

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CIVIL CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KEVIN JOHN KANE, and
SEAN MICHAEL KANE,

Defendants.

COMPLAINT and JURY DEMAND

Plaintiff, Securities and Exchange Commission (“SEC”), alleges against Defendant Kevin John Kane (“Kevin Kane”) and Defendant Sean Michael Kane (“Sean Kane”):

SUMMARY

1. From at least October 2018 through February 2021, Kevin Kane and Sean Kane (jointly the “Kanes” or “Defendants”) were investment advisers associated with a dually-registered investment adviser and broker-dealer (“Investment Adviser 1”). During this time, the Kanes provided investment advisory services to more than one hundred clients who collectively had over \$27 million in assets under management. As investment advisers, the Kanes owed each of their advisory clients a fiduciary duty to act in the client’s best interest, to exercise the utmost good faith in dealing with clients, to disclose all material facts to their clients, and to employ reasonable care to avoid misleading those clients.

2. On February 23, 2021, Investment Adviser 1 terminated the Kanes because they had violated its policies and procedures. Following their termination, in an effort to convince many of their clients to join them at a new investment advisory firm, the Kanes repeatedly

defrauded and breached their fiduciary duty to these clients by: (1) falsely telling clients that they were voluntarily ending their association with Investment Adviser 1, despite having been terminated for cause; (2) falsely telling clients that they were still associated with Investment Adviser 1 and could continue to effect transactions in their accounts; (3) failing to alert clients of their termination and inability to perform transactions in their accounts; and (4) to prevent clients from discovering the truth, impersonating their clients in telephone calls with Investment Adviser 1 to effect securities transactions.

3. By engaging in this conduct, the Kanes violated the anti-fraud provisions of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1) and 80b-6(2). The SEC seeks permanent injunctions and civil penalties against the Kanes.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to Sections 209(d), 209(e)(1) and 214 of the Advisers Act, 15 U.S.C. §§ 80b-9(d), 80b-9(e)(1) and 80b-14.

5. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this complaint.

6. Venue is proper in this district pursuant to Section 214 of the Advisers Act, 15 U.S.C. § 80b-14, because one or more of the acts or transactions constituting the violations alleged occurred within this district. In addition, venue is proper in this district because Defendants reside in this district.

DEFENDANTS

7. **Kevin John Kane**, 66 years old, resides in York, Pennsylvania. From December 13, 2013 through February 23, 2021, Kevin Kane was associated with Investment Adviser 1 as an investment adviser representative and a registered representative. Since March 25, 2021, he has been associated as a registered representative with a broker-dealer, and since May 20, 2021, as an investment adviser representative with an investment advisory firm affiliated with the broker-dealer. Kevin Kane holds Series 7, 63, and 65 licenses issued by the Financial Industry Regulatory Authority (“FINRA”), a non-governmental regulator that oversees broker-dealers. Kevin Kane is the father of Sean Kane.

8. **Sean Michael Kane**, 36 years old, resides in both York and Philadelphia, Pennsylvania. From October 1, 2018 through February 23, 2021, Sean Kane was associated with Investment Adviser 1 as an investment adviser representative and a registered representative. Since March 25, 2021, he has been associated as a registered representative with a broker-dealer, and since May 5, 2021, as an investment adviser representative, with the same firms as his father, Kevin Kane. Sean Kane holds Series 6, 7, 63, and 66 licenses issued by FINRA.

RELATED PARTY

9. **Investment Adviser 1** was dually-registered with the SEC as an investment adviser and broker-dealer. On December 2, 2020, the parent entity of Investment Adviser 1 announced it would be acquired by another company, and that immediately upon completion of the acquisition, the new company would sell Investment Adviser 1 to another investment adviser (“Investment Adviser 2”). The transaction was completed on April 30, 2021.

FACTS

A. The Kanes Were Investment Advisers Associated with Investment Adviser 1.

10. During all relevant times, Defendants were investment advisers within the meaning of Section 202(a)(11) of the Advisers Act, 15 U.S.C. § 80b-2(a)(11).

11. In December 2013, Kevin Kane began working as an investment adviser representative and registered representative at Investment Adviser 1.

