

CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza
New York, NY 10006-1470
T: +1 212 225 2000
F: +1 212 225 3999

clearygottlieb.com

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KARA A. HAILEY
ANNA KODAN
BRANDON M. HAMMER
RESIDENT COUNSEL

D: +1 212 225 2950
jkim@cgsh.com

July 15, 2022

VIA EFAP

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9010

Re: *In the Matter of Daniel B. Kamensky*, Admin. Proc. File No. 3-20586

Dear Commissioners:

We represent Respondent Daniel B. Kamensky in the above-referenced administrative proceeding before the Securities Exchange Commission (“SEC” or the “Commission”).¹ We write on behalf of Mr. Kamensky pursuant to SEC Rule of Practice 452, 17 C.F.R. § 201.452, to request leave to adduce the following additional evidence in connection with his November 29, 2021 Response in Opposition to the Division of Enforcement’s (the “Division”) Motion for Summary Disposition (“Summary Disposition Brief”), which was issued following Summary Disposition Briefing in this matter:

- (1) an April 28, 2022 Order of the Supreme Court of the State of New York Appellate Division, First Judicial Department, in *Daniel B. Kamensky*, Case No. 2021-02725, retroactively suspending Mr. Kamensky from the practice of law in New York State for six months, attached hereto as Exhibit A; and

¹ For background, on September 21, 2022, the Commission filed an Order Instituting Proceedings (“OIP”) on the basis of Mr. Kamensky’s guilty plea for a one-count violation of 28 U.S.C. § 152(6), *see* Information, *United States v. Kamensky*, No. 21-cr-00067 (DLC) (S.D.N.Y. Feb. 3, 2021), ECF No. 12, and subsequent settlement in a parallel SEC-initiated civil suit, *see* Judgment, *SEC v. Kamensky*, No. 20-cv-07193 (VEC) (S.D.N.Y. Sep. 10, 2021), ECF No. 40. Mr. Kamensky agreed with the Division that the Commission can resolve this matter on summary disposition, but disagreed with its request for unnecessarily punitive sanctions. The summary disposition motion is now pending before the Commission.

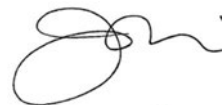
- (2) a July 12, 2022 Order of the First Department in the same matter reinstating Mr. Kamensky as an attorney and counselor-at-law in New York State, attached hereto as Exhibit B (together, the “Additional Evidence”).

The Additional Evidence demonstrates the First Department’s conclusion that Mr. Kamensky has shown by “clear and convincing evidence” that he “has the requisite character and fitness to practice law,” and that “it would be in the public interest to reinstate the [him] to the practice of law.” *See* 22 N.Y.C.R.R. § 1240.16 (setting forth the requirements for reinstatement after suspension).

The Additional Evidence provides material support that the *Steadman v. SEC* public interest factors, *see* 603 F.2d 1126, 1140 (5th Cir. 1979), weigh heavily against ordering the permanent bars that the Division has sought in this case or, indeed, any further sanctions in this case. In particular, the First Department’s findings indicate that Mr. Kamensky’s conduct was isolated, “occur[ing] within the span of a few hours”; that he took responsibility and made assurances against future wrongdoing by “promptly withdr[awing] from the Creditors’ Committee,” “subordinat[ing] all of his personal interests in the Neiman Marcus bankruptcy,” and agreeing to “never again serve on any official bankruptcy committee”; and that “there was no harm to the unsecured creditors to whom [he] owed a fiduciary duty.” Ex. A at 5. Notably, the Additional Evidence also provides authority from the New York State Courts supporting the conclusion that any opportunities Mr. Kamensky’s occupation may present for future violations are alleviated by the fact that Mr. Kamensky poses no risk of such behavior and that Mr. Kamensky is fit to resume the practice of law. The fact is, Mr. Kamensky presents no “present danger to the public,” *Johnson v. SEC*, 87 F.3d 484, 490 (D.C. Cir. 1996), a fact recognized by the New York State Courts. In sum, additional sanctions—to say nothing of the permanent bar the Division seeks to impose on Mr. Kamensky for his highly isolated and aberrant conduct—are unwarranted and would serve only punitive purposes. *See Johnson*, 87 F.3d at 488-90 (D.C. Cir. 1996) (vacating a six-month suspension because it was “punitive”).

For the foregoing reasons, we respectfully request that the Commission consider this Additional Evidence in favor of denying the Division’s request for a permanent bar.

Sincerely,



Joon H. Kim

cc: Joseph P. Ceglio, Esq. (U.S. Securities and Exchange Commission) (via e-mail)
Alexander Vasilescu, Esq. (U.S. Securities and Exchange Commission) (via e-mail)
Richard Hong, Esq. (U.S. Securities and Exchange Commission) (via- email)

CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing letter with attachments was served on the following persons on July 15, 2022, and otherwise sent, by the method indicated:

By e-filing:
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

By email:
Alexander M. Vasilescu, Esq., VasilescuA@sec.gov
Richard Hong, Esq., HongR@sec.gov
Joseph P. Ceglio, Esq., CeglioJ@sec.gov
Securities and Exchange Commission
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281
Counsel for Division of Enforcement



Joon H. Kim

EXHIBIT A

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Anil C. Singh,
Lizbeth González
Tanya R. Kennedy
Saliann Scarpulla
Martin Shulman,

J.P.,

JJ.

Motion No.	2022-00779
Case No.	2021-02725

In the Matter of
DANIEL B. KAMENSKY,
a suspended attorney:

ATTORNEY GRIEVANCE COMMITTEE FOR THE
FIRST JUDICIAL DEPARTMENT,
Petitioner,

DANIEL B. KAMENSKY,
(OCA ATTY. REG. NO. 3046752)
Respondent.

Disciplinary proceedings instituted by the Attorney Grievance Committee for the First Judicial Department. Respondent was admitted to the Bar of the State of New York at a Term of the Appellate Division of the Supreme Court for the First Judicial Department on April 10, 2000.

Appearances:

Jorge Dopico, Chief Attorney,
Attorney Grievance Committee, New York
(Raymond Vallejo, of counsel), for petitioner.

Michael S. Ross, Esq., for respondent.

Motion No. 2022-00779 - March 14, 2022

IN THE MATTER OF DANIEL B. KAMENSKY, A SUSPENDED ATTORNEY

PER CURIAM

Respondent Daniel B. Kamensky was admitted to the practice of law in the State of New York by the First Judicial Department on April 10, 2000. At all times relevant to this proceeding, he maintained an office for the practice of law within the First Department.

On February 3, 2021, in the United States District Court for the Southern District of New York, respondent pleaded guilty to committing an act of bribery or extortion in connection with the federal bankruptcy laws (*see* 18 USC § 152[6]). Respondent timely notified this Court and the Attorney Grievance Committee (AGC) of his conviction. Respondent was sentenced to six months' imprisonment and six months' supervised release with a condition of home detention. He was fined \$55,000 with an assessment of \$100. He was released from prison two months early.

The AGC moved this Court for an order to deem respondent's offense as a "serious crime" under Judiciary Law § 90(4)(d) and to immediately suspend respondent pursuant to the Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.12(c)(2) and Judiciary Law § 90(4)(f). This Court granted the AGC's motion and determined that respondent's offense was a "serious crime" within the meaning of Judiciary Law § 90(4)(d) (*Matter of Kamensky*, 199 AD3d 114 [1st Dept 2021]). Respondent was suspended from the practice of law on September 16, 2021.

The parties now jointly move under 22 NYCRR 1240.8(a)(5) for an order imposing discipline by consent and request that respondent be suspended for a period of six months effective retroactively to September 16, 2021.

A joint motion for discipline by consent must include a stipulation of facts, the respondent's conditional admission to acts of professional misconduct and the violation of specific Rules of Professional Conduct, the relevant factors in mitigation and aggravation, and the agreed-upon discipline (*see* 22 NYCRR 1240.8[a][5][i]). The motion must also be accompanied by an affidavit from the respondent acknowledging the respondent's conditional admission of misconduct, the respondent's freely given consent to the agreed-upon discipline, and the respondent's full awareness of the consequences of such consent (*see* 22 NYCRR 1240.8[a][5][iii]).

The parties have stipulated to the following facts. Respondent started his own hedge fund, Marble Ridge Capital, in 2015. Marble Ridge Capital, in 2018, invested in unsecured bonds of Neiman Marcus. Neiman Marcus transferred a valuable online business, the MyTheresa subsidiary, out of the reach of its creditors ostensibly for the benefit of Neiman Marcus' private equity owners. During the next two years, respondent through Marble Ridge Capital pursued fraudulent conveyance claims against the private equity owners of Neiman Marcus.

Neiman Marcus commenced Chapter 11 Bankruptcy proceedings in May 2020. Respondent applied and was appointed to the Official Committee of Unsecured Creditors (Creditors' Committee) on behalf of Marble Ridge Capital. By statute, members of the Creditors' Committee are required to act as fiduciaries to all unsecured creditors and to put the interests of the unsecured creditors above their personal interests.

In the midst of the bankruptcy proceedings, Neiman Marcus agreed, as part of a settlement, to transfer back certain illiquid assets which would be held by a trust for the benefit of the unsecured creditors. After the settlement was accepted, the counsel to the

Creditors' Committee made a proposal to allow unsecured creditors, as a class, the option to receive an upfront cash payment for their share of the illiquid assets that they are entitled to receive under the settlement. Marble Ridge Capital and other bondholders would fund the cash payment. The Creditors' Committee voted to continue negotiations with bondholders, including Marble Ridge Capital, for a potential cash-out option as part of a settlement.

During these proceedings, the counsel to the Creditors' Committee informed respondent that a trading desk at an investment bank expressed interest in placing a bid for the cash out option that was being negotiated. Specifically, the investment bank expressed interest in purchasing the Series B shares of the MyTheresa subsidiary from the unsecured creditors of Neiman Marcus.

