

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

FILED
12/27/2024 10:18 AM
ARDC Clerk

In the Matter of:

RANDALL S. GOULDING,

Attorney-Respondent,

No. 1025619.

Commission No. 2024PR00080

COMPLAINT

Lea S. Gutierrez, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Scott Renfro, pursuant to Supreme Court Rule 753(b), complains of Respondent, Randall S. Goulding, who was licensed to practice law in the State of Illinois on May 19, 1978, and alleges that Respondent has engaged in the following conduct that subjects him to discipline pursuant to Supreme Court Rule 770:

(Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation – The Nutmeg Group)

A. *Introduction*

1. In 2003, Respondent co-founded an investment advisory firm named The Nutmeg Group, LLC (“Nutmeg”), to make investments and to provide investment advice to unregistered investment pools. Prior to June 7, 2007, when it registered as an investment advisor with the federal Securities and Exchange Commission (“SEC”), Nutmeg operated without being registered due to its small size. As of 2007, though, Nutmeg had fifteen advisory clients, all of which were limited partnerships organized in either Illinois or Minnesota. Each advisory client was organized as a fund (“the Funds”), and collectively included 328 individuals or entities who participated in the Funds as limited partners. The investors invested their money with the Funds,

which then purchased securities issued by companies with market capitalization less than \$50 million. As of 2007, Nutmeg claimed that the total amount of assets it had under management in the various Funds was approximately \$32 million.

2. Initially, each Fund was invested in a single company, but Nutmeg's practices changed around 2005 when it opened Funds that invested in more than one company.

3. In 2006, Respondent became Nutmeg's sole owner and managing member. Respondent held those positions until 2009, when he and Nutmeg were sued by the SEC. Respondent is also an accountant, and his law firm, The Law Offices of Randall S. Goulding & Associates, P.C., shared office space with Nutmeg and provided legal services to Nutmeg and the Funds. Respondent made the decision for Nutmeg to hire his law firm to provide legal services for Nutmeg and the Funds, and Nutmeg was the firm's only client and sole source of income.

4. As Nutmeg's owner and managing member, Respondent oversaw all of Nutmeg's operations and employees, determined who to hire, prepared the Funds' offering documents, identified investment opportunities, negotiated investment terms, made investment decisions for the Funds, approved the transfer of funds and payment of expenses for both Nutmeg and the Funds, approved expenses incurred by Nutmeg (including payments made to Respondent or for his benefit), and was responsible for the books and records of both Nutmeg and the Funds. In Nutmeg's annual filings with the SEC, Nutmeg identified Respondent as its Chief Compliance Officer, whose responsibility it was to ensure that Nutmeg complied with the federal securities laws, including the Investment Advisers Act of 1940.

B. *Respondent Makes False Statements About the Value of the Funds*

5. Beginning in at least 2008, Respondent caused Nutmeg to make false statements about the value of various Funds to the SEC and to investors in those Funds. During an

examination by SEC staff in relating to the first quarter of 2008, Respondent was asked to substantiate claims regarding the value of Nutmeg's four largest Funds (known as Michael, Fortuna, Mercury and Stealth). The information Respondent provided overstated the value of the Mercury Fund by \$485,479, overstated the value of the Stealth Fund by \$578,000, and misstated the values of the Michael and Fortuna Funds because Nutmeg, at Respondent's direction, had commingled those Funds' assets with other Funds, or paid out distributions due to the Michael or Fortuna Funds and rolled some of those distributions to a separate Fund held in Nutmeg's name, rather than in the name of Michael or Fortuna.

6. Respondent also caused Nutmeg to send false investor account statements to its investors about the performance of various Funds and the investors' cash position, due to Respondent's failure to properly allocate up to \$1 million in rolled-over assets to certain Funds and his decision to describe as "cash" investments in unallocated and illiquid securities.

7. The statements Respondent caused Nutmeg to make to the SEC and to Nutmeg's investors, described in paragraphs five and six, above, were false, because they were based on incomplete, inaccurate or deliberately misstated stock prices, overstated sales prices, inflated share holdings, and commingled or misallocated assets.