12. In October 2018, Sean Kane began working as an investment adviser representative and registered representative at Investment Adviser 1.

13. From at least October 2018 through February 2021, the Kanes worked as investment advisers associated with Investment Adviser 1 from an office located in York, Pennsylvania. They provided investment advice to their investment advisory clients and executed securities transactions for them through Investment Adviser 1's securities brokerage firm.

14. While associated with Investment Adviser 1, the Kanes worked together as a team, operating under the same Investment Adviser 1 "team code" to provide financial planning and advice to advisory clients. The Kanes shared clients and the compensation earned from advising these clients.

15. As investment adviser representatives, both Kevin Kane and Sean Kane provided, and were compensated for providing, financial planning and advice to clients, including advice as to the advisability of investing in, purchasing, or selling securities. As of February 10, 2020, the Kanes were investment advisers to over one hundred clients who collectively had over \$27 million in assets under management at Investment Adviser 1.

16. Immediately after they were terminated by Investment Adviser 1, the Kanes began seeking to associate with another investment adviser to which they could transfer their advisory clients' business.

17. Between February 23, 2021 and approximately March 24, 2021, when the Kanes were not associated with an investment advisory firm, they held themselves out as investment adviser representatives associated with Investment Adviser 1, continued to provide investment advisory services to their clients who had accounts at Investment Adviser 1, and solicited those clients to join them at a new advisory firm with the expectation of compensation.

18. As investment advisers, the Kanes owed each of their advisory clients a fiduciary duty to act in the client's best interest, to exercise the utmost good faith in dealing with clients, to disclose all material facts to their clients, and to employ reasonable care to avoid misleading those clients.

B. Investment Adviser 1 Terminated the Kanes for Cause.

19. During 2020 and early 2021, Investment Adviser 1 determined that both of the Kanes had violated Investment Adviser 1's compliance policies, FINRA rules, and SEC regulations. For example, Investment Adviser 1 determined that the Kanes had undisclosed outside business associations with a third-party that violated Investment Adviser 1's policies and FINRA rules; shared client information with a third-party that violated Investment Adviser 1's policies and SEC regulations; failed to submit retail communications to the firm for review that violated Investment Adviser 1's policies and FINRA Rules; delayed entry of client equity transactions that violated Investment Adviser 1's policies and FINRA rules; and had engaged in a variety of practices that did not adequately protect client information such as texting with clients, sending client confidential information through unencrypted emails, and using a personal email

account and cloud storage to transmit or store client confidential that violated Investment Adviser 1's policies and FINRA Rules.

20. On February 23, 2021, during a conference call with the Kanes, Investment Adviser 1 informed the Kanes that it was terminating each of the Kanes for cause, effective immediately, due to their violations of Investment Adviser 1's policies and procedures. The representative of Investment Adviser 1 advised the Kanes that they were terminated for violation of multiple firm policies including outside business activities, communications with the public, client/data privacy and client signatures. At the same time, Investment Adviser 1 terminated the Kanes' credentials and ability to access Investment Adviser 1's systems, including the systems for executing securities trades on behalf of clients.

21. On or about February 26, 2021, Investment Adviser 1 mailed letters to the Kanes' clients informing them that the Kanes were no longer associated with Investment Adviser 1 and that a new investment adviser representative would be assigned to them (the "Client Letter"). The Client Letter did not provide the clients with any details as to the reasons for Kanes' separation from Investment Adviser 1.

22. On March 3, 2021, Investment Adviser 1 confirmed by email to the Kanes that they "were terminated for cause and [were] not eligible for access to a client list [or] information." That same day, Investment Adviser 1 delivered a letter to each of the Kanes further notifying them that their association with Investment Adviser 1 ended on February 23, 2021. The letters stated in part that the Kanes "are no longer authorized to act as an agent of [Investment Adviser 1] or to hold [themselves] out, whether orally or in writing, as an associated person of [Investment Adviser 1]." The letters instructed the Kanes to return, and cautioned them not to use, any confidential client information obtained while working at Investment Adviser 1. The letters attached a copy of each

Kane's Form U5, a form required to be filed with FINRA when an individual separates from a broker-dealer. These forms reported that the Kanes were "terminated for violation of multiple firm policies including [those related to] outside business activities, communications with the public" and "client/data privacy." Investment Adviser 1 further reported in Sean Kane's U5 that he was also terminated for violating firm policies related to "client signatures."

