did, right? Maybe I should go to jail. But I'm asking you not to put me in jail.

IB Employee-1: . . . Dan [] I would never lie for anyone, okay, like 100 percent clear because that in and of itself is a crime and I have ethics...

* * *

KAMENSKY: . . . Just so you know I'm not asking you to lie, okay, and all I'm saying is that if that's what I said that's not at all what I intended and I apologize, okay? . . . I'm telling you that what I intended to say, okay, is if you're not real don't bid but if you're real then you should bid, and . . . for the relationship I would tell you that's exactly what I said and I apologize if I was upset or if it appeared as a threat. But I'm telling you that is exactly what I intended to say and I'm just begging you to please appreciate that's what I meant to say and that this conversation never happened. . . .

IB Employee-1: . . . [IB Employee-2] was also on the phone, Dan, right, and I just will not be involved in a situation where I lie, okay? I just will not ...

* * *

KAMENSKY: I'm not asking you to lie . . . maybe you can see your way to saying that it was misconstrued . . . That's all I'm saying . . . And this conversation could not have happened. . . .

KAMENSKY Admits "Profound Errors," Resigns from the Committee
and Closes Marble Ridge

14. As part of the UST Investigation, the UST conducted a voluntary interview under oath of DANIEL KAMENSKY, the defendant (the "KAMENSKY Interview"). During the KAMENSKY Interview, KAMENSKY was represented by counsel and advised of the voluntary nature of the interview. Based on my review of a transcript of the KAMENSKY Interview, I have learned the following:

a. KAMENSKY stated, in substance and in part, that he understood that a Committee member had a fiduciary duty to act "in the best interest of unsecured creditors generally and put those interests above your own personal interests."

b. KAMENSKY stated, in substance and in part, that during the telephone call described in paragraph 13(g) above, that he "may have" told the IB Employees that their bid for the MYT Securities "would affect our business relationship going forward," and also that KAMENSKY would "use my membership on the UCC to stop [the Investment Bank's bid for MYT Securities]."

c. KAMENSKY stated, in substance and in part, when discussing the telephone call with IB Employee-1 described in paragraph 13(k) above, that he did not want IB Employee-1 to lie, but said instead that he was attempting to "manage the message" and hoped that the two could find "common ground" regarding KAMENSKY's position that he had intended to communicate that the Investment Bank should bid for MYT Securities if it was serious.

d. KAMENSKY stated on multiple occasions, in substance and in part, that his calls to IB Employee-1 were a "terrible mistake" and "profound errors in lapses of judgment [that] violated the personal and professional belief I tried my best to live by."


15. From my review of the Trustee Report, I have learned that Marble Ridge resigned from the Committee on August 1, 2020.

16. From my review of publicly available information, I have learned that on or about August 20, 2020, Marble Ridge advised its investors that it intended to begin winding down operations and returning investor capital.

WHEREFORE, I respectfully request that an arrest warrant be issued for DANIEL KAMENSKY, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

_/s/ Fatima Haque (By Court with Authorization)
FATIMA HAQUE
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to me through the transmission
of this Complaint by reliable electronic means
pursuant to Federal Rule of Criminal Procedure 4.1,
this 2nd day of September, 2020



HONORABLE SARAH L. CAVE
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

INFORMATION

- v. -

DANIEL KAMENSKY,

: 21 Cr. 67

Defendant.

- - - - - X

The Acting United States Attorney charges:

COUNT ONE

1. On or about July 31, 2020, in the Southern District of New York and elsewhere, DANIEL KAMENSKY, the defendant, knowingly and fraudulently gave, offered, received, and attempted to obtain money and property, remuneration, compensation, reward, advantage, and promise thereof for acting or forbearing to act in any case under Title 11 of the United States Code, to wit, KAMENSKY pressured a certain global investment bank (the "Investment Bank") to refrain from bidding to purchase MyTheresa Series B Shares from the unsecured creditors of Neiman Marcus Group Ltd LLC in connection with its Chapter 11 bankruptcy proceeding by threatening to (i) use his position on the Official Committee of Unsecured Creditors to ensure that the Investment Bank's bid would be rejected, and (ii) withhold Marble Ridge Capital LP's ("Marble Ridge") future business from the Investment Bank, so that Marble Ridge, a firm

managed by KAMENSKY, could obtain those MyTheresa Series B Shares at a lower price.

(Title 18, United States Code, Sections 152(6) and 2.)

FORFEITURE ALLEGATIONS

2. As a result of committing the offense alleged in Count One of this Information, DANIEL KAMENSKY, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense alleged in Count One of this Information, that the defendant personally obtained.

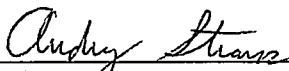
Substitute Assets Provision

3. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Sections 981 and 982;
Title 21, United States Code, Section 853;
and Title 28, United States Code, Section 2461.)



Audrey Strauss
Acting United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

DANIEL KAMENSKY,

Defendant.

INFORMATION

21 Cr.

(Title 18, United States Code,
Sections 152(6) and 2.)

AUDREY STRAUSS

United States Attorney

2/3/2021 Waiver of Indictment filed. (gr) Cote, USDJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Wheel A

----- x

UNITED STATES OF AMERICA, :

- v - :

NOTICE OF INTENT TO
FILE AN INFORMATION

DANIEL KAMENSKY, :

Defendant. :


----- x

21 CRIM 067


Please take notice that the United States Attorney's Office will file an information upon the defendant's waiver of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure.

Dated: New York, New York
November 19, 2020

AUDREY STRAUSS
Acting United States Attorney

By: 
Richard Cooper
Assistant United States Attorney

AGREED AND CONSENTED TO:

By: 
Joon Kim, Esq.
Lawrence Gerschwer, Esq.
Joseph Matteo, Esq.
Attorneys for Daniel Kamensky

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21-CR-0067(DLC)
Telephone Conference

5 DANIEL KAMENSKY,

6 Defendant.

7 -----x

New York, N.Y.
February 3, 2021
2:00 p.m.

10 Before:

11 HON. DENISE COTE,

District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 United States Attorney for the
16 Southern District of New York

BY: DANIEL TRACER

Assistant United States Attorney

17 CLEARY GOTTlieb STEEN & HAMILTON LLP

18 Attorneys for Defendant

BY: JOON HYUN KIM

19 BARNES & THORNBURG LLP

20 Attorneys for Defendant

BY: LAWRENCE GERSCHWER

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1 (The Court and all parties appearing telephonically)

2 THE COURT: Good afternoon. This is Judge Cote
3 speaking. Ms. Rojas, please call the case.

4 THE DEPUTY CLERK: First, your Honor, we do have a
5 court reporter participating.

6 This is the matter of the United States of America
7 versus Daniel Kamensky.

8 Is the government ready to proceed?

9 MR. TRACER: Yes. Good afternoon, your Honor.

10 Daniel Tracer for the government.

11 THE COURT: And for the defendant, Kamensky, are you
12 ready to proceed?

13 MR. KIM: Yes, we are. Good afternoon, your Honor.

14 Joon Kim from Cleary Gottlieb Steen & Hamilton on
15 behalf of the defendant, Mr. Kamensky.

16 THE COURT: I do not see Mr. Kamensky.

17 MR. KIM: He does appear on video for us.

18 THE DEPUTY CLERK: Yes, Judge Cote, I do see him, as
19 well. Daniel K. He's wearing the headphones with the blue
20 tie.

21 MR. GERSCHWER: Do you want me to go off camera?

22 MR. KIM: Your Honor, do you see Larry Gerschwer or
23 myself. We could switch. We're actually, so your Honor
24 knows --

25 THE COURT: I see Mr. Gerschwer and I see you,

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1 Mr. Kim. I don't see your client.

2 MR. GERSCHWER: I'm going to turn off. Did that fix
3 it?

4 THE COURT: No. No.

5 MR. KIM: Do you want to switch seats?

6 MR. GERSCHWER: We can do that.

7 MR. KIM: So your Honor is aware, we are in a large
8 conference room, socially distanced. So, we can actually have
9 Mr. Kamensky and Mr. Gerschwer switch seats and then hopefully
10 you can see Mr. Kamensky.

11 THE COURT: Thank you very much. I can now see
12 Mr. Kamensky, as well.

13 Mr. Kamensky, I just want to make sure that's you.
14 Would you please raise your right hand. Thank you.

15 Mr. Kamensky, can you see me?

16 THE DEFENDANT: Yes, I can, your Honor.

17 THE COURT: And can you see Mr. Kim?

18 THE DEFENDANT: Yes, I can, your Honor.

19 THE COURT: Thank you very much.

20 I'm sorry to interrupt. Ms. Rojas, you may continue.
21 Is there anything else, Ms. Rojas?

22 THE DEPUTY CLERK: Let me make sure we have defense
23 counsel on the record.

24 Counsel for the defendant, please state your name for
25 the record.

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1 MR. KIM: Joon Kim from Cleary Gottlieb Steen &
2 Hamilton.

3 MR. GERSCHWER: Berg LLP.

4 THE COURT: So, Mr. Gerschwer, we did not hear you
5 speak, except at the very end there.

6 MR. GERSCHWER: I'll try it again, your Honor.

7 Lawrence Gerschwer for Mr. Kamensky from the law firm
8 of Barnes & Thornburg.

9 THE COURT: Thank you. And now, Mr. Kamensky, you're
10 on my screen. So, we have achieved a great deal in these
11 initial moments. So, thank you for your patience.

12 Ms. Rojas, just for my own comfort level, I'm going to
13 ask the court reporter to speak so I can hear the court
14 reporter. Is the court reporter with us?

15 (Pause)

16 THE COURT: Thank you so much.

17 We're in the middle of a pandemic. It's a global
18 pandemic. Right now, jury trials are suspended in the Southern
19 District of New York. While we hope for a moment when New York
20 City's condition permits the resumption of jury trials, which
21 we hope will be indeed later this month, it is possible to
22 conduct an in-court proceeding for criminal cases in the
23 courthouse, that is all criminal proceedings, except for jury
24 trials, in the courthouse; however, because of the pandemic, we
25 have been offering participants in criminal proceedings

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1 options, including the option of a video conference if they
2 prefer that over coming to the courthouse because of the
3 pandemic.

4 I wanted to ask you, Mr. Kim, have you discussed these
5 issues with your client?

6 MR. KIM: Yes, I have, your Honor.

7 THE COURT: And in those discussions, did you explain
8 to your client that he could opt for an in-court proceeding for
9 today's arraignment and plea?

10 MR. KIM: Yes, I have, your Honor.

11 THE COURT: After those discussions, what was your
12 client's decision?

13 MR. KIM: It is his decision to proceed virtually
14 through video conference, your Honor.

15 THE COURT: And Mr. Kamensky, have you heard what your
16 attorney just told me?

17 THE DEFENDANT: Yes, I have, your Honor.

18 THE COURT: And is it correct that you prefer to
19 proceed today with a video conference proceeding?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: So I find a knowing and voluntary waiver
22 of the right to appear in court, as Mr. Kim has explained.

23 Counsel are in the same room with their client and, of
24 course, if at any time you, Mr. Kamensky, or your counsel
25 believe it is appropriate for you to have a confidential

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1 conference out of my hearing, I'll make sure to arrange for
2 that to happen.

3 Do you understand that, Mr. Kamensky?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Thank you. This is the first proceeding
6 in this case. We do not yet have a criminal docket number for
7 this case. I've prepared a Rule 5(f) order, it will be filed
8 on the docket as soon as we have a criminal docket number.
9 It's been, I believe, transmitted by email to counsel. I want
10 to advise the government of Rule 5(f) orally in presence of the
11 defendant and defense counsel.

