

STATE OF NORTH CAROLINA



Department of The
Secretary of State

IN THE MATTER OF:

THE NORTH CAROLINA SECURITIES DIVISION,

Petitioner,

vs.

AEGIS CAPITAL, LLC,

1909 English Ivy Court
Mount Pleasant, SC 29464

Respondent.

**ORDER OF
SUMMARY
SUSPENSION**

FILE NO. 13-SEC-140

Pursuant to the authority granted by Chapter 78C of the North Carolina General Statutes (the North Carolina Investment Advisers Act), (hereinafter referred to as the "Act"), and the rules promulgated thereunder, the Securities Division of the Department of the Secretary of State, (hereinafter referred to as the "Securities Division") has attempted to investigate the activities of Aegis Capital, LLC, (hereinafter, the "Respondent") to determine if it has engaged in, or is about to engage in, any act or practice constituting a violation of the Investment Advisers Act or any rule or order thereunder.

The Securities Division has filed an Administrative Petition against the above-named Respondent seeking, among other remedies, an Order for Summary Suspension of Registration pursuant to the provisions of N.C.G.S. § 78C-19(c).

The SECRETARY OF STATE, acting by and through her duly authorized Deputy Securities Administrator, from the investigation and the information derived therefrom, and for the protection and preservation of the public welfare and in the public interest makes the following:

FINDINGS OF FACT

1. Respondent, Aegis Capital, LLC, ("Aegis"), is a Limited Liability Company organized in the State of North Carolina. Aegis has stated that it maintains a principal office address of 1909 English Ivy Court, Mount Pleasant, South Carolina 29464.
2. Aegis has been registered with the Securities Division as an investment adviser under the Act since March 27, 2012. Aegis does not appear to maintain an office location in North Carolina.
3. According to its last Annual Report, dated April 12, 2010 and filed with the Corporations Division of the North Carolina Secretary of State on September 16, 2010, Aegis listed its CEO as John R. Lakian.
4. Further, on or about April 27, 2012, Aegis filed an Other-Than-Annual Amendment to its ADV Part-1 (an ADV is a uniform form used by investment advisers to register and disclose required information to regulators). In said ADV filing, Aegis listed John R. Lakian as a Director and majority (greater than 75%) owner.
5. Aegis is registered in North Carolina as an investment adviser.
6. Upon its registration as an investment adviser with the State of North Carolina, Aegis's principal place of business was located in Charlotte, North Carolina.

7. On or about April 27, 2012, Aegis filed an Other-Than-Annual Amendment to its ADV Part I. In said filing, Aegis stated that its principal place of business was 1909 English Ivy Court, Mount Pleasant, South Carolina 29464. There are no later filings stating a subsequent change in address.

8. Upon information and belief, Aegis is not registered in South Carolina as an investment adviser. Aegis applied for registration as an investment adviser in South Carolina on March 23, 2012, but the web-based CRD registration system reflects that Aegis's application for registration was abandoned on December 17, 2012.

9. In 2013, the Securities Division began its attempt to make contact with Aegis in order to perform a routine examination of the adviser.

10. In May of 2013, an examiner with the Securities Division attempted to contact Aegis at the telephone numbers listed in its ADV-Part 1 and the ADV-Part 2. This included the telephone number listed for the 1909 English Ivy Court, Mount Pleasant, South Carolina address and the telephone number it listed for its office located at 525 North Tryon Street, Suite 1600, Charlotte, North Carolina.

11. The telephone numbers failed to provide access to Aegis or Lakian.

12. N.C.G.S. § 78C-18(a) requires all investment advisers registered in the State of North Carolina to "make and keep such accounts, correspondence, memoranda, papers, books and records as the Administrator by rule prescribes..."

13. N.C.G.S. § 78C-18(e) subjects, from time to time, the records referred to in subsection (a) of this section "to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the public protection of investors."

14. Rule 18 NCAC 06A .1706 details the books and records the Administrator prescribes, as provided by N.C.G.S. § 78C-18. Subsection (i) of the Rule expounds upon the mandate of N.C.G.S. § 78C-18(e) stating that “[every] registered investment adviser shall maintain within this state, in a readily accessible location, all records required by this Rule. A written request for the waiver of the provisions of this Section may be made to the administrator to permit any registered investment adviser to maintain any of the records required by this Rule in some place other than the State of North Carolina.”