23. Immediately after they were terminated by Investment Adviser 1, the Kanes began seeking to associate with another investment adviser to which they could transfer their advisory clients' business.

C. The Kanes Repeatedly Breached Their Fiduciary Duty To Their Clients.

24. After Investment Adviser 1 terminated the Kanes on February 23, 2021, the Kanes repeatedly violated their fiduciary duties in an effort to convince their clients to join them at a new investment advisory firm so that they would continue to receive advisory fees.

25. In response to the Client Letter, the Kanes contacted, and were contacted by, certain of their clients who had accounts at Investment Adviser 1 by email, text message, telephone, and in person. Contrary to Investment Adviser 1's policies, the Kanes retained confidential client contact information such as account numbers, dates of birth, telephone numbers and email addresses, which Investment Adviser 1 had demanded that they immediately return after the Kanes were terminated. The Kanes then used this information to contact their advisory clients who had accounts at Investment Adviser 1 to discuss transferring their accounts to a new investment adviser.

26. In connection with these communications following their firing by Investment Adviser 1, the Kanes defrauded their clients and breached their fiduciary duties by (1) falsely telling clients that they had voluntarily ended their association with Investment Adviser 1, despite

having been terminated for cause; (2) falsely telling clients that they were still associated with Investment Adviser 1 and could continue to effect transactions in their accounts; (3) failing to alert clients of their termination and inability to perform transactions in their accounts; and (4) to prevent clients from discovering the truth, impersonating their clients in telephone calls with Investment Adviser 1 to effect securities transactions.

27. Specific instances of the Kanes' fraudulent conduct and breaches of fiduciary duties include the following:

- a. On March 1, 2021, after learning about the Client Letter, Client A texted Kevin Kane asking whether the Kanes had "left [Investment Adviser 1]?!?" and if so, "Now what?" Kevin Kane replied, falsely, "No. Not yet. Lol. [Investment Adviser 1] was bought by [Investment Adviser 2]. Not happy with it but I'm still at my desk."
- b. On a subsequent phone call, Kevin Kane gave Client A the false impression that the Kanes were leaving Investment Adviser 1 voluntarily because of Investment Adviser 1's merger with Investment Adviser 2; failed to disclose that Investment Adviser 1 had terminated the Kanes for cause; and stated falsely that the Kanes could still access Client A's advisory account.
- c. On March 1, 2021, Client B instructed Sean Kane to purchase a specific security in Client B's Investment Adviser 1 advisory account. Sean Kane failed to disclose to Client B that Investment Adviser 1 had terminated the Kanes for cause, or that the Kanes could no longer access Client B's account. Instead, without client consent, Sean Kane impersonated Client B on a telephone call with Investment Adviser 1 to execute the purchase of a security. To accomplish this transaction, Sean Kane used

the client's confidential information including the client's date of birth and social security number.

- d. After his termination, Kevin Kane met with Client C, a representative of an investment club, and stated that the Kanes were leaving Investment Adviser 1 because the firm was cutting back on support of individual financial advisors. Kevin Kane failed to disclose that Investment Adviser 1 had terminated the Kanes for cause.
- e. On March 1, 2021, Client C instructed Kevin Kane to execute certain securities transactions in in the investment club's advisory account. Again, Kevin Kane failed to inform Client C that Investment Adviser 1 had terminated the Kanes for cause. Instead, using confidential client information, including the account number and Client C's social security number, Kevin Kane impersonated Client C, without their knowledge or consent, on a telephone call to Investment Adviser 1 in order to execute the requested transactions.
- f. On March 2, 2021, after receiving the Client Letter, Client D texted Sean Kane asking, "what's going on[?] Guessing your team has left [Investment Adviser 1]. Due to being bought up.???" Sean Kane replied that Investment Adviser 1 is "being bought by [Investment Adviser 2]" and stated, falsely, "we decided not to go that route.... As of now nothing changes" Sean Kane failed to disclose that Investment Adviser 1 had terminated the Kanes for cause.
- g. On March 3, 2021, Sean Kane texted Client E stating, "you'll be receiving a letter from [Investment Adviser 1].... They're being bought by [Investment Adviser 2]...." Sean Kane further stated, falsely, "we decided not to go with them after the

