UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6435 / September 26, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21725

In the Matter of

Bruderman Asset Management, LLC, n/k/a Gary Goldberg Planning Services, LLC

and

Matthew J. Bruderman

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and against Bruderman Asset Management, LLC, now known as Gary Goldberg Planning Services, LLC ("BAM") and Matthew J. Bruderman ("Bruderman") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

1. These proceedings concern the misuse of proceeds raised by BAM from investment advisory clients. Between February 2017 and August 2021, BAM, at Bruderman's direction, raised at least $6.1 million for debt and equity in three private entities in which Bruderman had significant ownership interests and decision-making authority from at least thirteen investment advisory clients.

2. In connection with these offerings, Respondents failed to disclose to their investment advisory clients that the money they invested would be temporarily used for the operating expenses of entities other than those in which they intended to invest or to repay outstanding loans Bruderman made to the entities or to repay intercompany loans.

3. Additionally, BAM, by and through Bruderman, failed to implement reasonably designed written policies and procedures concerning the disclosure of conflicts of interest.

4. Based on this conduct, and as described in further detail below, BAM violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; and Bruderman violated Section 206(2) of the Advisers Act and caused BAM's violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondents

5. **BAM**, which was an investment adviser registered with the Commission from March 2015 until December 2022, when it withdrew its registration, was incorporated in New York in September 2014. Prior to Bruderman indirectly purchasing BAM through a family-owned corporation in 2014, BAM had been registered as Gary Goldberg Planning Services, LLC. In September 2022, BAM reverted to its original name, Gary Goldberg Planning Services, LLC.

6. **Bruderman**, age 51, resides in Oyster Bay, NY. Bruderman holds his Series 7, 24, 27, 63, 65, 99, and Securities Industry Essentials licenses but is no longer associated with any registered broker-dealer. Bruderman served as the Chairman and control person of Bruderman Brothers, LLC (n/k/a Gary Goldberg & Co., LLC), a broker-dealer formerly registered with the Commission, from June 1999 until it withdrew its registration in February 2023. Bruderman also served as Chairman and CEO of BAM, an investment adviser formerly registered with the Commission, from February 2015 until it withdrew its registration in December 2022. Bruderman

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

also has significant ownership and Board of Directors ("Board") positions in various privately held companies including, as follows: a 20 percent interest in a company ("Company A") where he serves as a member of the Board; a 5 percent interest in a second company ("Company B") where he serves as Chairman of the Board (with the remainder of the company owned by his wife and children); and an 85 percent interest in a third company ("Company C") (collectively, the "Bruderman Affiliated Companies").

Facts

7. Between February 2017 and August 2021, Respondents advised at least thirteen investment advisory clients to invest $6.1 million in the Bruderman Affiliated Companies.

8. Bruderman maintained significant ownership and Board positions in connection with the Bruderman Affiliated Companies. Bruderman held a 20 percent interest in Company A and served as a member of the Board; a 5 percent interest in Company B, with the remaining 95 percent owned by his wife and children, and served as Chairman of the Board; and an 85 percent interest in Company C. In each of the Bruderman Affiliated Companies, Bruderman had decision-making authority.

9. Respondents provided certain information concerning the underlying business operations of the Bruderman Affiliated Companies to a BAM investment adviser representative (the "IAR") and suggested the IAR recommend that BAM investment advisory clients invest in the Bruderman Affiliated Companies. The IAR also received information about the business operations of Company A from an executive of Company A.

10. While Bruderman did not speak directly to the investment advisory clients, he directed the IAR to recommend the investments in Bruderman Affiliated Companies to BAM clients. The IAR recommended investments in each of the Bruderman Affiliated Companies to BAM clients on the basis of the information about the respective Bruderman Affiliated Company that he received from Bruderman and others and the conversations the IAR and Bruderman had.

11. Bruderman's ownership interests, Board positions, decision-making authority, and the conflicts of interest they presented, were not disclosed to investment advisory clients.