15. Rule 18 NCAC 06A .1706(j) exempts any investment adviser that has a principal place of business in a state other than North Carolina from the requirements of the Rule. This exemption may be considered only if the investment adviser is “licensed in such state and is in compliance with such state’s record keeping requirements, if any.”

16. As an investment adviser registered in the State of North Carolina, Aegis is required to make and keep the accounts, correspondence, memoranda, papers, books and records pursuant to N.C.G.S. § 78C-18(a).

17. Those records required to be kept by Aegis pursuant to N.C.G.S. § 78C-18(a) are subject to examination by the Securities Division periodically or otherwise pursuant to N.C.G.S. § 78C-18(e).

18. On July 16, 2014, the Administrator issued an administrative subpoena asking that Aegis Capital, LLC, and John R. Lakian produce the books and records required to be kept by the firm pursuant to N.C.G.S. § 78C-18(a) and Rule 18 NCAC 06A .1706. The subpoena was sent to the principal place of business listed for Aegis – 1909 English Ivy Court, Mount Pleasant, South Carolina, 29464.

19. The subpoena was returned to the Securities Division as “not deliverable as addressed and unable to be forwarded.” The Securities Division received the returned subpoena on July 25, 2014.

20. The incorrect listing of Aegis's principal office address is misleading in a material respect because the Securities Division must be able to locate the investment adviser in order to inspect the investment adviser's books and records as provided for by N.C.G.S. § 78C-18(e).

21. Upon receipt of the returned subpoena, the Securities Division made several attempts to contact Aegis and Lakian via telephone to determine where Aegis's current principal place of business was located in order to make review of the firm's books and records pursuant to N.C.G.S. § 78C-18(e).

22. On July 31, 2014, an investigator for the Securities Division attempted to contact Aegis utilizing the telephone phone number Aegis provided for its principal place of business address, 1909 English Ivy Court, Mount Pleasant, South Carolina 29464. A recording indicated that the telephone number had been disconnected or was no longer in use.

23. On August 1, 2014, an investigator for the Securities Division attempted to contact Aegis utilizing the telephone number Aegis provided for one of its "Other Office" locations listed on its ADV-Part 1. The woman who answered the telephone identified herself as someone other than Lakian, indicating that she had never heard of Aegis Capital, LLC, or John R. Lakian and that the telephone number's respective address had been a private residence for 41 years.

24. Previously, Aegis had filed an ADV-Part 2 Disclosure Brochure with the Securities Division where it listed 525 N Tryon Street, Suite 1600, Charlotte, North Carolina 29202, as an office address for Aegis. That filing was made March 23, 2012 and has not been updated.

25. On September 18, 2014, an investigator for the Securities Division contacted the leasing company of the building located at 525 North Tryon Street, Charlotte, North Carolina.

26. A representative of the leasing company indicated that there were no records of Aegis or Lakian in the company's lease database as far back as 2010.

27. The ADV-Part 2 that Aegis filed with the Securities Division reflecting an office address as 525 North Tryon Street, Suite 1600, Charlotte, North Carolina 29202, violates N.C.G.S. 78C-9 because the incorrect listing of an office address is misleading in a material respect.

28. N.C.G.S. § 78C-9 states "it is unlawful for any person to make or cause to be made, in any document filed with the Administrator or any proceeding under this Chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect."

29. Additionally, N.C.G.S. § 78C-18(d) requires the registrant to promptly file a correcting amendment with the Administrator if any of the information contained in any document already filed with the Administrator is or becomes inaccurate or incomplete in any material respect.

30. Neither Aegis nor Lakian filed a waiver with the Administrator, as provided for by 18 NCAC 06A .1706(i), requesting to keep the firm's books and records in some place other than within the State of North Carolina.

31. Although Aegis alleges its principal place of business to be in South Carolina, Aegis is not registered with the State of South Carolina as an investment adviser. As Aegis is not registered in South Carolina as an investment adviser, the firm is unable to claim an exemption from compliance with the North Carolina books and records requirements as provided by 18 NCAC 06A .1706(j).