merger.... As of now nothing changes at all for you....” Sean Kane failed to disclose that Investment Adviser 1 had terminated the Kanes for cause.

- h. On March 8, 2021, after receiving the Client Letter, Client F telephoned Kevin Kane and asked if he was no longer employed by Investment Adviser 1. Kevin Kane stated, falsely, to Client F that the Client Letter was a misunderstanding and the Kanes were leaving the firm because of its merger with Investment Adviser 2. Kevin Kane failed to disclose to Client F that Investment Adviser 1 had terminated the Kanes for cause, and stated, falsely, that he could still access Client F’s account.
- i. After receiving the Client Letter, Client G called Kevin Kane on March 2, 2021. Kevin Kane told Client G that the Kanes were still associated with Investment Adviser 1, they were voluntarily leaving Investment Adviser 1 because of its acquisition and planned to join another advisory firm, and failed to disclose that Investment Adviser 1 had terminated the Kanes for cause.
- j. On March 16, 2021, Client G instructed Kevin Kane to sell certain securities in Client G’s Investment Adviser 1 advisory account. Kevin Kane failed to disclose that Investment Adviser 1 terminated the Kanes for cause, or that they could no longer access Investment Adviser 1 client accounts. Instead, on March 16, 2021, using Client G’s confidential client information, including his date of birth, social security number and address, Kevin Kane impersonated Client G, without his knowledge or consent, on a telephone call to Investment Adviser 1 to execute the sales.
- k. On March 18, 2021, Client H called Sean Kane requesting information about a disbursement from his Investment Adviser 1 advisory account. Sean Kane failed to

disclose that Investment Adviser 1 had terminated the Kanes for cause, or that they could no longer access Investment Adviser 1 client accounts. Instead, using confidential client information, including the client's date of birth, social security number and address, Sean Kane impersonated Client H, without their knowledge or consent, on a telephone call to Investment Adviser 1 to obtain the requested information. Sean Kane attempted to disguise his identity from Investment Adviser 1 by entering *67 before he called the firm. Entering *67 before making a call allows a user to block their Caller ID name and number.

- l. On March 19, 2021, Client J texted Sean Kane requesting information about how to disburse funds from her advisory account. Client J asked, "do I just go through YOU at [Investment Adviser 1] if I decide to take the Money out now?" Sean Kane failed to disclose that Investment Adviser 1 had terminated the Kanes for cause, or that they could no longer access Investment Adviser 1 client accounts. Instead, Sean Kane stated, falsely, "Yes I can still withdrawal [sic] whatever you need."
 - m. After Investment Adviser 1 terminated the Kanes for cause, Kevin Kane called Client K and told him, falsely, that the Kanes were leaving Investment Adviser 1 because of the merger with Investment Adviser 2, and failed to disclose that the Kanes had been terminated for cause.
 - n. On March 22, 2019, using Client K's confidential client information, including the client's account number and social security number, Kevin Kane impersonated Client K, without Client K's knowledge or consent, on a telephone call to Investment Adviser 1 to request a cash disbursement from Client K's account.
28. On March 18, 2021, Investment Adviser 1 became suspicious that the Kanes were

impersonating clients in telephone calls to the firm, and started an investigation. On March 23, 2021, Investment Adviser 1 sent cease-and-desist letters to the Kanes, stating they were not authorized to act as agents or associated persons of Investment Adviser 1, and demanding the return of Investment Adviser 1's confidential client information.