12. Neither BAM nor Bruderman told the IAR that the money invested by the investment advisory clients in a particular Bruderman Affiliated Company would be utilized in the short term for other uses, such as to fund BAM's payroll, or to pay back outstanding loans owed to Bruderman or other Bruderman Affiliated Companies.

13. Bruderman, however, utilized the money of the investment advisory clients for each of these purposes. Some money was temporarily employed to repay outstanding loans made to the Bruderman Affiliated Companies by Bruderman himself or intercompany loans among and between the Bruderman Affiliated Companies. Other monies were diverted for short periods

of time before the monies were ultimately returned to the appropriate Bruderman Affiliated Company.

14. The investment advisory clients invested on the basis of BAM's advice. The IAR would not have recommended the investments had he known that the money was to be used for purposes other than for the ongoing operations of the relevant Bruderman Affiliated Company, even if the money was ultimately returned to the Bruderman Affiliated Company for its intended purpose.

15. For example, at Bruderman's direction, $200,000 of a September 2017 $500,000 debt investment in Company C was temporarily transferred to BAM to fund its payroll. One week later, BAM returned the $200,000 to Company C. No documentation of any contemporaneous justification exists for these transactions. The client who made this investment has since been repaid his original investment in its entirety.

16. Similarly, in October 2018, an investment advisory client ("Client W") made a $500,000 equity investment in Company A. Client W was contemporaneously issued 500,000 shares of stock in Company A, as agreed. Shortly thereafter, at Bruderman's direction, $400,000 of this investment was transferred to Bruderman's personal bank account to repay Bruderman for an outstanding loan of more than $1 million owed to him by Company A. The loan from Bruderman to Company A was tracked in the company's internal accounting software, but no other contemporaneous writing memorializes the transaction.

17. Later in October 2018, another investment advisory client ("Client X") made a $500,000 investment in Company A. Client X was contemporaneously issued 500,000 shares of stock in Company A, as agreed. At Bruderman's direction, $495,000 of the funds were transferred to Company C and used to repay Company C's lender. Bruderman directed this intercompany transfer as further repayment of his outstanding loan owed to him by Company A. Outside of the internal accounting software tracking Bruderman's loans, no other contemporaneous writing memorializes the transaction.

18. BAM's policies and procedures required the disclosure of all material conflicts of interest to its investment advisory clients, including the potential for the Adviser, any employees, and/or affiliates to earn compensation from advisory clients in addition to its advisory fees. Bruderman was uniquely aware of this conflict as he directed all the transfers of the monies invested by the investment advisory clients. Nonetheless, BAM, by and through Bruderman, failed to implement BAM's written policies and procedures concerning the disclosure of conflicts of interest arising from investment advisory clients' investment in the Bruderman Affiliated Companies.

Violations

19. Section 206(2) of the Advisers Act prohibits an investment adviser, directly or indirectly, from engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v.*

Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

20. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging in acts, practices, or courses of business that are fraudulent, deceptive, or manipulative, as defined by the Commission in rules and regulations promulgated under the statute. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647. Rule 206(4)-7 requires, among other things, that an investment adviser registered with the Commission adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and rules thereunder.

21. As a result of the conduct described above, BAM and Bruderman willfully[2] violated Section 206(2) of the Advisers Act and BAM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and Bruderman caused BAM's violation of Section 206(4) and Rule 206(4)-7 thereunder.

BAM and Bruderman's Remedial Efforts

In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents, including voluntarily repaying certain debts to investment advisory clients in connection with the Bruderman Affiliated Companies, totaling $1,650,000.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent BAM is censured.

C. Respondent Bruderman is censured.

D. Respondents shall pay, jointly and severally, within fourteen (14) calendar days of the entry of this Order, a civil money penalty in the amount of $250,000 to the Securities and

[2] "Willfully," for purposes of imposing relief under Sections 203(e) and 203(f) of the Advisers Act "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

E. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BAM and Bruderman as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Steven G. Rawlings, Division of Enforcement, Securities and Exchange Commission, New York Regional Office 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent Bruderman, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Bruderman under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Bruderman of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary