BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: DAMIEN PAYMAN ALEXANDER, Respondent.	OAH No. 2013050158

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings (OAH), on May 20, 21, 22, and 23, 2013, in Sacramento, California.

Miranda L. Lekander, Counsel, Department of Corporations (Department), represented Jan Lynn Owen, Commissioner, State of California (Complainant).

Damien P. Alexander (respondent), was present and represented himself.

Evidence was received and the record remained open for the filing of the Department's Declaration of Costs and Ancillary Relief. On June 6, 2013, OAH received the Department's Declaration of Counsel in Support of Petition for Attorneys' Fees and Investigative Expenses (Corp. Code, § 25254). This Declaration was marked for identification as Exhibit 19. The record closed on June 7, 2013.

SUMMARY

Respondent obtained his Series 6 and Series 63 registrations in 1996 and was qualified to sell mutual funds and other variable products under a registered broker-dealer through July 12, 2011. Respondent was licensed by the Department of Insurance in June 2001 and was authorized to sell accident, health, and life insurance products through June 2013.

In July 2011, respondent began working with Donald Raymond Dunakin III. Mr. Dunakin was formerly registered as a securities broker from 1999 to December 2009, when he was permanently barred from selling securities or associating with any broker/dealer investment advisor. In 2009/2010, Mr. Dunakin formed three corporations: Dunakin Investments, Inc., Platinum Performance Holdings, LLC (PPH), and Preferred Diversified Holdings, LLC (PDH) (Dunakin's companies).

These companies shared a principal business address in Folsom, California. As a "sales director" respondent was responsible to attract investment clients to Dunakin's companies. Respondent solicited his own insurance and investment clients to transfer savings to Dunakin's companies. Dunakin's companies were a sham. Investor money was not invested in valid financial products. Sales literature used to explain Dunakin investment products was cut and pasted from the prospectuses of other companies. Performance data and charts were falsified. Mr. Dunakin appropriated deposits for personal gain, unauthorized ventures, and overhead business expenses including respondent's commissions and bonuses.

In March 2013, Mr. Dunakin was convicted of securities fraud and sentenced to state prison. Several investors lost substantial or all of their deposits. The Department alleged in the Accusation that respondent's actions and omissions relative to Mr. Dunakin's ventures constituted fraud, misrepresentation, and dishonest dealing in violation of the Corporate Securities Law and are cause for disciplinary action including being barred from any position of employment, management or control of any broker-dealer or investment adviser, administrative penalties, ancillary relief (disgorgement and prosecution/investigation costs), and a desist and refrain order. For the reasons stated herein, respondent's violations warrant discipline of his securities license and licensing rights.

FACTUAL FINDINGS

1. Complainant made and filed this Accusation in her official capacity on or about April 2, 2013.

2. *License History*. Respondent was licensed from June 23, 2001, through June 30, 2013, with the Department of Insurance as an Accident and Health agent, Life-Only agent, and Variable Contracts agent (Lic. No. 0D34070). Respondent passed the Series 6 and 63 examinations in 1996.[1] Respondent was last licensed with the Financial Industry Regulatory Authority (FINRA) to perform sales of investment products through July 12, 2011 (CRD No. 2724252). He was registered as an agent with the broker/dealer firm Financial Network Investment Corporation from August 13, 2008 through July 1, 2011. A review of the Central Registration Depository (CRD) system, maintained by the Department, confirmed that respondent has not been registered as an agent with any broker/dealer firm since July 12, 2011.

---

[1] The Series 6/63 examinations are administered by the Financial Industry Regulatory Authority (FINRA). Passing the Series 6/63 examination allows individuals to sell investment company products (mutual funds, variable annuities, variable life insurance, and mutual fund securities).

3. Mr. Dunakin passed the Series 7 and 63 examinations in 1998.[2] He was licensed with FINRA from approximately 1998 to December 2009. He was last registered as a securities broker with Gunnallen Financial, Inc. from August 2007 to April 2009 (CRD No. 17609). His FINRA Web CRD Record reflects several violations of FINRA rules. Effective December 3, 2009, FINRA issued a final determination permanently barring Mr. Dunakin from "association with any FINRA member in any capacity." The allegation was that Mr. Dunakin engaged in unsuitable trading, unauthorized trading, breach of fiduciary duty, negligence, fraud, and constructive fraud.

Department Expert – Nick Kotyrol

4. Nick Kotyrol is employed by the Department in the Securities Regulation Division. He began working for the Department in 2004. He possesses an undergraduate degree in Business Administration, is a Certified Public Accountant (CPA), and has taken the Series 7 and Series 65 (investment advisors) training courses.[3] Mr. Kotyrlo explained that FINRA is a self-regulatory national organization that regulates broker-dealers. You must be either a broker-dealer or broker-dealer agent (agent) to sell securities in the United States. A broker-dealer agent works for a broker-dealer. The public can check the registration/license status of agents and brokers on the Department or FINRA websites.

5. During the execution of a search warrant at Mr. Dunakin's home and Folsom office, investigators found a document entitled "Platinum Performance Holdings, LLC - Private Offering Memorandum" (PPH Memorandum), dated May 20, 2010. Investigators also received a copy of this PPH Memorandum from several defrauded investors. Mr. Kotyrlo testified that this product is a "private placement offering for securities." In fact, the plain language under "Introduction" of the PPH Memorandum states as much:

> Platinum Performance Holdings, LLC is a California Limited Liability Company (the "Company") formed on the 21th [sic] of May, 2009 as a private investment vehicle for a limited number of sophisticated, long-term investors. The Company will engage primarily in the purchase and sale of long positions in publicly-traded securities, and during extreme market environments, may hedge the portfolio using options, futures, other derivative securities and short sales of stocks....

---

[2] Passing the Series 7/63 examination allows individuals to sell securities (stock, bonds, options, limited partnerships, and investment company products).

[3] Mr. Kotyrlo did not sit for the FINRA examinations as he stated that would present a conflict of interest.

6. Mr. Kotyrlo explained that "long position securities" are companies traded on the stock exchanges (the New York Stock Exchange is the primary one). Individuals need a license to trade or invest money in the stock exchange and must go through a licensed dealer. Since being barred in December 2009, Mr. Dunakin was not licensed to sell securities.

7. The PPH Memorandum is 36 pages long and is followed by numerous "Subscription Documents" which are forms to be completed by the purchaser. The manager of PPH is identified as "Donald Dunakin Platinum Performance Holdings, LLC, a California Limited Liability Company ("Manager")." The PPH Memorandum also states:

> The company is not registered as an investment company under the Act, the interests offered hereby have not been and will not be registered under the Securities Act, or any state or other securities laws. Interest in the company are offered and sold for investment only pursuant to an exemption from registration with the SEC and in compliance with any applicable state or other securities laws. The interests are being offered only to a limited number of persons who are accredited investors within the meaning of Rule 501 of Regulation D promulgated under the Securities Act...

8. Mr. Kotyrlo explained that if the broker is claiming that an offering is "exempt," the broker must file a notice with the Securities and Exchange Commission (SEC) or Department. Even if an agent claims the security is "exempt" a broker-dealer license is still required. PPH was not registered with the SEC as exempt. According to a Certificate of Search by the Department's Custodian of Records, as of August 2011, neither Donald Raymond Dunakin III, Dunakin Investments, PPH, PDH, nor respondent, held "any qualification or permit authorizing any offer or sale of securities, or any application for such, or any notice of exemption."

According to Mr. Kotyrlo, Mr. Dunakin was barred at all relevant times from doing any business in the securities industry or associating with any broker-dealer investment. Mr. Kotyrlo testified that at all relevant times respondent had no qualification or permit authorizing him to offer or sell securities or any investment application or notice of exception.

9. Private placement offerings are targeted to "accredited investors" with a net worth of at least $1 million, excepting the value of the primary residence. This protects the public by ensuring that only large investors with more sophisticated knowledge are targeted. The law assumes that people with great wealth will take more care. As is set forth below, the investors that respondent solicited were not "accredited investors." Mr. Kotyrlo pointed out language in the PPH Memorandum

under "Accredited Investor Certification" requiring each subscriber to represent that they were in fact an "Accredited Investor" based on listed criteria. Criteria included being an individual subscriber with an IRA with a net worth in excess of $1,000,000, an individual subscriber with an income in excess of $200,000 in each of the two most recent years, or joint income with a spouse in excess of $300,000 in the two prior years. Of the 13 investors who testified, none stated that they met the income requirements to be deemed "accredited investors."

10. Mr. Kotyrlo explained that in order to sell securities, respondent needed to associate with another broker-dealer after leaving his last employer, Financial Network. When a licensed broker-dealer firm determines to employ an agent they give a "form U-4" to the prospective employee. The candidate completes the form which is then filed with Central Registry Depository maintained by FINRA. An agent can easily check on the status of a potential employer.

11. Mr. Kotyrlo stated that broker-dealers and agents have a duty of diligence. The industry standard is for brokers and agents to evaluate all products on their approved list of offerings. This includes evaluating financial statements and checking the background of the people making the offering (CRD records at a minimum). Broker-dealers must maintain certain books and records to ensure net capital is proper and for general accounting purposes. Broker-dealers report to FINRA on a quarterly basis and must carry a bond to insure client funds. The Department's Securities Regulation Broker Dealer Advisor Unit conducts field audits of the financial health of firms. Because Dunakin companies were not registered with FINRA, the Department was unaware of the firm's operations for the purpose of initiating a field audit.

Department Investigator - Christopher Lewis

12. Christopher Lewis is an investigator for the Department. He is a peace officer and is POST certified. He has taken and passed the Series 6 examination through FINRA. He received a call from the Department of Justice in March 2012 regarding an ongoing investigation of Mr. Dunakin's companies. During a search of Mr. Dunakin's offices, Mr. Lewis found two different business cards for respondent. One identified respondent as a PPH "Wealth Manager" and the other as a Dunakin Investments "Sales Director." Mr. Lewis obtained sales brochures and earnings data during the search and from various investors who told him that they had received the investment packet from respondent.

13. Mr. Lewis determined that the documentation used by respondent to sell the PPH investment product was invalid. The PPH marketing brochures contained monthly earnings data and statistics (in graph and pie chart form) for PPH

from September 2007 through August 2010.[4] This monthly earnings data could not have been valid since PPH was not organized until 2009. Mr. Dunakin filed "Limited Liability Articles of Organization" for PPH with the California Secretary of State on February 10, 2009. Mr. Dunakin filed "Limited Liability Articles of Organization" with the California Secretary of State for PDH on February 16 and March 23, 2009. Even the May 2010 PPH Memorandum (at page 25) states: "Platinum Performance Holdings, LLC, has no operating and investing history upon which potential investors may evaluate past performance." Hence, the PPH Memorandum contradicts the marketing materials, and the earnings data distributed by respondent was fictitious and misleading.

14. Mr. Lewis interviewed respondent and approximately 20 investors during the course of his investigation. During the search of the Dunakin offices, Mr. Lewis obtained investor files that contained registration forms and wiring instructions for each client. This Registration Information form was "To Be Completed by All Subscribers" and used to wire opening deposits to a Preferred Diversified Holdings account at JP Morgan Chase Bank.

Every investor who testified stated that respondent completed the Registration form for them, and they simply signed where he indicated. The Registration form contained spaces for the subscriber name, address, telephone, and e-mail. It also asked three questions which were answered the same for every investor: Are you a U.S. Person? "Yes," Are you an Existing Member? "No," and Were you referred by someone else? "No." This response is false since respondent was the referring party. The line provided for his name as the referring party was left blank on every form.

Finally, the Registration form contained a space for the "Amount of Subscription," and beneath this line it states: "*(Minimum $250,000)*." This relatively large investment floor helps ensure that the subscriber is a more sophisticated investor with higher earnings. Not a single investor solicited by respondent invested the minimum amount. Respondent accepted amounts as low as $10,000 and $25,000. These were clearly not the type of investors deemed to have sophisticated knowledge of securities offerings. The product should not have been offered to them.

15. Mr. Lewis learned from investors that respondent acted as their investment advisor which he defined as "someone providing investment advice for purpose of effectuating a sale." Prior to his affiliation with Mr. Dunakin, respondent sold clients reputable mutual fund and insurance products. As such, they had each built up trust in his advice. Unbeknownst to them, respondent was no longer licensed as an investment advisor after July 12, 2011, when his relationship with Financial

---

[4] Claimed year to date earnings were as follows: 2007 at 20.77 percent, 2008 at 137.65 percent, 2009 at 1102.53 percent, and 2010 at 339.98 percent. Since inception, PPH had reportedly earned 1600.9 percent.