Respondent telephoned a trader who worked on the trading desk at the investment bank, and he told the trader to refrain from placing a competing bid. Respondent threatened the trader by suggesting that he would use his position on the Creditors' Committee to ensure that the investment bank's bid would be rejected. He also informed the trader that he would withhold Marble Ridge Capital's future business from the investment bank if it did not step down. The investment bank initially communicated its decision not to make a bid; however it did place a bid the next day.

Several hours after respondent's phone call to the investment bank, the counsel to the Creditors' Committee informed respondent that the trader believed that respondent had threatened the investment bank. Respondent subsequently placed a second call to the trader. Respondent attempted to persuade the trader to falsely state that he was mistaken about the nature of respondent's previous call and that respondent

only suggested that the investment bank should bid if it was making a serious offer.

Respondent was federally indicted one month later.

Respondent conditionally admits that his conduct, violated Rules of Professional Conduct (22 NYCRR 1200.0) rules 8.4(b) (illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer) and 8.4(h) (other conduct that adversely reflects on the lawyer's fitness as a lawyer).

In mitigation, the parties note that respondent has no prior disciplinary history and that the offense occurred within the span of a few hours. The parties also note that there was no harm to the unsecured creditors to whom respondent owed a fiduciary duty, as the investment bank placed a bid the following day after respondent's offense. Respondent also promptly withdrew from the Creditors' Committee and subordinated all of his personal interests in the Neiman Marcus bankruptcy. In settling his personal claims with the Neiman Marcus estate, he agreed to, among other things, never again serve on any official bankruptcy committee.

In aggravation, the parties emphasize that respondent harmed and threatened the integrity of the bankruptcy process. Respondent's coercive phone call to the trader was predicated upon Marble Ridge Capital's potential financial gain. In light of respondent's personal financial condition, there was no financial need for him to engage in the underlying misconduct. Furthermore, respondent willfully attempted to obstruct and impede the administration of justice with respect to the government's investigation of his offense by attempting to persuade the trader to change his account of the coercion.

We agree with the parties that the discipline to be imposed upon respondent should be a suspension for a period of six months effective retroactively to September

16, 2021 (*cf. Matter of Novins*, 119 AD3d 37 [1st Dept 2014]; *Matter of Rosenblatt*, 253 AD2d 106 [1st Dept 1999]).

Accordingly, the parties' joint motion for discipline by consent should be granted and respondent is suspended from the practice of law for a period of six months effective retroactively to September 16, 2021 and until further order of the Court. The AGC's petition of charges should be denied as moot.

All concur.

It is Ordered that the parties' joint motion for discipline by consent pursuant to 22 NYCRR 1240.8(a)(5) is granted, and respondent Daniel B. Kamensky is suspended from the practice of law in the State of New York for a period of six months, effective retroactively to September 16, 2021, and continuing until further order of this Court, and

It is further Ordered that the Attorney Grievance Committee's petition of charges is denied as moot, and

It is further Ordered that during the period of suspension, respondent Daniel B. Kamensky is commanded to desist and refrain from (1) the practice of in any form, either as principal or agent, clerk or employee of another, (2) appearing as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and

It is further Ordered that respondent Daniel B. Kamensky shall comply with the rules governing the conduct of disbarred or suspended attorneys (see NYCRR 1240.15), which are made part hereof; and

It is further Ordered that if respondent Daniel B. Kamensky has been issued a secure pass by the Office of Court Administration, it shall be returned to the issuing agency.

Entered: April 28, 2022

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court

EXHIBIT B

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Anil C. Singh, Justice Presiding,
Lizbeth González
Tanya R. Kennedy
Saliann Scarpulla
Martin Shulman, Justices.

In the Matter of Daniel B. Kamensky,
(OCA Atty. Reg. No. 3046752),
a suspended attorney:
Petitioner,

Motion No. 2022-02060
Case No. 2021-02725

For Reinstatement to the Bar
of the State of New York,

Attorney Grievance Committee
for the First Judicial Department,
Respondent.

An order of this Court having been entered April 28, 2022, suspending petitioner (who was admitted to practice as an attorney and counselor-at-law in the State of New York at a Term of the Appellate Division of the Supreme Court for the First Judicial Department on April 10, 2000) from the New York State bar for a period of six-months, effective September 16, 2021,

And petitioner having moved this Court on June 21, 2022, for an order, pursuant to 22 NYCRR 1240.16(d), reinstating him as an attorney and counselor-at-law in the State of New York,

And the Attorney Grievance Committee, by Jorge Dopico, its Chief Attorney (Raymond Vallejo, of counsel), having submitted an affirmation stating that it does not oppose the motion,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is unanimously,

Ordered that the motion is granted, and petitioner is reinstated as an attorney and counselor-at-law in the State of New York, effective the date hereof.

Entered: July 12, 2022

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court