12 The government has disclosure obligations under *Brady*
13 and its progeny. My order advises the government of the
14 possible consequences of violating the order.

15 Pursuant to Rule 5(f), I order the government, as
16 well, today, in this court proceeding with defense counsel
17 participating, to comply with its disclosure obligations under
18 *Brady* and its progeny.

19 The written order sets up the obligations that the
20 government has in more detail. The government attorneys should
21 read it with care and they must comply with it.

22 Finally, I caution the government that if it fails to
23 comply with the order, any number of consequences may follow,
24 including the imposition of sanctions, the dismissal of
25 charges, and any other consequence that is just under the

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1 circumstances.

2 Do you understand that, Mr. Tracer?

3 MR. TRACER: Yes, your Honor.

4 THE COURT: Now, I understand that today will be the
5 entry of a plea of guilty pursuant to an information; is that
6 right, Mr. Kim?

7 MR. KIM: Yes, your Honor, it is.

8 THE COURT: Mr. Kamensky, before accepting your plea,
9 I'm going to ask you certain questions to establish to my
10 satisfaction that you are pleading guilty because you are
11 guilty and not for some other or any other reason.

12 If at any time you do not understand my questions or
13 if you wish for a further opportunity to consult with your
14 lawyer, will you let me know?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I'm going to ask you to raise your right
17 hand so I can administer the oath.

18 Do you solemnly swear that the answers to my questions
19 will be the truth and nothing but the truth, so help you God?

20 THE DEFENDANT: I do.

21 THE COURT: You are now under oath. If you answer any
22 of my questions falsely, you can be prosecuted for perjury.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: What is your full name?

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1 THE DEFENDANT: Daniel Brian Kamensky.

2 THE COURT: How old are you?

3 THE DEFENDANT: 48 years old.

4 THE COURT: How far did you go in school?

5 THE DEFENDANT: Law school.

6 THE COURT: Have you ever been hospitalized or treated
7 for any addiction to drugs or to alcohol?

8 THE DEFENDANT: No, I have not.

9 THE COURT: In the past 24 hours, have you taken any
10 drugs or medicine or pills?

11 THE DEFENDANT: Yes, your Honor. I've taken my
12 regular Zoloft medication.

13 THE COURT: Does that interfere with your ability to
14 understand what's happening in this proceeding?

15 THE DEFENDANT: No, it does not, your Honor.

16 THE COURT: Does it interfere with your ability to
17 consult with your attorneys?

18 THE DEFENDANT: No, it does not, your Honor.

19 THE COURT: In the past 24 hours, have you drunk any
20 alcoholic beverages?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Have you ever been treated or hospitalized
23 for any mental illness?

24 THE DEFENDANT: Yes, your Honor. I'm currently in
25 treatment for stress, anxiety, and hypomania disorders.

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1 THE COURT: Have you been given any medication, other
2 than what you've just described to me?

3 THE DEFENDANT: No, I have not, your Honor.

4 THE COURT: Is your mind clear today?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You understand what's happening in this
7 proceeding?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Does the government have any doubt as to
10 the defendant's competence to enter a plea of guilty?

11 MR. TRACER: I do not, your Honor.

12 THE COURT: Mr. Kim, do you have any doubt as to the
13 defendant's competence to enter a plea of guilty?

14 MR. KIM: I do not have any doubt, your Honor.

15 THE COURT: Mr. Gerschwer, do you have any doubt as to
16 the defendant's competence to enter a plea of guilty?

17 MR. GERSCHWER: I do not, your Honor.

18 THE COURT: Based on the defendant's responses to my
19 questions, his demeanor, and viewed through this video
20 conference facility, which is the Microsoft Teams facility, I
21 find he is competent to enter a plea of guilty.

22 Now, Mr. Kamensky, have you had a sufficient
23 opportunity to discuss this case with your attorneys?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Have you had a sufficient opportunity to

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1 discuss with them the charge to which you'll be pleading
2 guilty, any defenses you have to that charge, and the
3 consequences to you of entering a plea of guilty?

4 THE DEFENDANT: Yes, I have, your Honor.

5 THE COURT: Are you satisfied with the representation
6 your attorneys have given you?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Now, I'm going to explain certain
9 constitutional rights that you have. You'll be giving up these
10 rights if you enter a plea of guilty.

11 Under the Constitution and laws of the United States,
12 you're entitled to a speedy and public trial by a jury on the
13 charges contained in the information that's being filed against
14 you.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: At that trial, you would be presumed to be
18 innocent and the government would be required to prove you
19 guilty by competent evidence and beyond a reasonable doubt
20 before you could be found guilty. You would not have to prove
21 that you were innocent. A jury of 12 people would have to
22 agree unanimously that you were guilty.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: At that trial and at every stage of your

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1 case, you would be entitled to be represented by a lawyer. If
2 you could not afford a lawyer, the Court would appoint a lawyer
3 to represent you.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: During the trial, the witnesses for the
7 government would have to come to court and testify in your
8 presence, your lawyer could cross examine the witnesses for the
9 government, object to evidence offered by the government, and
10 if you desired, issue subpoenas, offer evidence, and compel
11 witnesses to come to court and testify on your behalf.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: At a trial, although you'd have the right
15 to testify if you chose to do so, you'd also have the right not
16 to testify, and no inference or suggestion of guilt could be
17 drawn from the fact that you did not testify if that is what
18 you chose to do.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that if you were
22 convicted at a trial, that you would have the right to appeal
23 that verdict?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: Even at this time right now, even as

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1 you're entering this plea, you have the right to change your
2 mind and plead not guilty and go to trial.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: If you plead guilty and I accept your
6 plea, you're going to give up your right to a trial and all the
7 other rights I've just described, there will be no trial, and I
8 will enter a judgment of guilty and sentence you based on this
9 plea after I read whatever submissions I get from you and your
10 lawyer and the government's lawyer, and after I read a
11 presentence report prepared by the probation department.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: If you plead guilty, you're also going to
15 give up your right not to incriminate yourself, because I'm
16 going to ask you, this afternoon, what you did and you're going
17 to have to describe your conduct to me.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Now, the document to which you'll be
21 entering a plea of guilty charges you with a serious crime. As
22 a result, you have the right, under the Constitution, to
23 require the government to go before a grand jury, present
24 evidence to the grand jury, and see whether or not the grand
25 jury will vote to charge you with this crime. If the grand

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1 jury votes to charge you with this crime, their charge will be
2 contained in a different document, a document called an
3 indictment that is signed both by the grand jury foreperson and
4 also by the U.S. Attorney. This document is not an indictment,
5 it's an information, and is has been signed only by the U.S.
6 Attorney.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you willing to give up your right to
10 be indicted by a grand jury by this crime?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, I understand that you've provided my
13 chambers already with written waiver forms that you have
14 signed, which acknowledge to me your willingness to give up
15 your right to be indicted by a grand jury.

16 Do you have a copy of those forms before you right
17 now?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Before signing those forms, did you read
20 the document?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And before signing that form, did you
23 discuss it with your lawyers?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Thank you. Mr. Kim, those documents, I

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1 have a waiver form. Sadly, I can't physically receive a copy
2 right now, I have seen one on my screen. I assume your office
3 electronically provided the signed forms, the executed forms to
4 my chambers; is that right?

5 MR. KIM: Yes, your Honor. The waiver of indictment
6 form, we discussed it with Mr. Kamensky, he signed it, and it
7 has been sent to your Honor's chambers.

8 THE COURT: Thank you. We'll make sure those are
9 filed and appropriately dealt with. I find a knowing and
10 voluntary waiver of the right to indictment.

11 Now, let me just make sure you understand what you're
12 charged with in this information.

13 By the way, Mr. Kamensky, have you received a copy of
14 the information that contains the charge against you?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I'm going to summarize this charge for
17 you, hopefully capture each of the important elements. I also
18 will, of course, read it word-by-word to you if you would like
19 me to read it word-by-word to you.

20 Do you wish me to read it word-by-word to you?

21 THE DEFENDANT: A summary is fine, your Honor.

22 THE COURT: Thank you. So this information charges
23 you in a single count with a crime that was committed on or
24 about July 31st, 2020, in the Southern District of New York.
25 The Southern District of New York includes Manhattan and the

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1 Bronx and several other locations.

2 The charge against you is that you knowingly and
3 fraudulently gave, received, or attempted to obtain money or
4 property for acting or forbearing to act in a case filed
5 pursuant to Title 11 of the United States Code, that refers to
6 the bankruptcy code.

7 What this refers specifically to is the following
8 conduct as described in the information.

9 It charges that you pressured a global investment bank
10 to refrain from bidding to purchase particular shares from
11 unsecured creditors of a company known as or an entity known as
12 Neiman Marcus Group Limited, LLC. The shares were known as
13 MyTheresa Series B shares, and that was all in connection with
14 the Chapter 11 bankruptcy proceeding.

15 It charges that you pressured the investment bank to
16 refrain from bidding on those shares by threatening to use your
17 position on the Official Committee of Unsecured Creditors to
18 ensure that the investment bank's bid would be rejected. It
19 also says that you pressured the bank by the threat of
20 withholding future business from the investment bank, future
21 business by an entity known as Marble Ridge Capital LP.

22 It also explains that Marble Ridge was managed by you.
23 It explains, if I understand this correctly, that this was all
24 for the purpose of arranging for Marble Ridge itself to obtain
25 the MyTheresa Series B shares at a lower price.

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1 Do you understand that's the charge against you
2 contained in this information?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Let me make sure you understand the
5 penalties that apply to this violation.

6 This violation of law, which can be described in
7 general terms as an act of bribery or extortion in connection
8 with the bankruptcy laws, carries a maximum term of
9 imprisonment of 5 years, a maximum term of supervised release
10 of 3 years, a maximum fine of \$250,000 or twice the gross gain
11 or loss from the crime, and a requirement, as well, that you
12 pay a special assessment of \$100.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: There may also be penalties of restitution
16 or forfeiture, but I'm not going to decide that now. I would
17 decide that at the time of sentence.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Now, supervised release means that you
21 would be subject to monitoring when released from prison.
22 There are terms of supervised release with which you must
23 comply, and if you don't comply with them, you can be returned
24 to prison without a jury trial, you'll be given no credit for
25 time you already spent in prison and no credit for any time you

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1 spent on post release supervision.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you a citizen of this country?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Now, do you understand that if your
7 attorney or anyone else has attempted to predict to you what
8 your sentence will be, that their prediction could be wrong?

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: No one, not your lawyer, not the
12 government's lawyer, no one can give you any assurance of what
13 your sentence will be, because I will decide your sentence.
14 I'm not going to do it today, I'm going to wait. I'm going to
15 wait until I get that presentence report prepared by the
16 probation department, look at all the other submissions that
17 have been made to me in connection with your sentence, consider
18 all the information that's relevant to your sentence, consider,
19 as well, a section of the law we call Section 3553(a) and all
20 the factors listed within it. I'm going to look,
21 independently, at the sentencing guidelines range that's been
22 calculated in the presentence report, I'm going to decide
23 whether I should depart up or down from that range, and I'll
24 also, after consideration of all the factors that I've just
25 listed and all the information I've just generally described,

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1 only after that whole process will I decide what a reasonable
2 sentence is for you.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Even if your sentence is different from
6 what your attorney or anyone else has told you it might be,
7 even if it's different from what's calculated in a written plea
8 agreement you have with the government, you're going to be
9 bound by your plea of guilty and cannot withdraw your plea of
10 guilty.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now, has anyone threatened you or anyone
14 else forced you in any way to plead guilty?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Now, I understand there is a written plea
17 agreement between you and the government.