Network Investment Corporation ended. Because Mr. Dunakin was also not a licensed broker-dealer after being barred effective December 3, 2009, respondent could not enter into a valid agency with Mr. Dunakin.

16. Mr. Lewis also found that in 2010, Mr. Dunakin filed for bankruptcy in the U.S. Bankruptcy Court, Eastern District of California. Public bankruptcy records show that Mr. Dunakin sought to discharge six civil suits pending against him at that time. On February 14, 2011, Mr. Dunakin filed his "Schedule I-Current Income of Individual Debtor(s) – Amended" in the Bankruptcy court. The form asked him to "describe any increase or decrease in income reasonably anticipated to occur within the year following filing of this document." He answered:

> Dunakin investments is winding down and is expected to be completely dissolved by April 2011. No future income is expected from date of filing.

It is noted that respondent became affiliated with Mr. Dunakin five months later, in July 2011, and solicited investment clients for Dunakin investments through May 2012. The Bankruptcy court granted discharge of Mr. Dunakin's debts on August 10, 2011 (Case No. 10-52578-A-7). None of the investors knew about the bankruptcy. Respondent denied knowing that Mr. Dunakin, his employer, had filed for bankruptcy.

DOJ Auditor – Vikram Mandla

17. Vikram Mandla has worked for the Department of Justice, Criminal Division, as an investigative auditor for six years. He holds an undergraduate degree in Business, a graduate degree in Accounting, a juris doctorate degree, and a license to practice law. His duties involved conducting financial investigations. The search warrant on Mr. Dunakin and his enterprises yielded bank statements for multiple accounts at Chase Bank, Bank of America, and Umpqua Bank. Mr. Mandla analyzed the statements to determine the source and use of funds, and created a spreadsheet of his findings.

18. Of the $2,477,333 deposited into Mr. Dunakin's accounts, Mr. Mandla found that the majority of the money came from investors. Mr. Dunakin received $2,025,121 or 82 percent of all deposits from investors. Mr. Mandla itemized the investor names and deposits remitted to Dunakin investments.

19. Mr. Mandala found that of the total deposits of $2,477,333, only $30,000 or one percent was used for investment related activities (transferred to SOGO Trade), $1,138,391 or 46 percent was distributed to Mr. Dunakin (cash, housing, travel, and other personal expenses), $366,088 was paid to investors, $287,038 was paid to 121 unknown individuals (not investors), $145,986 was paid to respondent (salary and business expenses), $74,712 was invested in a night club

venture in downtown Sacramento, and $78,604 was used to purchase a house. The balance went out in miscellaneous withdrawals.

Investors Complaints

20. Debra Gard is a DOJ investigator in the Special Crimes Unit. Her duties included conducting the securities fraud investigation of Mr. Dunakin's companies. She interviewed 20 investors who had a prior relationship with respondent when he was their insurance agent and financial advisor. Many of these investors wrote victim impact statements for use in Mr. Dunakin's sentencing hearing. At hearing, the Department submitted victim impact statements from nine defrauded investors at hearing. Thirteen victims testified about the harm respondent had caused them and their families. Below is a summary of their complaints as it relates to respondent.[5]

a. Kathy Dotson is 59 years of age. She and her husband, Willie Freeman, testified at hearing. Ms. Dotson met respondent approximately 15 years ago and opened a Roth IRA. She called respondent her "financial advisor" and stated that she "unknowingly" invested in Mr. Dunakin's company. Respondent told her the new investment was "a great thing." He told them house they were purchasing would be "paid off in three years." Respondent told them the money was going into "short term money market and bonds, global bonds through Black Rock, real estate, toxic acids, assisted living, commercial properties, PPH (10 percent), and Forex." She and Mr. Freeman, transferred $23,618.04 from their retirement account at a credit union. Ms. Dotson "trusted" respondent and believed she could access her money at any time. She did not know that respondent was not licensed to sell securities. She first realized there was a problem when she lost her unemployment compensation and "really needed money...things were tight." She contacted respondent who told her to call "later" and later told her to call Mr. Dunakin at Dunakin's night club, Purgatory. Ms. Dotson and Mr. Freeman started visiting Purgatory multiple times a week and asking for their investment back. Mr. Dunakin ultimately returned $7,500.

b. Marcus Mann and Fred Mann are brothers and both dentists. Both testified at hearing. Respondent has been their insurance broker for 17 years, and 10 years ago helped them set up a SETH IRA with Western Reserve Life. In 2011, respondent came to the dental office with a brochure and investment package.

---

[5] Twenty-one victims were identified through credible evidence presented at hearing. Seventeen victims were identified through testimony at hearing: Kathy Dotson, Willie Freeman, Marcus Mann, Bonnie Grewal and husband Monie Grewal, Mortenza Ahmadi and wife Mojgan Rahmani Ahmadi, Mohammed Tahoori, Fred Mann, John Stralen and wife, Larry Poore, Shahram Ardalan and wife Katayoun Ardalan, Ehsand Ghods, Terri Jackson, and Lloyd Robert Jackson. Four victims were identified solely through their victim impact statements: Gerald Martino and wife, Alex Flowers, Maxx Zamani.

Respondent said it was run by "professional investors" referring to Mr. Dunakin. Dr. Mann recalled respondent stating that the product "worked with currency exchange and you make money whether the stock market goes up or down...that they have ways to hedge it." They took a few weeks to consider investing while respondent followed up at least twice by phone. They were motivated to invest because respondent told them the money would "double or triple within a few years' time."

Dr. M. Mann initially invested $25,000 and added another $10,000 in April 2012, in lieu of his regular IRA deposit. Respondent told him he had to keep the money there for "a two year term" or suffer a 15 percent penalty. Dr. Mann saw the "minimum $250,000" language on the Registration form and asked respondent about it. Respondent said he had "special permission to lower the investment amount." Neither doctor knew that respondent was unlicensed or that Mr. Dunakin was barred from selling securities. Neither has received a refund or any return on their investment.

Dr. F. Mann was "very reluctant" because it was not the type of investment he had used in the past with more established companies. After respondent's third office visit, he and his brother decided to go along with it because they trusted respondent based on past performance. Respondent told them that his own family had invested money in the product and that he was "going to." Respondent never invested in the Dunakin venture. Dr. F. Mann invested an initial $25,000 and added his annual $10,000 IRA contribution in April 2012. After two to three months, when Dr. F. Mann did not receive a statement, he called respondent several times. Respondent told him he would contact Mr. Dunakin and "see to it that I would receive something." Respondent told Dr. F. Mann that they were having problems with "software updates" and that he was "keeping a close eye on the money." After a while with no statement, Dr. F. Mann started to get that "sick feeling" that something was wrong. He subsequently received a call from the DOJ.

c. Bonnie Grewal is an IT administrator and her husband Moni Grewal is an engineer. She has known respondent for nine years. He helped them set up retirement funds with John Hancock. In December 2011, respondent called them and to arrange a meeting to discuss a new investment. He described PPH as a wealth management company and showed them handouts of PPH holdings and performance. He said he was working for the company and could get a good return on investments. Whereas John Hancock was giving them four to five percent, with PPH they would get 13 to 20 percent which he "guaranteed." The money would be invested in "foreign currency and foreign oil." The Grewal's wanted more time to go over the large package.

Respondent called them again in mid-January 2012 and told them they needed to "quickly invest" in the product and be "very aggressive" about it otherwise "you will lose the opportunity to double your money." Ms. Grewal gave the phone to her husband who was not impressed with the names of the Board of Directors and was

leery. Respondent replied, "Are you interested in academic background or do you want to make money." Ms. Grewal stated that she "trusted" respondent. He told them they could withdraw after a "three year term" to avoid a penalty. Respondent told them, "Your money is going to be safe. You will double your money in three years."

In February 2012, they authorized a transfer of $133,000 from John Hancock to their bank. Respondent went to their bank to wire the money directly to PPH. Ms. Grewal described him as "proactive" as he brought all of the transfer paperwork with him. At the last minute, she decided to add approximately $10,000 from her savings account. The Grewals invested a total of $144,000. They believed respondent had a valid license to transact business. They did not know Mr. Dunakin was barred from selling securities or that respondent would receive a residual on their investment.