32. In September of 2014, an investigator for the Securities Division obtained a possible Gmail email address for John Lakian. Said investigator sent an email to the address; thereafter, said investigator received responsive email correspondence from someone purporting to be "John Lakian".

33. In email correspondence dated September 22, 2014, "John Lakian" represented that "...Aegis was dissolved. Therefore there is no office."

34. At this time, the Securities Division has been unable to determine a physical principal office address or other office address for Aegis, either within or outside of North Carolina.

35. The Securities Division was not able to contact Aegis or Lakian at the addresses and telephone numbers that the registrant listed as its principal office address and other office addresses on the Forms ADV-Parts 1 and 2.

36. Aegis's failure to promptly amend its principal office, other office addresses, and telephone numbers in the Form ADV-Parts 1 and 2 violates N.C.G.S. § 78C-18(d).

37. Aegis's violations of N.C.G.S. § 78C-18(d) and § 78C-9 have prevented the Securities Division from conducting a reasonable examination of the registered investment adviser pursuant to the authority granted to the Administrator by N.C.G.S. § 78C-18(e) and 18 NCAC 06A .1706(i).

38. Pursuant to N.C.G.S. § 78C-19(a)(2)b, the Division may suspend or revoke the registration of any registrant if the revocation is in the public interest of the citizens of North Carolina and the registrant has willfully violated or willfully failed to comply with any provision of Chapter 78C or any rule under that Chapter.

39. It is in the public interest of the citizens of North Carolina and for the protection of investors that Aegis's registration as an investment advisor be temporarily suspended, pending revocation, for violating the Misleading Filings and Post-registration Provisions of the Investment Advisers Act of North Carolina.

CONCLUSIONS OF LAW

1. The Secretary has statutory authority pursuant to N.C.G.S. § 78C-19 to enter and issue an Order for Summary Suspension against Respondent.
2. There is reasonable cause to believe that Respondent has willfully violated or willfully failed to comply with a provision of the North Carolina Investment Advisers Act or a Rule under that chapter, specifically, N.C.G.S. §§ 78C-9 and 78C-18(d).
3. There is reasonable cause to believe that Respondent will continue to commit acts and/or omissions in violation of the North Carolina Investment Advisers Act.
4. It is necessary and appropriate for the protection and preservation of the public interest that the investment adviser registration of Respondent be summarily suspended.
5. The Administrator finds the entry and issuance of this Order to be in the public interest, for purposes of N.C.G.S. § 78C-19(a)(1).
6. The public interest would be irreparably harmed by the delay inherent in issuing an order under the provisions of N.C.G.S. § 78C-19(c).

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority contained in N.C.G.S. § 78C-19(c), that, the registration of Respondent as an investment advisor in North Carolina, is summarily suspended pending final determination of this proceeding;

NOTICE IS HEREBY GIVEN that Respondent may request a hearing upon this matter by transmitting such request, in writing and within thirty (30) business days of receipt of this document, to David S. Massey, Deputy Securities Administrator, Securities

Division, Department of Secretary of State, Post Office Box 29622, Raleigh, North Carolina 27626-0622. A copy of any such request shall be served by first-class mail upon Kristine M. Ricketts, Enforcement Attorney, Securities Division, Department of the Secretary of State, Post Office Box 29622, Raleigh, North Carolina 27626-0622. If such a request is made, this matter shall be scheduled for a hearing in accordance with Chapter 150B of the North Carolina General Statutes within twenty (20) days after receipt by the Deputy Securities Administrator of the written request. If no request for a hearing, other responsive pleading, or submission is received by the Deputy Securities Administrator within thirty (30) business days of the receipt of service hereof, this Order for Summary Suspension shall become final and remain in effect unless it is modified or vacated by the Secretary of State in her capacity as Administrator of the North Carolina Investment Advisers Act.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina Department of the Secretary of State, this the 20th day of March, 2015.

Time of entry: 2:07 P.M.



ELAINE F. MARSHALL
SECRETARY OF STATE
STATE OF NORTH CAROLINA and
SECURITIES ADMINISTRATOR

By: 
DAVID S. MASSEY
DEPUTY SECURITIES ADMINISTRATOR