18 Do you have a copy of that in front of you right now?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Does it have the date February 2, 2021, on
21 the first page?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Does it have six pages in all?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Is your signature on the last page?

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1 THE DEFENDANT: Yes, it is, your Honor.

2 THE COURT: What's the date next to your signature?

3 THE DEFENDANT: February 2nd, 2021.

4 THE COURT: Before you signed this document, did you
5 read it with care?

6 THE DEFENDANT: I did, your Honor.

7 THE COURT: Before you signed this document, did you
8 discuss it with your lawyers?

9 THE DEFENDANT: Yes, I did, your Honor.

10 THE COURT: At the time you signed this document, did
11 you think you had a good understanding of its terms?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: In this document, you and the government
14 agree that your sentencing guidelines range is 12 to 18 months
15 in prison.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: In this document, you also agree that you
19 will not appeal, challenge, or litigate your sentence so long
20 as I don't sentence you to more than 18 months in prison.

21 Do you understand nah?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Now, do you have any agreement with the
24 government about your plea or about your sentence that has been
25 left out of this written plea agreement?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: Just give me one moment here.

3 So, we're at that point where I want you to tell me,
4 in your own words, what you did that makes you believe you are
5 guilty of the crime charged in this information.

6 THE DEFENDANT: Yes, your Honor. I wrote down what
7 I'm going to say.

8 THE COURT: So, Mr. Kamensky, I'm happy to have you
9 read it to me, but I just want you to go slowly so the court
10 reporter can pick up every word. Thank you.

11 THE DEFENDANT: Yes, your Honor.

12 In 2015, I founded a firm called Marble Ridge Capital.
13 In the summer of 2018, Marble Ridge invested in unsecured bonds
14 of Neiman Marcus. Later that year, Neiman Marcus transferred a
15 valuable online business out of the reach of creditors for the
16 benefit of the company's private equity owners. Marble Ridge
17 and others believed that this transfer was improper and that
18 the online business should be returned to the company for the
19 benefit of unsecured creditors.

20 In May 2020, Neiman Marcus filed for bankruptcy and I
21 was appointed by the U.S. Trustee to serve on the Official
22 Committee of Unsecured Creditors on behalf of Marble Ridge.
23 During the bankruptcy, the owners of Neiman Marcus agreed, as
24 parts of a settlement, to transfer back certain illiquid
25 assets, which would be held by a trust for the benefit of the

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1 unsecured creditors.

2 After the settlement was accepted by the committee in
3 late July, committee counsel made a proposal to the members of
4 the committee to allow unsecured creditors, as a class if they
5 so chose, the option to receive an upfront cash payment for
6 their share of the illiquid assets they would be entitled to
7 receive under the settlement. That cash payment would be
8 funded by Marble Ridge and other bondholders. The committee
9 voted to continue negotiations with my firm and the other
10 bondholders for such a potential cash-out option as part of a
11 global settlement.

12 The next day, on July 31st, counsel to the committee
13 called me and told me that a trading desk at Jefferies had
14 expressed interest in potentially putting in a competing bid
15 for the cash-out option that was being negotiated. After
16 learning that, I called individuals who worked on the trading
17 desk at Jefferies. During that call, I said to them, among
18 other things and in substance, that they did not know or
19 appreciate the full background and history of the bankruptcy
20 negotiations, and I told them they should stand down and not
21 put in a competing bid. I told them I would use my position on
22 the committee to make sure that their bid would be rejected. I
23 also told them during that call, in substance, that I had a
24 good relationship with Jefferies and that our relationship
25 could be affected by their conduct.

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1 Your Honor, I made a series of terrible mistakes that
2 day reflecting extremely poor judgment, and what I did was
3 wrong. I failed to live up to the ethics, morals, and values I
4 hold dear. As a result, I've brought great pain on my family,
5 my colleagues, and many others. I deeply regret what happened
6 that day and I will regret it for the rest of my life. I have
7 since tried to take responsibility for my actions and do
8 everything I can to make up for it.

9 Thank you, your Honor, for your time.

10 THE COURT: Where were you when you made that call?
11 Was it in Manhattan?

12 THE DEFENDANT: I was at my home in Long Island.

13 THE COURT: Long Island. And did you understand that
14 Jefferies' offices were in Manhattan?

15 THE DEFENDANT: I did, your Honor.

16 THE COURT: And the bankruptcy that was at issue was
17 filed in the Southern District of New York or elsewhere?

18 THE DEFENDANT: It was filed in Texas.

19 THE COURT: Mr. Tracer, I'll take a representation
20 with respect to venue.

21 MR. TRACER: Yes, your Honor. We would proffer to the
22 Court that one of the participants in the call that
23 Mr. Kamensky described, one of the individuals who worked at
24 Jefferies was in the Southern District of New York when he
25 participated in that phone call, specifically, he was working

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1 out of his home in Westchester, New York.

2 THE COURT: So, Mr. Kamensky, you told me that you
3 understood that what you were doing in that telephone call was
4 wrong.

5 Did you understand that it was a violation of the law?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Does the government agree there is a
8 sufficient factual predicate for a plea?

9 MR. TRACER: We do, your Honor.

10 THE COURT: Does defense counsel agree, Mr. Joon Kim?

11 MR. KIM: Yes. Yes, I do, your Honor.

12 THE COURT: Mr. Kim, do you know of any reason why I
13 should not accept this plea?

14 MR. KIM: I know of no reason, your Honor.

15 THE COURT: So, Mr. Kamensky, since you acknowledge
16 that you are, in fact, guilty as charged in this information,
17 since I am satisfied that you know of your rights, including
18 your right to go to trial and that you're aware of the
19 consequence of your plea, including the sentence that may be
20 imposed, and since I find that you're voluntarily pleading
21 guilty, I accept this plea and enter a judgment of guilty on
22 this information.

23 Now, at some point here, the probation department is
24 going to want to interview you. If you speak with them, make
25 sure anything you say is truthful and accurate. They prepare a

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1 report and that report is important to me in deciding what
2 sentence to impose. You read it with care, as well. If you
3 see any errors in it, point them out to your attorneys before
4 sentence so they can bring those errors to my attention.

5 Will you do that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And Mr. Kim, will you cooperate with the
8 probation department so your client can be interviewed within
9 the next two weeks?

10 MR. KIM: Yes, I will, your Honor.

11 THE COURT: Thank you. Ms. Rojas.

12 THE DEPUTY CLERK: Sentencing is set for May 7 at
13 11:00 a.m. Any defense submissions regarding sentencing will
14 be due April 23rd, government's response due April 30th.

15 THE COURT: Counsel, it's certainly my hope that the
16 pandemic in New York will be far more under control by May, but
17 it's highly likely that we will still be offering the option to
18 participants in criminal proceedings to proceed by video
19 conference as opposed to an in-court proceeding. We will
20 inquire of you closer to the time so you can consider the
21 current state of affairs in May or close to May in making your
22 decision, but I want to alert you that you will have that
23 decision to make as we get closer to the May 7th date.

24 Mr. Tracer, anything further we should do today?

25 MR. TRACER: No, your Honor.

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1 THE COURT: Mr. Kim?

2 MR. KIM: No, your Honor.

3 THE COURT: Thank you, all.

4 THE DEPUTY CLERK: This matter is adjourned.

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

21 Cr. 67 (DLC)

5 DANIEL KAMENSKY,

6 Defendant.

7 -----x

8 May 7, 2021
9 11:00 a.m.

10 Before:

11 HON. DENISE L. COTE,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the
17 Southern District of New York

18 BY: RICHARD A. COOPER

19 DANIEL TRACER

20 Assistant United States Attorneys

21 CLEARY GOTTLIEB

22 Attorneys for Defendant

23 BY: JOON HYUN KIM

24 -and-

25 BARNES & THORNBURG, LLP

BY: LAWRENCE GERSCHWER

ALSO PRESENT: FATIMA HAQUE, Special Agent, FBI
ANGELA TASSONE, Special Agent, FBI

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1 (Case called)

2 THE DEPUTY CLERK: Is the government ready to proceed?

3 MR. COOPER: Yes. Good morning, your Honor. Richard
4 Cooper and Daniel Tracer for the government, with FBI special
5 agents Fatima Haque and Angela Tassone.

6 THE DEPUTY CLERK: For the defendant?

7 MR. KIM: Yes, your Honor. Joon Kim, Cleary Gottlieb
8 Steen & Hamilton on behalf of the defendant Dan Kamensky. I am
9 here with co-counsel Lawrence Gerschwer from Barnes &
10 Thornburg.

11 THE COURT: Thank you. You may be seated.

12 Wet me ask you, Mr. Kim, have you and your client both
13 reviewed the presentence report?

14 MR. KIM: Yes, we have, your Honor.

15 THE COURT: And have you discussed it with each other?

16 MR. KIM: Yes, we have.

17 THE COURT: Do you have any objections to it other
18 than what might be contained in your written sentencing
19 submissions?

20 MR. KIM: No, your Honor.

21 THE COURT: Thank you.

22 The presentence report is made part of the record in
23 this case. It will be placed under seal. If an appeal is
24 taken, counsel on appeal may have access to the sealed report
25 without further application to this Court.

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1 There is a plea agreement in this case with a
2 stipulation with respect to the sentencing guidelines. It
3 agrees that the offense level is 13 and the Criminal History
4 Category is I, with a sentencing guidelines range of 12 to 18
5 months. The presentence report contains the same calculation.
6 I have reviewed it and adopt it as my own.

7 Mr. Kamensky has asked for a non-incarceratory
8 sentence. He has been extraordinarily generous with his wealth
9 and with his time. He has given significance assistance to
10 several charitable endeavors and been a loving friend to many.
11 He is deeply devoted to his family. He has many admirers in
12 his profession and has made positive contributions working as a
13 professional in challenging reorganizations including, most
14 prominently, the Lerman bankruptcy. The probation department
15 agrees that an non-incarceratory sentence is appropriate in
16 this case.

17 The government and the U.S. Trustee ask for a sentence
18 of incarceration within a range of 12 to 18 months. They
19 stress that the bankruptcy system is premised upon transparency
20 and the honesty of fiduciaries. "Without faith in the
21 bankruptcy sale process, it would be difficult to obtain
22 willing buyers to purchase bankruptcy estate assets through the
23 Court-approved option sale process." They argue that if the
24 defendant's actions are not significantly addressed with an
25 appropriate sentence, those actions would "work to destroy the

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1 public's confidence in the important role of official
2 committees in the bankruptcy system."

3 I have read more than 100 letters submitted on behalf
4 of the defendant; I have reviewed an October 31, 2020 forensic
5 psychiatric evaluation of the defendant; the August 19, 2020
6 U.S. Trustee report to the Bankruptcy Court in the Southern
7 District of Texas; the April 14th, 2021 letter from the U.S.
8 Trustee; the defendant's voluntary testimony of August 16,
9 2020. I have listened to the taped July 31st conversation with
10 the Jefferies employee while reading the transcript of that
11 conversation. I have reread the allocution for the defendant's
12 plea and, of course, I have read everything else the parties
13 submitted including their memoranda of law.

14 The defendant's submissions emphasize his good works,
15 the pandemic, and the risk of incarceration during a pandemic,
16 the way he has lived his life, and what they characterize as
17 the aberration reflected by this criminal behavior.

18 I will hear from the government.

19 MR. COOPER: Thank you, your Honor. I will be brief.

20 I would just like to address two points, the
21 seriousness of the offense and the concept of general
22 deterrence, both of which are touched on in our submission.