The Grewals first became concerned when they called respondent to inquire about their initial statement. Respondent told them he would be hearing from the main corporate office within six weeks. In April 2012, Ms. Grewal called respondent again. He gave her a number for PPH and told her to call about her statement. She left three voice messages over a week and then called respondent again to say she could not reach anyone and had received no statement. He told her to try back again which she did. In mid-May 2012, she called respondent and told him she did not have a good feeling about the investment and wanted to "revoke" and pay "whatever penalty I have to pay" but she needed her money back. In June 2012, Ms. Grewal called respondent who disclosed that Mr. Dunakin had invested all of her money in a night club. Respondent gave her Mr. Dunakin's e-mail address. In July 2012, Ms. Grewal received a call from Ms. Gard at the DOJ. This is when she learned that respondent was operating without a license. Ms. Grewal did reach Mr. Dunakin once and he told her that the money had been invested for three years and she would not be able to take out the money. The Grewals invested their entire retirement savings and will need to continue working in order to recover some of the lost investment.

d. Morteza Ahmadi and his wife, Mojgan Rahmani, have known respondent for seven years as their insurance consultant. They own a construction company and five years ago, respondent helped them set up an IRA account with ING Retirement Services. Around December 2011 respondent called them "a few times" about a new investment opportunity. He came to their home and reviewed the package. Respondent told them he had "researched" the company and "how successful Mr. Dunakin was" with investments. The ING account was earning seven percent and respondent told them, "I guarantee you will be able to get 10 percent." They invested the entire $75,000 balance from ING because of "the trust we had in [respondent]." They had tried to trade stock before but did not have enough knowledge. Respondent told them that he was "in the office and could supervise our account much better."

When respondent arrived at their home, it was late and he left no copies of documents. He gave them the number of a secretary in the office. Every time they called, they got no response. The Ahmadis traveled to Iran in July 2012. When they returned in August 2012, there was a message from the DOJ. They then learned that respondent was unlicensed and that Dunakin was "not a legitimate company." Mr. Ahmadi also learned that a second transfer of $75,000 had been wired to PPH without their signature or consent. Mr. Ahmadi contacted respondent who told them that "maybe" he could get their money back. He took them to Purgatory Bar in downtown Sacramento, where the money was supposedly invested. The Ahmadi's have not received a refund or any return on their $150,000 investment.

e. Mohammed Tahoori owns a smog shop and has known respondent since 1996. Mr. Tahoori called respondent his "financial broker." Respondent helped set up insurance, stocks, a John Hancock retirement account, and an IRA. At the beginning of 2012, respondent came to Mr. Tahoori's shop to discuss Dunakin investments. Respondent told Mr. Tahoori that he was "losing money" in his retirement account and he had a "better product for you." Mr. Tahoori stated he trusted respondent. Mr. Tahoori went against the advice of his adult son who told him, "Don't do it." Respondent called again and in August 2011, Mr. Tahoori invested $25,000 from the John Hancock fund. Mr. Tahoori subsequently called respondent when he did not receive a statement from Dunakin's company. Respondent said, "You're doing good, don't worry about it."

Mr. Tahoori stated that respondent gave him promotional materials. He did not review them because he trusted respondent. Respondent did not disclose that he was unlicensed or that he would receive a commission on the investment. Mr. Tahoori has no experience investing money in the United States. He did not have a net worth of $1million and did not earn in excess of $200,000 a year. He learned that he had lost his investment from Debra Gard at the DOJ. Mr. Tahoori spoke to respondent many times after that and respondent said, "I am going to get your money."

f. John Stralen has known respondent since 2000. Mr. Stralen is a self-employed personal injury attorney. Respondent set up health insurance for his family, a 401k, and mutual funds. Respondent is no longer Mr. Stralen's insurance agent. In 2011, respondent contacted Mr. Stralen about a new investment opportunity. At the time Mr. Stralen had $80,000 invested in mutual funds. Respondent wanted him to transfer the entire balance to Dunakin investments, however, Mr. Stralen was only willing to invest $25,000. Respondent completed the wire transfer forms and Mr. Stralen signed it on December 24, 2011. Respondent told Mr. Stralen that the investment opportunity was being limited to certain individuals and if he did not act immediately, it would be a "missed opportunity." Respondent stated that you needed to have a minimum amount of money to be involved but that he had "authority to waive the amount." Mr. Stralen believed that other investors were investing $250,000. Mr. Stralen has no experience in securities investment and relied on

respondent. He did not know that respondent was unlicensed or that the product was not licensed with the proper authorities. Respondent told Mr. Stralen that the company was "in compliance with relevant laws and regulations." They had two to three calls and the same number of visits before Mr. Stralen decided to invest. Respondent did disclose that he would receive a commission.