8. Respondent knew or should have known that the statements he caused Nutmeg to make to the SEC and to Nutmeg's investors, described in paragraphs five and six, above, were false, because they were based on incomplete, inaccurate or deliberately misstated stock prices, overstated sales prices, inflated share holdings, and commingled or misallocated assets.

C. *Respondent Uses Nutmeg Assets for His Own Purposes*

9. Respondent's initial capital contribution to Nutmeg was \$70,000. Despite that, between at least 2003 and 2009, Respondent withdrew more than \$1.2 million from Nutmeg's

commingled investment accounts that he used to pay his personal expenses, without regard to whether the money was his to take or belonged to the Funds or the Funds' investors. Those personal expenses included more than \$660,000 on Respondent's home equity line of credit, \$67,000 for the acquisition of an Acura automobile that was titled in Nutmeg's name but used by Respondent, more than \$400 in tickets for Chicago White Sox baseball games, a \$10,000 entry fee for the World Series of Poker, and more than \$160,000 in payments on Respondent's personal credit cards or on Nutmeg's cards for purchases made on Respondent's behalf. As of 2008, Nutmeg owed the Funds \$974,054, but the balances in its two bank accounts were both negative as of March 31, 2008.

10. Respondent's use of assets belonging to Nutmeg, its Funds, or those Funds' investors, was dishonest, because those assets did not belong to Respondent individually and because Respondent took those assets without notice to, or permission from, Nutmeg's investors.

D. *The SEC Takes Regulatory Action Against Respondent, Nutmeg and Others*

11. On March 23, 2009, the SEC filed suit in the United States District Court for the Northern District of Illinois against Nutmeg, Respondent, and one of Respondent's sons, who was then acting as Nutmeg's Chief Compliance Officer. The SEC suit also named another of Respondent's sons and other family friends as "Relief Defendants" who were alleged to have been involved in various Nutmeg-related activities. The suit was docketed as case number 1:09-cv-01775, *Securities and Exchange Commission v. The Nutmeg Group, LLC, et al.* The SEC filed an amended complaint on June 14, 2011. Both complaints charged Respondent with having engaged in deceptive, fraudulent or manipulative conduct, with having made untrue statements of material fact, with using instrumentalities of interstate commerce and the mail to defraud

Nutmeg's clients, and with aiding and abetting Nutmeg in violations of the Investment Advisers Act of 1940.

12. On October 25, 2019, Magistrate Judge Jeffrey T. Gilbert entered a 61-page document entitled "Findings of Fact and Conclusions of Law" in case number 1:09-cv-01775, in which he concluded that Respondent violated the Investment Advisers Act of 1940 by misappropriating and misrepresenting the value of Nutmeg investors' assets, that Respondent's violations had been material, and that Respondent was reasonably likely to violate the law in the future and therefore should be permanently enjoined from violating the Investment Advisers Act. Magistrate Judge Gilbert also ordered Respondent to disgorge \$642,422 of the proceeds of his illegal activities, plus prejudgment interest, plus an additional \$642,422 as a civil penalty.

13. On July 7, 2022, the United States Court of Appeals for the Seventh Circuit issued an opinion resolving Respondent's appeal of Magistrate Judge Gilbert's decision. *Securities and Exchange Commission v. Goulding*, number 20-1689. The Court affirmed all of Magistrate Judge Gilbert's findings and conclusions but remanded the case for Magistrate Judge Gilbert to include more specific language in his injunction. On December 20, 2022, Magistrate Judge Gilbert entered an order in case number 1:09-cv-01775 that enjoined Respondent from "(1) buying, selling or trading securities on behalf of an investment advisor or pooled investment vehicle; (2) managing securities investments for, or providing investment advice to, any person or entity, other than himself and immediate relatives, for compensation; and (3) providing consulting, valuation, compliance or other investment-related services to an investment adviser or pooled investment vehicle."