23 First, on the seriousness of the offense, it bears
24 noting that even though, as the defense contends, there was no
25 financial loss, the idea behind the crime here was financial in

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1 nature. The defendant had learned of a competing bid for
2 assets, a bid that was higher than the one that he and his firm
3 had put in, and he faced a situation where he would either lose
4 the opportunity to serve as the cash backstop for bidding on
5 those assets, or he would have to increase his bid and pay more
6 for them. Either way, your Honor, the motive here was
7 financial in nature and was for his firm to obtain valuable
8 assets for a cheaper price. But, even setting that aside, as
9 your Honor noted, there was an intangible harm that was
10 intended and that was done to the process. The crime here
11 threatens the integrity of the bankruptcy process. It doesn't
12 matter that Jefferies ultimately decided to bid or that their
13 bid was not accepted by the creditors' committee. The conduct
14 here puts into question the integrity of players in this
15 process.

16 In terms of general deterrence, it is a similar idea
17 here. The bankruptcy process, and in particular unsecured
18 creditors' committees like the one that the defendant
19 co-chaired in the Neiman Marcus bankruptcy, their work,
20 although supervised by the Court, largely occurs outside of the
21 direct view of the Court unless issues arise and are presented
22 to the Court and the process relies on the candor and good
23 faith of the participants. There are relatively few
24 prosecutions of the statute that the defendant pled guilty to
25 before your Honor but that's all the more reason to impose a

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1 sentence commensurate with the nature of the crime here.
2 Because there were relatively few opportunities for courts to
3 speak on this issue, it is important that participants in
4 bankruptcy processes understand that if they engage in conduct
5 of this sort, it's not merely a matter of reputational damage
6 or financial harm, but there are additional serious
7 consequences to serve as a deterrent message to those who
8 participate in these processes.

9 So, with that, unless the Court has particular
10 questions, the government will rest on our submission.

11 THE COURT: I have no questions. Thank you.

12 MR. COOPER: Thank you, your Honor.

13 THE COURT: Before I hear from Mr. Kim I should have
14 noted for the record that we are in the midst of a worldwide
15 pandemic and, as a result, everyone in this courtroom,
16 including myself and the defendant and counsel, are masked and
17 socially distanced.

18 Mr. Kim, there is a phone in front of you and your
19 client that permits confidential communication, and if at any
20 time you would like an opportunity to have confidential
21 communication with your client, we will make sure that can
22 happen.

23 Mr. Kim.

24 MR. KIM: Thank you, your Honor.

25 Your Honor, before you today for sentencing is Dan

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1 Kamensky, a genuinely good and decent person. He is a deeply
2 devoted husband, a loving father, a caring friend to many, and
3 honest and hard working professional, extremely considerate
4 employer and compassionate and generous member of his
5 community.

6 Dan has led a worthy life by any measure; he has tried
7 to live it the right way, with integrity, and trying to be good
8 to those around him. Although there is no audio tape of those
9 moments big and small, we do have, and your Honor has read,
10 over 100 letters from family, from friends, business
11 colleagues, employees, competitors even who paint the picture
12 of Dan who sits before you today. And in reading those letters
13 I found that they were describing the person that I got to know
14 as his lawyer -- kind, caring, generous, considerate. But of
15 course he sits here before you today because of his conduct on
16 July 31 of last year, because in moments of extreme panic and
17 stress on that day, he made phone calls that he absolutely
18 should not have made, he said things on those calls that he
19 absolutely should not have said. And he knows that. He
20 accepts responsibility for that and has pled guilty to a
21 felony. But, in sentencing Dan today, your Honor, we ask that
22 you consider the complete person that Dan is, not just his
23 offense.

24 The probation office recommends three years'
25 probation, reasoning that "this offense appears to be an

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1 isolated aberrant act." And we very much agree with that. The
2 probation office also concludes that the three-year sentence of
3 probation is sufficient taking into account the sentencing
4 factors, and they look to "the need for the sentence to promote
5 respect for the law, provide just punishment, afford adequate
6 deterrence to future criminal conduct, and to protect the
7 public from future crimes, further crimes." And in assessing
8 those they conclude and recommend that a sentence of
9 probation -- three years' probation is sufficient. And we
10 obviously join and agree with the assessment and
11 recommendation.

12 If I could say a few words about the offense conduct
13 here in the nature of the offense and, in doing so, we
14 absolutely do not intend to minimize the conduct or the impact
15 it has had but we want to talk about what it is and what it is
16 not.

17 First, the offense was very short-lived. It was two
18 phone calls on one day during a particularly intense period in
19 the midst of the pandemic and at a time of extreme stress and
20 panic while Dan was suffering from some of the mental health
21 issues that your Honor has read about. No premeditation, no
22 planning, no scheme, no real thought. In many ways, the
23 offense here was as a result of a lack of thought, a lack of
24 careful consideration or reflection and, in fact, reacting.
25 That is different, as your Honor is aware, from many of the

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1 cases that we see in this court house, criminal fraud cases
2 that generally involve schemes that last for periods of time,
3 individuals who work with others to hatch, engage in fraudulent
4 schemes. That was not this case.

5 Your Honor asked for earlier this week, and listened
6 to, the audio of the entire call of the second of the calls to
7 Jefferies, and you can hear the panic and desperation in his
8 voice. He had just been told by Marble Ridge's lawyer that
9 Jefferies felt threatened by the earlier call, told Dan that
10 this could be bankruptcy fraud and that he could be going to
11 jail for it. And you hear Dan talk about that, say that I
12 could be going to jail. You hear him trying to understand what
13 happened and try to, in his panicked state, see if there is
14 anything he can do. It is a painful call to listen to. The
15 call starts with: *Do you know what happened?* And ends with:
16 *I'm really sorry.* But, of course, the damage was done. Dan
17 should never have made that call, he should never had said
18 those things that he said, but those are the two calls, within
19 hours of each other, that is the offense conduct.

20 The other point I'm going to make about the offense is
21 that it did not result in economic harm to the unsecured
22 creditors, the people to whom Dan owed his fiduciary duties.

23 THE COURT: So, Mr. Kim, that's hard for me to assess.
24 I appreciate that that is your position but that's very hard to
25 assess.

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1 MR. KIM: Yes, your Honor.

2 The economic harm, in terms of the bidding process,
3 there was an economic harm because the next day Jefferies
4 intended -- sent their intent to bid and then actually did put
5 in their bid.

6 THE COURT: I know, but this misconduct, this criminal
7 activity became known and was investigated, and everything that
8 happened thereafter happened in the context of this deeply
9 disturbing behavior, and so it's really difficult for me to
10 make a judgment about the impact of that on the entire bidding
11 process.

12 MR. KIM: Your Honor, it is of course difficult to
13 imagine or know what the parallel world would have looked like
14 if this didn't happen and he hadn't made that call, but what
15 happened was, after that second call, Dan took all the steps
16 that he could to correct himself -- he withdrew from the
17 Committee, with all the issues with that second call he
18 encouraged Jefferies to bid, they actually bid. It turned out
19 that the bid had some of the problems that Dan was afraid
20 about, that it may not be the real bid of the type that the
21 Committee was looking for because, if your Honor will see from
22 the papers, it was the Committee that was encouraging Dan and
23 Marble Ridge to provide this cash backstop offer because they
24 were the ones who actually created that asset for the unsecured
25 creditors. And the Committee professionals recognized that

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1 some of the unsecured creditors, particularly the trade
2 creditors, would not be interested in holding illiquid
3 MyTheresa's shares and rather wants cash. And so they had
4 asked -- the Committee professionals had asked Mr. Kamensky to
5 see if he could put up cash backstop offer so that the
6 settlement could go through. Those were the negotiations that
7 were taking place on that day. And the understanding was that
8 once that cash backstop offer would be incorporated as part of
9 the structure that would be in the disclosure statement that
10 was due that Monday -- so, this call was Friday and then Monday
11 the disclosure statement was due -- the understanding, and
12 certainly Dan's understanding was that structure needed to be
13 in place. But, once that structure was in, then once the
14 disclosure statement was disclosed, other interested parties,
15 like Jefferies or anyone else, could come in and bid and see if
16 they can top it. And that actually is what happened, including
17 after Mr. Kamensky's conduct. The expectation was that once it
18 is publicly filed, interested parties who wanted to bid for
19 those assets would have that option.

20 So, although your Honor certainly recognizes that you
21 can't know for sure what would happen in a parallel universe
22 where these acts did not happen, but the intent was that the
23 cash backstop offer that the Committee wanted Marble Ridge to
24 provide would be put in place and it needed to be put in place
25 by that Monday. Once it was put in place there would be other

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1 opportunities for other bidders to emerge, which is what they
2 did. So, that is sort of what we mean by the lack of harm and
3 lack of intent to harm. But, in doing so, your Honor, we don't
4 want to minimize the harm that was done to the bankruptcy
5 process. And, we have read Trustee's letter. Any misconduct
6 in a bankruptcy, certainly this one, harms the process, and
7 this is actually something -- and your Honor has seen the
8 letters from his bankruptcy colleagues. This is something that
9 pains Dan as well. He is someone who cares deeply about the
10 bankruptcy process. Bankruptcy is the area that he has worked
11 his entire professional life. He has actually taken steps to
12 try to improve and make it fairer working with people. And so,
13 he recognizes and accepts the harm that he has done to that
14 process.

15 The government, in their submission, says that Dan
16 only took responsibility after being confronted with the
17 recorded call. That's not correct. Mr. Kamensky, as I said
18 earlier, immediately after July 31 -- he didn't know the call
19 was recorded -- withdrew from the Committee and then willingly
20 and voluntarily cooperated with the Trustee's investigation.
21 He testified under oath, he did not assert his Fifth Amendment
22 rights, and the first thing he did in that testimony was to
23 apologize and recognize his wrongdoing. If I could quote --
24 and this is before he was confronted with the audio later in
25 the testimony -- if I quote, he started by saying, "I want to

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1 come right out and say I made a series of terrible mistakes.
2 These mistakes were profound, profound errors and lapses of
3 judgment, and violated the personal and professional beliefs I
4 have tried my best to live by. I am an active participant in
5 the bankruptcy process and I believe in the sanctity of that
6 process to my core. Anything I have done to that to put that
7 process at risk is unacceptable and I apologize to the Court,
8 the U.S. Trustee, to the Committee, and to the professionals
9 who worked to make this case a success." I think those
10 feelings were genuine and you can see that the work what he did
11 in the bankruptcy process.

12 Another point that I want to make about the offense
13 conduct, and I won't belabor it because I think I addressed it
14 in response to one of your Honor's questions, this whole
15 recovery that led to Mr. Kamensky's criminal conduct was
16 something that he and Marble Ridge created on behalf of the
17 unsecured creditors. It was no one else, it was a direct
18 result of the years of work that Mr. Kamensky -- Dan -- took to
19 pursue fraudulent conveyance claims against Neiman-Marcus'
20 sponsor. No one else believed in it, no one else was willing
21 to put in the work to pursue it. Dan did. He put in the
22 laboring oar and the immense risk that came from it and all the
23 unsecured creditors benefited from it.

24 So, it is unfortunate -- in some ways tragic -- that
25 this recovery that he created for the unsecured creditors is

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1 what lands him in this position now of having breached his
2 fiduciary duty to those very same creditors for whom he worked
3 to get this recovery.

4 THE COURT: Is he the largest unsecured creditor?
5 Marble Ridge?

6 MR. KIM: Your Honor, I am not sure about that.

7 (Defendant and counsel conferring)

8 MR. KIM: Yes, he says he was the largest unsecured
9 creditor.

10 Your Honor, that is the nature and circumstances of
11 the offense here. In many ways it is quite unique, exceedingly
12 short-lived, a time of particular intense pressure, no plan, no
13 premeditation, no scheme, a reaction in a state of panic and
14 desperation based on recovery that Dan and Marble Ridge had
15 created, and a fiduciary duty that where because, when Marble
16 Ridge and Dan started to negotiate the cash backstop offer with
17 the Committee he refused, from that discussion, although not
18 taken off the Committee. And so, the fiduciary duty that was
19 breached was in the context of negotiations from which he had
20 been recused and ultimately no actual economic harm resulting.

21 I would like to turn back to Dan Kamensky the person
22 and talk about the characteristics of the defendant as your
23 Honor will consider it.

24 You have seen all the letters about the type of person
25 he is and the life that he has led, and significantly how out

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1 of character the conduct on July 31 was. And, the probation
2 office recognizes that. The letters show and confirm that Dan
3 is someone who has and is considered to be fair, honest, and
4 straight forward. If you read some of the letters that your
5 Honor has seen, "Honesty is an immovable feature of Dan. Even
6 in the most contentious situations, his legal and professional
7 and personal ethics were never called into question. Great
8 decency integrity and humility. Honesty and
9 straightforwardness were prominent features of our
10 interactions. One of the best people I have known in my
11 lifetime. It is also clear that Dan has been uniquely
12 collaborative and cooperative in an industry that is notorious
13 for sharp elbows and rivalries." One of his investors noted,
14 "Never one to bad-mouth his peers, we were taken aback by how
15 nicely he spoke about his rivals."

16 And, as I said earlier, Dan has also has actively
17 participated in trying to make the bankruptcy process better
18 and fairer. Rich Levin, respected bankruptcy lawyer, talked
19 about how Dan always worked to develop the best policy
20 solutions independent of his firm's financial interests.
21 Elliot Ganz, the general counsel of Loan Syndication Trading
22 Association, shared how Dan worked actively with that
23 organization to devise the fair disclosure rule. He said
24 "Whenever Dan called, I knew that hard work lay ahead but I was
25 always happy to partner with him because whatever he was

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1 proposing was important and necessary and would make the system
2 work better." Mr. Ganz noted that Dan does this work behind
3 the scenes, never putting his name on anything.

4 Howard Shams, the CEO of a distressed debt investment
5 firm says in his letter, "Dan has been responsible for many
6 practical and positive changes to the bankruptcy code itself.
7 That is what makes this error such an outlier. Dan is the guy
8 who helped codify fair practices."

9 In terms of being an employer, his employees at Marble
10 Ridge describe a truly exceptional employer. It was not just
11 about being a good boss. He was kind and caring and in a real
12 way, created a close knit culture at his firm, treated his
13 employees like family. When employees' family members were
14 sick, he would tell them to go home even if it was their first
15 day at work. He looked out for their personal and professional
16 development. He helped an employee's brother find work, paid
17 for another's speech therapy. And in perhaps the most moving
18 tribute among his employees, his former assistant who is
19 currently pregnant, says that she hopes her son would grow up
20 to be like Dan.

21 These are some of the people who knew him best and
22 worked with him every day and that's what they said about him.
23 And that's partly the reason why it has been so devastating for
24 him for him to close Marble Ridge as a consequence of his
25 actions.

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1 In terms of his family -- and your Honor has seen the
2 letters from his family members and many of them are here today
3 and others are joining by phone -- his dedication to his family
4 is apparent to everyone who meets him. As the former Chief
5 Bankruptcy Judge Arthur Gonzalez who Dan has worked with and a
6 class Dan taught in says, "What stands out to most to me is his
7 commitment to family, a devoted husband and an extremely proud
8 father of his teenage daughter."

9 And, Dan is part of an extremely close family with his
10 wife Andy and his teenage daughter [REDACTED]. And your Honor has
11 read the letters about how they met and how, despite what they
12 feared would be challenges in having children, that they were
13 able to have their miracle child [REDACTED] who is now a teenager.
14 And you have read the moving letters about how they've
15 supported each other through health issues that his wife had
16 gone through, through the personal and professional challenges
17 that Dan has gone through, and the challenges he and the family
18 face today as a result of his actions on July 31. That
19 commitment to his family and the extended family is something
20 that we ask, your Honor, and I am sure you will, consider it in
21 deciding the sentence.

22 The other point about Dan we want to emphasize is the
23 charitable and generous work that he has done and he has done
24 consistently throughout his life, whether it is helping a
25 friend go through difficult times, even while he is going

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1 through his own, or whether it is jumping at opportunities to
2 provide support for worthy causes near and far. And, as your
3 Honor has seen, it goes beyond just financial support. He puts
4 in his time, his energy, his dedication, his tenacity, his
5 creativity. It is not done in showy or flashy ways to get his
6 name on a brochure, it is because he cares. And he didn't care
7 whether he got credit or not. And as an example, your Honor
8 has seen how, when his daughter's school, The Schechter School,
9 looked like they were not going to have enough money to
10 continue to operate, he put in the funding they needed to
11 continue to operate and did so anonymously and even at a time
12 when his daughter was going to be moving on to a different
13 school.

14 And his contributions -- financial, time, and
15 otherwise -- have, the list is many and your Honor has seen
16 them, The Jewish National Fund, Memorial Sloan-Kettering, Let
17 Kids Try, The Michael J. Fox Foundation, but also as far away
18 as Israel where he has been actively supporting a
19 rehabilitation village of children with severe disabilities and
20 a pediatric cancer center in Ghana.

21 So, this generous and charitable spirit is something
22 that has been part of Dan his whole life and has actually been
23 conveying and transferring to others including his daughter and
24 others in his community.

25 In terms of what he has done after July 31 he has done

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1 what he can, as best as he can, to try to make things better.
2 He subordinated all of his personal interests in the bankruptcy
3 in the interest of others. He settled all of his claims in the
4 bankruptcy paying for all the fees incurred by the debtor as a
5 result of his conduct. He voluntarily agreed, as part of his
6 settlement, to perform 200 hours of community service including
7 teaching at law schools and business schools. And, he has been
8 working at a soup kitchen and your Honor has seen the letter
9 from the person there showing how much they appreciate Dan and
10 Dan appreciates them. And, the lecturing at law schools and
11 business schools, that was Dan's idea, that is something that
12 he wanted to do and make part of the bankruptcy settlement to
13 see if he can make something positive out of this situation he
14 is in. And, some of the comments from the students show that
15 they appreciate it and is hopefully having the impact. I quote
16 from one student who says: "It takes courage and humility to
17 share his story with us and tell us what real life is
18 professionally when it comes to risk. I would like to tell Dan
19 that I admire him from the bottom of my heart and his story
20 will have, without a doubt, impact on our careers." That is
21 something that Dan has been trying to do. It goes not only to
22 his character but also the question of general deterrence which
23 the government has raised and obviously your Honor must
24 consider. He understands that need and that's all part of the
25 need to make sure no one else does what he did or makes the

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1 mistake he did.

2 The government suggests that general deterrence needs
3 to include a term of imprisonment. I don't think that's always
4 the case. We don't think that's the case here. The Probation
5 Office has agreed it is not every client, it does not require
6 the person to go to jail and spend time in jail for there to be
7 a general deterrent effect. The probation office has found
8 that general deterrence will be served here by a sentence of
9 three years' probation -- at least that's their recommendation.

10 There are other factors that we believe impact the
11 general deterrence question. The first is that as the
12 government has said, this offense and this crime is rarely
13 charged. 18 U.S.C. 152(6), the offense, has actually never
14 been charged before in the Southern District of New York. And
15 in the 1.5 million federal sentences that are in the Sentencing
16 Commission's database there is only two, and both of those
17 defendants received terms of probation; one year and three
18 years.

19 And, commentators, who have been following this case
20 intensely, have noted that this is a remarkable case in that it
21 is unusual for this type of conduct to result in criminal
22 charges. I quote: What is remarkable is the government's
23 position that a breach of fiduciary duty in bankruptcy is
24 criminally fraudulent. And that's the question and recognition
25 that is in the community. And it is not that this type of

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1 conduct hasn't ever been charged because it hasn't happened
2 before. There are breaches of fiduciary duties and misconduct
3 in bankruptcy. They are obviously serious and need to be
4 handled and treated seriously, they are mostly handled in the
5 bankruptcy context in the bankruptcy court. As here, Dan has
6 undergone and entered into the settlements that he did in the
7 bankruptcy court. So, again, not to suggest in any way that
8 the charge was inappropriate or the elements weren't met, but
9 the fact that this statute has never been charged in this
10 district before, so rarely charged, it already puts the
11 resolution of Mr. Kamensky's -- Dan's case -- in an extreme, a
12 harsh extreme and then if you consider how similarly situated
13 individuals are treated. And, also the deterrent effect. It
14 is -- I don't think there is anyone who is following this case
15 in the bankruptcy or financial community would say that he was
16 treated lightly here with a criminal charge and all the things
17 that has happened to him as a result.

18 Specific deterrence, your Honor, I don't think there
19 is much time needs to be spent on that. I don't believe the
20 government believes there is a need for specific deterrence,
21 tell you that Dan will never engage in this type of misconduct
22 again. And, fundamentally, he has learned his lesson. As his
23 wife put it, since July 31, 20, she has been living with a man
24 thoroughly consumed by remorse and regret.

25 One final point, your Honor, before I close, and your

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1 Honor has mentioned it, it is in our submissions, is the impact
2 of the pandemic which, obviously, we are all going through. It
3 has, although vaccinations are obviously going up and the
4 numbers are getting better, it has and continues to have an
5 extremely -- impose an extremely heavy burden on the Bureau of
6 Prisons and they have and are taking extraordinary measures
7 because of it, and specifically and in particular, we
8 understand that there are strict protocols for incoming and
9 outgoing inmates that include 14 days or more coming in and
10 going out in solitary confinement. And, as your Honor is
11 aware, solitary confinement is normally used for disciplinary
12 or punitive purposes and although we recognize why the BOP may
13 feel the need to do that to protect the inmates and their
14 staff, the result is that any term of incarceration results in
15 a month or more of solitary confinement, something that we
16 respectfully submit that this offense and Dan Kamensky does not
17 need to go through or is not fitting with the offense.

18 A couple of other things in terms of the impact of the
19 pandemic that your Honor has seen. Dan's father, who is in
20 Florida, [REDACTED]. Dan has been traveling
21 down whenever he can to try to help. [REDACTED]

22 [REDACTED] [REDACTED]
23 [REDACTED] It would
24 impose -- obviously a prison term imposes substantial burden on
25 any defendant but, your Honor, I raise this with your Honor.

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1 And, because of her medical history, [REDACTED]
2 [REDACTED] and Dan has played a critically important
3 role in the family in raising their teenage daughter and his
4 own mental health issues that your Honor has read about and the
5 impact it will have, particularly for a month of solitary
6 confinement could have exacerbating that condition.

7 I would like to close where I started in talking about
8 Dan as a person, how he is a generally good and decent person.
9 He is a good and decent person who made serious mistakes on
10 July 31, 2020 and his life, no matter what happens, will never
11 be the same again. But, outside of that day, those two calls,
12 he has been a loving family man, a reliable friend, honest and
13 respectful professional, caring employer, and a generous member
14 of his community. The worst moments of July 31 and perhaps his
15 entire life has been captured in an audio tape that your Honor
16 has heard. It is hard to do but we respectfully request that
17 your Honor try to picture the best and perhaps normal moments
18 of Dan and his life captured in audio tape as well. The many
19 letters help, it is hard to do because the audio is very
20 visceral, but the normal and best moments when Dan is trying to
21 do the right thing, trying to treat people the right way caring
22 for his family trying to help those in need, and we ask the
23 Court to take into account this complete picture of Dan
24 Kamensky as a person as well as the offense and some of the
25 unique nature of it, and we request that you adopt the

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1 recommendation of the Probation Office and find that a sentence
2 of probation is sufficient but not greater than necessary to
3 achieve the purposes of sentencing.