D. The Kanes Acted with Scienter.

29. Kevin Kane knew, or was reckless in not knowing, that Investment Adviser 1 had informed him that he was terminated for cause on or about February 23, 2021. Despite this, Kevin Kane knowingly or recklessly concealed this fact from clients; knowingly or recklessly represented falsely that he had access to client accounts or the ability to effect securities transactions in those accounts; knowingly or recklessly impersonated clients using their personal confidential information to communicate with Investment Adviser 1; and knowingly or recklessly provided false information to, or omitted material information from, clients regarding the real reason for leaving Investment Adviser 1.

30. Sean Kane knew or was reckless in not knowing that Investment Adviser 1 had informed him that he was terminated for cause on or about February 23, 2021. Despite this, Sean Kane knowingly or recklessly concealed this fact from clients; knowingly or recklessly represented falsely that he had access to client accounts or the ability to effect securities transactions in those accounts; knowingly or recklessly impersonated clients using their personal confidential information to communicate with Investment Adviser 1; and knowingly or recklessly provided false information to, or omitted material information from, clients regarding the real reason for leaving Investment Adviser 1.

E. The Kanes Acted Negligently.

31. During all relevant times, Defendants failed to exercise reasonable care.

32. Kevin Kane failed to exercise reasonable care by failing to disclose to clients certain material facts, including that he was not associated with Investment Adviser 1 and could no longer serve as the clients' investment adviser representative and thus, among other things, was not allowed to effect securities transactions through Investment Adviser 1; by impersonating certain clients in communications with Investment Adviser 1; and by providing materially false and misleading information – and omitting material information – regarding the real reason he was no longer associated with Investment Adviser 1.

33. Sean Kane failed to exercise reasonable care by failing to disclose to clients certain material facts, including that he was not associated with Investment Adviser 1 and could no longer serve as the clients' investment adviser representative and thus, among other things, was not allowed to effect securities transactions through Investment Adviser 1; by impersonating certain clients in communications with Investment Adviser 1; and by providing materially false and misleading information – and omitting material information – regarding the real reason he was no longer associated with Investment Adviser 1.

FIRST CLAIM FOR RELIEF
Fraud by an Investment Adviser (Knowing or Reckless)
Violations of Section 206(1) of the Advisers Act
(Against All Defendants)

34. The SEC realleges and incorporates by reference paragraphs 1 through 30 above.

35. By providing, and being compensated for providing, financial planning and advice to clients, including advice as to the advisability of investing in, purchasing, or selling securities and otherwise performing the acts alleged in this Complaint, Kevin Kane and Sean Kane acted as investment advisers.

36. By engaging in the conduct described above, Kevin Kane and Sean Kane, directly or indirectly, by use of the mails or means and instrumentalities of interstate commerce, with scienter, employed devices, schemes or artifices to defraud clients or prospective clients.

37. By engaging in the conduct described above, Defendants have violated, and unless enjoined, will continue to violate, Section 206(1) of the Advisers Act, 15 U.S.C. § 80b-6(1).

SECOND CLAIM FOR RELIEF
Fraud by an Investment Adviser (Negligent)
Violations of Section 206(2) of the Advisers Act
(Against All Defendants)

38. The SEC realleges and incorporates by reference paragraphs 1 through 33 above.

39. By providing, and being compensated for providing, financial planning and advice to clients, including advice as to the advisability of investing in, purchasing, or selling securities and otherwise performing the acts alleged in this Complaint, Kevin Kane and Sean Kane acted as investment advisers.

40. By engaging in the conduct described above, Defendants, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce, engaged in a transaction, practice, or course of business which operated as a fraud or deceit upon clients or prospective clients.

41. By engaging in the conduct described above, Defendants have violated, and unless enjoined, will continue to violate, Section 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(2).

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that the Defendants committed the violations alleged in this Complaint.

II.

Enter an injunction, in a form consistent with Rule 65 of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendants, and their agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, from violating Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

III.

Order Defendants to pay civil money penalties pursuant to Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

IV.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

V.

Grant such other and further relief as this Court may determine to be just and proper.

JURY DEMAND

The SEC demands a trial by jury on all claims so triable.

Dated: March 1, 2023

/s/ Leslie J. Hughes

Leslie J. Hughes (Colo. Bar No. 15043)

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