4 Thank you.

5 THE COURT: Thank you. And Mr. Kim, you have done a
6 wonderful job gathering together all those materials and I very
7 much appreciate it, the picture you gave of the defendant.

8 MR. KIM: Thank you, your Honor.

9 THE COURT: Mr. Kamensky, did you wish to speak to me
10 on your behalf in connection with this sentence?

11 THE DEFENDANT: Yes, I do, your Honor. Thank you.

12 Your Honor, I want to first apologize to everyone
13 affected by the terrible mistakes I made on July 31st; to the
14 Court, the government, to those involved in the Neiman-Marcus
15 bankruptcy, and to the U.S. Trustee, to the investors and
16 employees of my fund Marble Ridge which I shut down, and to my
17 friends and family who have suffered greatly as a result of my
18 conduct. I struggle to even put into words the depth of sorrow
19 and remorse I feel for the strain my actions have caused my
20 family, especially my wife. She does not deserve this.

21 There is no excuse for my behavior and I am deeply
22 regretful and embarrassed for my conduct that day. My actions
23 that day do not represent the person I am or the person I
24 aspire to be. They do not reflect my personal morals, ethics,
25 and values.

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1 My life will never be the same as a result of my
2 actions. I have lost the business I dreamed of creating. My
3 employees, who were like family to me, have had to find new
4 jobs. My wife and daughter have been traumatized at the
5 experience of an early morning arrest and raid in my home.
6 Your Honor, I only learned later that my daughter had thought I
7 had been killed and I will have to live and deal with that
8 fact, the fact that I put those I love and care about, my
9 friends and family, through this incredibly difficult ordeal.

10 Your Honor asked, questioned how to weigh and think
11 about economic harm in this case. There is so much about my
12 behavior that day that I still question and go over in my mind
13 but I was aware that bidders were going to come in, we had
14 talked about it. Whatever triggered my reaction, I will never
15 know. But, if anything, even after this was -- this came out,
16 which would have normally probably scared people away, bidders
17 still came in and I was not surprised by that. It doesn't
18 excuse my conduct. What I did was wrong but I want to try and
19 give you a little bit of context for just how tragic what I did
20 was.

21 Nothing can change what happened that day or excuse
22 the things I said. I made grave and terrible mistakes that I
23 will bear for the rest of my life. The only thing I can do is
24 own up to it, learn from it, and try to move forward in a
25 positive direction. And, your Honor, I am doing my best to do

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1 just that. I have been and will continue volunteering at a
2 food pantry where I give back to the community in a meaningful
3 way. I have found that work to be especially rewarding for me
4 personally. I think some of my colleagues from the Inn are on
5 the phone today to show their support and I appreciate that. I
6 plan to continue volunteering there going forward.

7 I am also using my experience as a real life example
8 of how mistakes get made and the consequences they can have on
9 your life and those around you so the next generation can learn
10 from and hopefully avoid making the mistakes that I made.

11 I guest lectured to students in graduate school
12 courses across law, risk management and business at schools
13 including Columbia, Duke, NYU Law, NYU Stern and Wharton. I am
14 preparing a case study for the faculty sponsored by Harvard so
15 that others can learn from the mistakes I made. I have been
16 asked to teach at Yale in the fall. I really sincerely hope I
17 will be able to make those commitments.

18 In putting myself out there for the students, I was
19 prepared for and expected to receive harsh judgment for my
20 actions but the feedback from the students has been thoughtful
21 and eye-opening, helping me reach deeper levels of
22 understanding about my own behavior and hopefully teaching them
23 not to make the mistakes I have as they start off their
24 careers.

25 The experience of teaching has been cathartic. It has

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1 helped me to heal in ways I could not have imagined and to
2 emerge from this experience with a more positive outlook. Your
3 Honor, I hope that you see in me, in addition to my failings,
4 the person I am, the life I have tried to live and plan to live
5 going forward, and that you take that into account in making
6 your decision.

7 I thank you for your consideration.

8 THE COURT: Thank you, Mr. Kamensky.

9 I agree with defense counsel that there was no
10 evidence of premeditation here, no premeditation. When the
11 unexpected happened -- the Jefferies bid -- the defendant
12 reacted in a way that I will discuss a bit more in a moment.
13 It is key the defendant admitted that he told the individuals
14 from Jefferies that they should stand down and not put in a
15 competing bid, that he would use his position on the Committee
16 to make sure that their bid would be rejected and that his
17 firm's relationship with Jefferies would be affected by their
18 conduct. Those statements during his plea allocution, on
19 February 3rd, describe the first telephone communication that
20 the defendant had with the Jefferies representatives that day.

21 I also accept that the defendant is deeply remorseful
22 and that the conduct in which he engaged was not foreshadowed
23 by the way he had lived the rest of his life. I commend the
24 defendant for his teaching. I think it could be enormously
25 important to law students and young lawyers to hear about what

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1 happened on July 31st of last year. The defendant's own
2 judgment and assessment about why he acted as he did and to
3 understand the consequences and impact it had not on him -- not
4 just on him, personally, but on that entire bankruptcy process
5 and the chain of events that were triggered.

6 In my judgment, based on the materials that have been
7 submitted to me, I feel quite confident in judging the
8 defendant as a good man but one who lost his warrants, and I
9 think that was true before July 31st of last year. It appears
10 from the materials that have been submitted to me that since
11 the defendant struck out on his own and founded Marble Ridge,
12 the pressure of that undertaking proved to be too much for him.
13 It took an enormous toll on his health, it took a toll on his
14 relationships, in particular those whom he loved the most. And
15 then, in July last year, working in the context of that
16 pressure, he came undone. He tried to control what he could
17 not control and, in doing so, he betrayed his profession, his
18 duties to others, his relationships. He broke the law. He
19 phoned Jefferies demanding that it stand down, and of course
20 the pressure of that day has to be understood in the context of
21 something he had been dealing with for literally years. Since
22 2018 he had been waging a battle over what he believed to be a
23 fraudulent transfer of assets. He had spent three and a
24 half million dollars in legal fees pursuing the issue. He
25 believed he was doing a good thing for Marble Ridge and for

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1 other unsecured creditors.

2 In the middle of the afternoon of July 31st, in a call
3 with Jefferies, he violated his fiduciary duty to the unsecured
4 creditors. He ignored his relationship with his fellow
5 Committee members and the professionals with whom the Committee
6 was working. And, of course, he breached his obligations to
7 the bankruptcy process. And then, later in the afternoon, when
8 he learned of what Jefferies said when it withdrew its bid
9 because of this pressure, and when the enormity of the criminal
10 activity in which he had just engaged became clear to him
11 including the risks that he faced of going to jail, the
12 defendant doubled-down. He tried to rewrite history. He tried
13 to get another person to lie for him. He tried to obstruct
14 justice and that's the recorded call.

15 So, there is a significant need here for both an
16 appropriate punishment for that activity and, I submit, more
17 general deterrence. The fact that there has not been or there
18 have not been many prosecutions of this nature does not suggest
19 that general deterrence isn't an issue. I would say quite the
20 opposite.

21 The bankruptcy process depends on trust and honesty
22 and good faith. Creditors must be able to have confidence in
23 the Committee process and faith that their interests will be
24 protected by the Committee that represents them and by the
25 bankruptcy process as a whole. On the other hand, I don't find

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1 that there is a need here to provide a sentence to the
2 defendant that guards against a repeat of this activity.
3 Individual deterrence is not necessary here. There is little
4 risk and this is true for many reasons, that the defendant will
5 violate the law again. I underscore that in my judgment he is
6 a good man who has lived a life with an abundance of love, of
7 kindness to others, and generosity.

8 In an exercise of my discretion and considering all of
9 the Section 3553(a) factors, as well as the sentencing
10 guidelines for a Zone C sentence, I am ready to impose
11 sentence.

12 Mr. Kamensky, please stand. I do not find that a
13 sentence of 12 months' imprisonment is necessary here. I
14 impose, instead, a sentence of six months' imprisonment, with a
15 term of supervised release of six months, with a condition of
16 home detention. No further term of supervised release is
17 warranted.

18 I believe there is also a requirement for a special
19 assessment of \$100. The Probation Department recommends a fine
20 of \$55,000. There has been no objection to that amount and I
21 impose it as well.

22 Counsel, is there any legal reason why I cannot impose
23 the sentence I have just described, as stated?

24 MR. COOPER: No, your Honor.

25 MR. KIM: No, your Honor.

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1 THE COURT: I order the sentence I have just described
2 on the record to be imposed, as stated. I need to advise the
3 defendant of his right to appeal.

4 If you are unable to pay the cost of an appeal, you
5 may apply for leave to appeal in forma pauperis. Any notice of
6 appeal must be filed within 14 days of the judgment of
7 conviction.

8 You may be seated. The defendant is required to
9 surrender by June 18 at 2:00 to the designated institution for
10 service of his sentence unless advised of an earlier surrender
11 date.

12 Mr. Cooper, is there anything else we need to do?

13 MR. COOPER: No, your Honor. Thank you.

14 THE COURT: Mr. Kim?

15 MR. KIM: Your Honor, I know your Honor does not
16 designate a particular facility, but if you could recommend a
17 facility close to New York City, specifically Otisville, to be
18 close for family visits and also more accommodating of inmates
19 who are Jewish, we request a recommendation along those lines.

20 THE COURT: I will make a recommendation to the Bureau
21 of Prisons that the defendant is designated to a facility as
22 close as possible to the New York City area.

23 Anything else, Mr. Kim?

24 MR. KIM: No, your Honor.

25 THE COURT: Thank you.

oOo

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

DANIEL KAMENSKY

JUDGMENT IN A CRIMINAL CASE

Case Number: 21-cr-00067-1 (DLC)

USM Number: 07262-509

Joon Kim

AUSA Richard Cooper

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §152(6)	Bribery and Extortion in Connection with Bankruptcy	7/31/2020	1

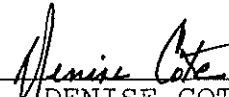
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/7/2021
Date

Sign: 
DENISE COTE
United States District Judge

Denise Cote, U.S. District Judge
Name and Title of Judge

5/10/2021
Date

DEFENDANT: DANIEL KAMENSKY
CASE NUMBER: 21-cr-00067-1 (DLC)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

6 Months

The court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated to a facility as close as possible to the New York City area.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on 6/18/2021

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DANIEL KAMENSKY
CASE NUMBER: 21-cr-00067-1 (DLC)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

6 Months Supervised Release with Home Detention

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: DANIEL KAMENSKY
CASE NUMBER: 21-cr-00067-1 (DLC)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: DANIEL KAMENSKY
CASE NUMBER: 21-cr-00067-1 (DLC)

SPECIAL CONDITIONS OF SUPERVISION

You shall be supervised by the district of residence

DEFENDANT: DANIEL KAMENSKY
CASE NUMBER: 21-cr-00067-1 (DLC)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 55,000.00	\$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	\$	0.00	\$	0.00
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Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- the interest requirement is waived for the fine restitution.
- the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DANIEL KAMENSKY
CASE NUMBER: 21-cr-00067-1 (DLC)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ 55,100.00 due immediately, balance due
- not later than _____, or
- in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

made, in light of the circumstances under which they were made, not misleading;

or

- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

Dated: September 10, 2021


UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----:
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

DANIEL B. KAMENSKY, :

Defendant. :

ECF CASE

20-cv-07193-VEC

-----:
CONSENT OF DEFENDANT DANIEL B. KAMENSKY

1. Defendant Daniel B. Kamensky (“Defendant”) acknowledges having been served with the complaint dated September 3, 2021 in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Daniel B. Kamensky*, No. 21-cr-0067 (DLC) (S.D.N.Y.) (the “Criminal Proceeding”), Defendant pleaded guilty to violating 18 U.S.C. § 152(6) (bankruptcy bribery and extortion). In connection with that plea, Defendant admitted to facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in the Criminal Proceeding.

3. Defendant hereby consents to the entry of the Final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violations of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)].

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty (30) days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or

may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; and (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in

litigation or other legal proceedings in which the Commission or the Division of Enforcement is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees to waive all objections, including but not limited to, constitutional, timeliness, and procedural objections, to the administrative proceeding that will be instituted when the judgment is entered.

14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

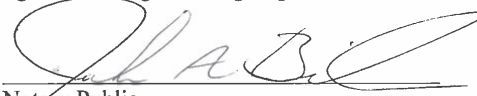
Dated: August 5, 2021



Daniel B. Kamensky



On August 5th, 2021, Daniel Kamensky, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.


* Notary Public
Commission expires: 12/31/2022

Approved as to form:



Joon H. Kim, Esq.
Alexander Janghorbani, Esq.
CLEARLY GOTTLIEB STEEN & HAMILTON LLP
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New York, NY 10006-1470
ajanghorbani@cgsh.com

Attorneys for Defendant Daniel B. Kamensky

EXHIBIT A



U.S. Department of Justice

*Office of the United States Trustee
Southern District of New York*

*201 Varick Street, Suite 1006
New York, New York 10014*

*Tel. (212) 510-0500
Fax: (212) 668-2255*

April 14, 2021

The Honorable Denise L. Cote
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 18A
New York, New York 10007-1312

**Re: United States of America v. Daniel Kamensky
Case No. 21-cr-00067 (DLC)**

Dear Judge Cote:

William K. Harrington, as the United States Trustee for Region 2 (“United States Trustee”), respectfully submits this letter in advance of the May 7, 2021, sentencing of Daniel Kamensky (“Kamensky”) to request that the Court impose a sentence, pursuant to 18 U.S.C. 152(6) (bankruptcy fraud), that will take into account the seriousness of Kamensky’s conduct, promote respect for the law, and afford adequate deterrence for such conduct.

A. The Office of the United States Trustee

The Office of the United States Trustee is a component of the United States Department of Justice, charged with monitoring the federal bankruptcy system. 28 U.S.C. § 586. Pursuant to Title 28, United States Code, Section 586(a)(3), the United States Trustee supervises the administration of cases under the Bankruptcy Code. The primary role of his Office is to serve as the “watchdog over the bankruptcy process.” H.R. Rep. 99-764, 99th Cong., 2d Sess. (reprinted in 1986 USCCAN 5227, 5231).

One of the United States Trustee’s core duties is the appointment and monitoring of official committees of creditors and equity security holders in chapter 11 cases. 11 U.S.C. § 1102(a)(1-2); 28 U.S.C. § 586(a)(3)(E). As long as there are qualified creditors willing to serve, the appointment of an official committee is mandatory. 11 U.S.C. § 1102(a)(1). Committee members owe a fiduciary duty to the committee’s constituents. See Westmoreland Human Opportunities, Inc. v. Walsh, 246 F.3d 233, 256 (3rd Cir. 2001) (stating that section 1103 of the Bankruptcy Code “impl[ies] a fiduciary duty on the part of members of a creditor’s Committee”). Those duties include a duty of loyalty, a duty of care, and a duty of disclosure. See In re Farrell, 610 B.R. 317, 323 (Bankr. C.D. Cal. 2019).

United States of America v. Daniel Kamensky
Case No. 21-cr-00067 (DLC)

The United States Trustee also has a statutory duty to refer matters to the United States Attorney's Office for investigation and prosecution that "relate to the occurrence of any action which may constitute a crime." 28 U.S.C. § 586(a)(3)(F). The United States Code also requires that each United States Trustee assist the United States Attorney in "carrying out prosecutions based on such action." *Id.* Pursuant to this mandate, on August 28, 2020, the United States Trustee's Office referred Kamensky to the United States Attorney for possible violations of criminal law in the chapter 11 bankruptcy case of Neiman Marcus Group, Ltd (the "Debtor"), (Bankr. S.D.Tx.) Case No. 20-32519 (DJJ) (the "Neiman Bankruptcy").

B. Background

On May 7, 2020, the Debtor filed its voluntary petition under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the Southern District of Texas ("Bankruptcy Court"). On May 19, 2020, pursuant to Bankruptcy Code Section 1102(a)(1), the Acting United States Trustee for Region 7 appointed a nine-member committee of unsecured creditors (the "Committee") that included Marble Ridge Capital LP ("Marble Ridge"). Kamensky represented Marble Ridge's interests on the Committee. Marble Ridge was later selected as one of three co-chairs of the Committee. Each member of an official committee of unsecured creditors—including Marble Ridge—owes a fiduciary duty to all unsecured creditors. Kamensky, who formerly worked as a bankruptcy and insolvency attorney, was well aware of the fiduciary duty owed by Marble Ridge—and Kamensky as its representative—to the entire unsecured creditor class.

In early July 2020, the Debtor began exploring "cash-out" options under which creditors could exchange their Series B Shares for cash. Such an option was integral to a successful reorganization. Without it, the Series B Shares were illiquid. On July 28, 2020, Kamensky provided a cash-out proposal to the Committee under which Marble Ridge would back stop the purchase of 60 million Series B Shares at \$0.20 per share from other unsecured creditors wishing to sell. Other noteholder creditors would have the right to participate in the purchase of the 60 million shares pro rata with Marble Ridge purchasing any remaining shares.

At the same time, Jefferies Financial Group ("Jefferies") was working on its own cash-out offer. Jefferies trades on its own behalf and for its clients. By July 31, 2020, Jefferies had clients that were interested in purchasing at least 80 million of the 140 million Series B Shares. Jefferies communicated its intent to bid to Committee professionals who in turn shared the communication with Kamensky. The Committee halted its work on finalizing the Marble Ridge proposal in order to consider the proposal from Jefferies.

Immediately upon learning of Jefferies' intent to purchase the shares—an asset that Kamensky through Marble Ridge wanted to acquire for his own purposes—Kamensky knowingly and intentionally took affirmative action to compel Jefferies to refrain from submitting a competing bid for the Series B Shares. Kamensky contacted a Jefferies' representative by telephone and not only threatened to terminate Marble Ridge's preexisting business relationship with Jefferies, but falsely asserted that as a co-chair of the Committee, he would be able to successfully prevent Jefferies from acquiring the shares.

United States of America v. Daniel Kamensky
Case No. 21-cr-00067 (DLC)

Jefferies acceded to Kamensky's demands and notified the Committee's professionals that they were withdrawing because a significant client – Marble Ridge and Kamensky - had asked it to do so. Upon learning that his bad acts had been discovered by the Committee, Kamensky again contacted the Jefferies' representative in an attempt to cover-up that he had wrongfully pressured Jefferies not to submit a bid.

Upon learning of Kamensky's alleged conduct, the Bankruptcy Court entered an order directing the Acting United States Trustee for Region 7 to conduct a time-limited investigation and file a statement of position "regarding the conduct of Marble Ridge and Mr. Kamensky in this case." The Acting United States Trustee, in coordination with the Executive Office for United States Trustee, assembled a team to undertake the investigation.

The Statement of the Acting United States Trustee (filed with the Bankruptcy Court on August 19, 2020) concluded that Kamensky, while co-chair of the Committee and as a principal of Marble Ridge, violated his fiduciary duties, acted in bad faith, and abused the bankruptcy process. He coerced a third-party bidder not to submit a bid to fund a cash-out option that would have potentially benefited the unsecured creditors and was considered integral to a successful plan of reorganization for the Debtor. Kamensky did so in order to advance the interests of Marble Ridge and his own self-interest. Then, when faced with the public disclosure of his illegal actions, Kamensky knowingly attempted to cover up his illegal activities by pressuring the competing bidder to change its story. Furthermore, when questioned about his repeated statement that "this conversation never happened" to the Jefferies representative, Kamensky maintained that he was trying to "manage the message" and not asking the Jefferies' representative to lie. All of Kamensky's actions and statements were intended to mislead the Bankruptcy Court, the Acting United States Trustee, the Committee, the creditors, the Debtor, and the public about his successful effort to stop a rival from submitting a bid.

In the Criminal Complaint filed with this Court on September 9, 2020, Kamensky was charged with extortion and bribery in bankruptcy, fraud in the offer or sale of securities, and wire fraud. On February 3, 2021, Kamensky pled guilty as charged in the Information to one count of bankruptcy fraud, 18 U.S.C. § 152(6).

C. Imposition of Sentence

Title 18, United States Code, section 3553, provides, in pertinent part, that in determining the particular sentence to be imposed, the Court should consider, among other things, the "need for the sentenced imposed . . . to reflect the seriousness of the offense, to promote respect for the law, . . . to provide punishment . . . [and] to afford adequate deterrence to criminal conduct." 18 U.S.C. §§ 3553(a)(2) and 3553(a)(6). For example, in United States v. Waldner, the court imposed the statutory maximum term of imprisonment because a lesser sentence "would give short shrift to all the people Defendant intended to hurt, the nonmonetary harm his victims suffered, Defendant's criminal purpose and the various dismissed and uncharged conduct." 564 F. Supp. 2d 911, 945 (N.D. Iowa 2008).

Official committees in chapter 11 serve a unique purpose in protecting the integrity of the bankruptcy system by providing supervision, to a limited degree, of the conduct of the case by

United States of America v. Daniel Kamensky
Case No. 21-cr-00067 (DLC)

the debtor, and they execute an oversight function to protect their constituent's interests. See H.R. Rep. 95-595, 95th Cong., 1st Sess. 401 (1977); In re Johns-Manville Corp., 26 B.R. 919, 925 (Bankr. S.D.N.Y. 1983) (finding that there "is a wide and important array of authority indicating the intent to create a significant and central role for committees in carrying out a reorganization"). An integral part of this function includes the committee's critical role in negotiations for a plan and disclosure statement, which requires the free flow of information, often times confidential, between a debtor and an unsecured committee.

Accordingly, "[g]ood faith, trust and candor are essential to ensure that the work of the committee does not come to a standstill and is completed for the benefit of all unsecured creditors." Westmoreland Human Opportunities, Inc. v. Walsh, 327 B.R. 561, 573 (W.D.Pa. 2005); Shaw & Levine v. Guld & Western Industries, Inc. (In the matter of Bohack Corp.), 607 F.2d 258, 262 n.4 (2d Cir. 1979) ("The committee owes a fiduciary duty to the creditors, and must guide its actions so as to safeguard as much as possible the rights of minority as well as majority creditors."). Committee members who serve their individual interests in a manner that is detrimental to other unsecured creditors not only violate their established fiduciary duty to their constituents—unsecured creditors—but also frustrate the committee's purpose. See 11 U.S.C. § 1102 (requiring the appointment of a committee by the United States Trustee); see also Westmoreland, 327 B.R. at 573.

Here, Kamensky, a former bankruptcy attorney at a prominent international law firm, knowingly and intentionally coerced and pressured a potential bidder not to submit a bid that potentially could have been financially advantageous to the unsecured class of creditors—a class to whom Kamensky owed a fiduciary obligation. The information about the potential bidder was information that Kamensky received in his capacity as a potential bidder for the Series B Shares but also while serving as a co-chair of the Committee. A committee member's use of confidential information for reasons other than to serve the interests of the unsecured creditor body as a whole serves to erode public confidence in the bankruptcy system. The bankruptcy system is premised upon transparency and the honesty of fiduciaries serving important roles. Without faith in the bankruptcy sale process, it would be difficult to obtain willing buyers to purchase bankruptcy estate assets through the court approved auction sale process—a process that may be the only option for companies in bankruptcy. Furthermore, Kamensky's actions—if not significantly addressed with an appropriate sentence—could work to destroy the public's confidence in the important role of official committees in the bankruptcy system.

The harm that resulted from Kamensky's abuse of the bankruptcy system cannot be overstated. It is clear that auctions of property through the bankruptcy process—whether in a chapter 11 reorganization or a chapter 7 liquidation—must be and must be seen as transparent and fair to the seller, the buyer, bidders, and creditors. The Debtor and their stakeholders were severely damaged by Kamensky's illegal conduct. The Debtor's unsecured creditors lost a cash-out option for illiquid Series B shares that would have provided an alternative recovery of approximately \$42 million to \$54 million in cash. Although ultimately—and with no assistance from Kamensky—a cash-out option was offered to creditors, the misconduct by a Committee member with respect to a court-supervised bidding process put a significant taint upon the proceedings, and if not for this prosecution, could lend support for the proposition that the bankruptcy bidding process was "rigged."

United States of America v. Daniel Kamensky
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The Court should not overlook that Kamensky's misconduct resulted in the expenditure of significant judicial resources and costs to the Debtor, the Committee, and other parties. Specifically, all these parties had to expend time and money in order to investigate and then respond to Kamensky's illegal actions that threatened the successful global resolution of the Debtor's bankruptcy case and the repayment of creditors.

Section 152, like all the provisions governing bankruptcy crimes, exists not to protect individual creditors, but rather "to prevent and redress abuses of the bankruptcy system." 1 COLLIER ON BANKRUPTCY ¶ 7.01[1][a] (16th ed. 2020). The nature of Kamensky's actions struck the very core of our bankruptcy system, such that this Court should impose a sentence adequate to protect the integrity of the bankruptcy system from similar abuses in the future. The United States Trustee respectfully requests that the sentence imposed take into account the seriousness of Kamensky's conduct and afford adequate deterrence pursuant to Section 3553 of Title 18 of the United States Code.

Thank you for your consideration of this letter.

Respectfully,

By: 

William K. Harrington
United States Trustee

Cc: Daniel Tracer, AUSA
Richard Cooper, AUSA

Exclusive: Daniel Kamensky Speaks. Part II. 🔥

Jun 11 [16](#)

Notice of Appearance - Daniel Kamensky, Former Managing Partner of Marble Ridge Capital. Part II.



Today we have **Daniel Kamensky**, former Managing Partner of **Marble Ridge Capital**, back for the second part of our two part interview. Here is the first part: "[Daniel Kamensky Speaks. Part I 🔥](#)." As you likely know by now, Mr. Kamensky is to report to federal prison on June 18 on account of actions he took at the tail end of the **Neiman Marcus** chapter 11 bankruptcy case. [Per the United States Attorney's Office for the Southern District of New York](#), Mr. Kamensky "...pled guilty to one count of *bankruptcy fraud in connection with his scheme to pressure a rival bidder to abandon its higher bid for assets in connection with Neiman Marcus's bankruptcy proceedings so that Marble Ridge could obtain those assets for a lower price. KAMENSKY pled guilty before United States District Judge Denise Cote.*" He will serve six months.

If you'd like to catch up on what happened during that case, you can find our prior Neiman Marcus coverage here:

- [🍷 Get Your High End Popcorn Ready \(Long Risky DIPs\) 🍷](#)
- [🔗“Independent” Directors Under Attack. Part II.🔗](#)
- [🔥 NEIMAN! A hot mess part 1 🔥](#)
- [🔥 NEIMAN! A hot mess part 2 🔥](#)
- [🔥 NEIMAN! A hot mess part 3. 🔥](#)
- [🌟Creditor's Prison🌟](#)
- [🔗Update: Neiman Marcus \(Short Freedom\)🔗](#)

Answers were edited only slightly for clarity. We're including the last two questions from Part I to refresh people's recollections on where we left off.

PETITION: Neiman. Initially, you won. Discuss. How did it feel to defeat a couple of funds, BS independent directors, and a powerful law firm that had been gaslighting you for years?

Kamensky: This was never about winning or losing. This was about seeing something so wrong and so brazen that it needed to be called out. It is not about defeating any one party or about achieving a victory as such but rather righting wrongs. Throughout my entire life, my commitment has been to help right wrongs whether it be a social cause or otherwise. I have always believed and will continue to adhere to the concept “Justice, Justice thou shalt pursue.” In the end, my efforts to hold the board of Neiman, its management, lawyers at **Kirkland** and **Ares** accountable for their severe wrongdoing was addressed and was made right ultimately for Neiman creditors, which included not only bondholders but merchants and suppliers who had been harmed by Ares' actions.

PETITION: But then you lost. You couldn't stop yourself, exhibiting a fierce sense of entitlement in your interaction with Jefferies. Walk us through your thought process there.

Kamensky: At the end of the day, my position was vindicated by every unbiased party in the case. What happened on July 31 is somewhat unrelated to Ares' fraudulent conveyance. What I lost was my ability to manage my emotions at a particular moment in time on July 31, when I let anger get the better of me, propelling me into an ill-fated phone call with Jefferies over their last minute attempt to get themselves cut into a potential bondholder deal. At the time, it felt like a shake-down by Jefferies and I did not believe that they were real. Subsequent events have proven me right.

Giving in to my anger in that moment has forever changed my life. I hope others can learn from my mistakes.

PETITION: We want to ask about the relatively recent barrage of creditor-on-creditor violence: what are your thoughts about what's been going on in matters like J.Crew, Neiman Marcus, Boardriders, Revlon, Transocean and others? What was it like to be a distressed investor in this environment?

Kamensky. Creditors need to stand up for their rights. The actions of the PE Sponsors and their lawyers went beyond the pale in **Neiman Marcus**. They saw what others had done at **PetSmart**, **J.Crew** and **Caesars** and decided to try to substantially push the boundaries further out. Without focusing the spotlight of accountability and responsibility on **Ares** and the Neiman Board, they would have completely gotten away with this fraudulent scheme. And there are a lot of lawyers and other supposed "fiduciaries" and so called "independent experts," who chase the money rationalizing why they are not upholding what's right against what is wrong.

PETITION: Any comments on the MyTheresa IPO?

Kamensky. I am glad Neiman creditors are able to benefit from its success. That would not have been the case without the battle **Marble Ridge** and I, as well as the Unsecured Creditors Committee, fought for in the Neiman case. A \$2.5 billion valuation is a far cry from the \$525 million value used by Ares and **Kirkland** in trying to jam bondholders.

PETITION: Prescribe some constructive changes to the bankruptcy process.

Kamensky: Over my career, I have seen how the increasing competition for capital and complexity and sophistication of financial products has led to a loosening of standards providing enormous flexibility and financial incentive for malfeasance. At first management teams and their equity owners would benefit themselves at the expense of creditors and more recently we have seen a race to the bottom, with creditors pitted against each other to see who can share in the spoils.

About 10 years ago, I saw that distrust among investors made it difficult to act in a coordinated fashion to push back against weakening market standards and I formed and became Chairman of the Bankruptcy and Creditor Rights Group of the Managed Funds Association.

We worked to increase transparency in the bankruptcy process to allow market-driven forces to help level the playing field between insiders and outsiders to the process. We also filed amicus briefs in cases before Courts to represent the interests of investors in the marketplace, even including an amicus brief in a case before the U.S. Supreme Court arguing in favor of reliable and transparent bankruptcy rules to support the development of robust secondary markets.

In December 2012, we staked out our defense of the absolute priority rule, the most fundamental protection for creditors in a corporate reorganization, before the Third Circuit Court of Appeals in **W.R. Grace**. We warned how *“managers and stockholders, who were often one and the same--became adept at manipulating the reorganization process to retain their own equity interests by diluting the claims of creditors.”* [W.R. Grace, Amicus Brief, December 6, 2012]. That feels fairly prescient.

I explained my views in two articles published in the American Bankruptcy Journal and St. John's Bankruptcy Law Review.

I recognized that competing interests in a bankruptcy process risked conflict and distrust:

...[when] critical decisions regarding case administration and the company's future are made by individuals who may have little or no financial stake in the reorganized entity, [it] can lead to management entrenchment and mistrust by the ultimate owners of the company because of the misalignment between the interests of management (and their professionals) and actual shareholders. — ABI Feature, February 2015

Unfortunately, with too many sponsor-friendly law firms and judges I don't see things getting any better for creditors anytime soon.

I still care a great deal about the bankruptcy system and may be in a better position after the dust settles to advocate for improvement. We'll see. It may be time to start another creditor rights group. Call it my **Milken**-style come-back.

Top of my list for reform would be venue rules. I think we need to have a national panel of bankruptcy judges to handle complex chapter 11 proceedings. We have come to a point where crafty lawyers can simply pick and choose a friendly judge, even if there is no rationale or reason for the case to be brought in that forum. **JCPenney** and Neiman filed in Houston? **Purdue Pharma** filed in White Plains New York? **Jonathan Lipson**, a professor at **Temple University's Beasley School of Law**, recently said "*It's similar to gerrymandering. In the same way that politicians are accused of choosing their voters, corporate debtors are accused of choosing their judges.*" That's not right, and should be changed.

PETITION: We've commented about the need for relatively more activist judges (in the context of feasibility and bullsh*t projections) while at the same time criticizing certain judges for being overly power-trippy and punitive on the bench. You've obviously been on the receiving end of a particularly powerful lashing. What do you want others to know about your experience?

Kamensky: I have two judges in my family who both started their careers as public defenders. One had a hand in the founding of the **Innocence Project**, using his position to protect the lives of the downtrodden. So, when it comes to justice, the abusive personalized rhetoric of [United States Bankruptcy Judge for the Southern District of Texas] **Judge Jones** strikes a particularly sensitive chord. He crossed the line. There is no question. Whether he will bear the consequences of that is outside of my control.

PETITION: As part of the Neiman settlement, you've been going around sharing what happened with law and business students. What are some of the things you're advising them?

Kamensky: In my talks, my intention is not to explain away my conduct but to show students the complexity of what happened to avoid making mistakes in the future.

The Neiman story presents moral and ethical lapses on many different fronts. That's what makes it so interesting for students. Who did Kirkland represent in the spin? Who was their client? Did their conflict of interest present an ethical dilemma? Could they advise Ares of solvency and then defend against that in the bankruptcy? Ares was unable to get a third party fairness opinion and kept the spin from the company. Are these red flags? What would you do as a professional confronted with those facts? What happened on July 31? How should Committee Counsel handle a conflict of interest? Should Committee counsel call a member with information about a competing bidder, especially when that member has been recused? How should ethical walls be enforced? What is the role of the US Trustee? Should they be a mere traffic cop or actually try and educate members about potential conflicts of interest?

Teaching has really helped me have perspective for what happened during the Neiman case, and has been rewarding on many different levels. I will continue teaching in the Fall of 2021 and Spring of 2022, and my case study will be published by **Harvard Business School** in Spring 2022.

PETITION: Final question. You're reporting to prison very soon. As things stand now, you may serve a significant portion of your term in solitary. As you can probably guess, there are certain PETITION readers who think you got off too easy. There are others who think your punishment was harsh. What do you want people on both sides to know...?

Kamensky: I was taught that....

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