g. Larry Poore owns a business, Medical Solutions, and has known respondent for 10 years. Respondent helped Mr. Poore obtain health insurance and establish his 401K and IRA accounts. In late-2011, respondent contacted Mr. Poore about a new investment group he was working with. Respondent told Mr. Poore that the minimum investment was "$25,000." He said he had already "recruited a number of investors" and the group had investments in "real estate, apartment complexes, night clubs, and cash generating businesses that were doing much better than the stock market at the time." Mr. Poore told respondent he did not want to put "$25,000 in one basket." When respondent returned, he told Mr. Poore that he had "gone back to the powers that be" and convinced them to allow Mr. Poore to join for less.

Respondent "assured [Mr. Poore] that this was a relatively risk free investment." Respondent did not fix a minimum term that the money had to remain in the account. Mr. Poore did not know respondent was unlicensed or that Mr. Dunakin had been barred from selling securities. They "never" discussed commissions or residuals to respondent. Mr. Poore learned he had lost his investment when he received a call from the DOJ. He subsequently called respondent and recalled a "considerable amount of back peddling." Respondent told Mr. Poore that the matter was "being looked into" and that respondent was doing his own investigation. In Mr. Poore's opinion, respondent had not done his "due diligence" and he no longer trusts him with his money. Mr. Poore understood that all investment carries risk, but stated, "This wasn't an investment, this was a theft."

h. Shahram Ardalan is a clinical psychologist. He has known respondent since 2000. Respondent helped Mr. Ardalan establish health and life insurance, and a SETH IRA account. Respondent contacted Mr. Ardalan in late-2012. Respondent suggested that Mr. Ardalan move his money from his SETH IRA to PPH because the returns were better. Mr. Ardalan also had a separate ROTH IRA with Fidelity. He wanted to consolidate all his funds under one broker. As such, he transferred $101,000 from his SETH IRA, $37,000 from his ROTH IRA, $37,000 from his wife's (Katayoun Ardalan) ROTH IRA, and $50,000 from a college account for their son. He also added $7,000 for the 2011 tax year to the PPH investment. Their total amount invested in PPH was $233,000. It is noted that this is still less than the minimum investment for "sophisticated investors."

Mr. Ardalan did not know that respondent was unlicensed or that Mr. Dunakin had been barred. It "absolutely" would have affected his decision to invest. He did not probe further because he "trusted him." Mr. Ardalan did not know that money would be invested in a night club. He received a voice message from the DOJ but

wanted to speak to respondent first. Mr. Ardalan immediately called respondent who assured Mr. Ardalan everything was fine and instructed Mr. Ardalan not to call the DOJ back. Respondent said he had called the DOJ and told them that they were "creating panic" in clients and not to contact Mr. Ardalan. Mr. Ardalan did not return the DOJ call, but a few weeks later, he received another call from the DOJ. Mr. Ardalan was still reluctant to speak and said he was working with his broker. Mr. Ardalan called respondent again but this time respondent's tone was different. Respondent now told Mr. Ardalan to cooperate.

In Mr. Ardalan's opinion, respondent could have done more to investigate the company. He stated, "[Respondent] is a very smart man. It is quite within his capability to check someone's background before investing my money." In his subsequent discussions with respondent, respondent placed "a lot of blame" on Mr. Dunakin. All of the money Mr. Ardalan invested in PPH is gone. He no longer trusts respondent with financial matters.

i. Ehsand Ghods is a physician and met respondent in 2008. Respondent helped Dr. Ghods roll an IRA into a SETH IRA with ING, and establish health insurance and a 529 account. In January 2012, respondent contacted Dr. Ghods with an offering from PDH. Respondent said that the rate of return would be higher than Dr. Ghods' SETH IRA. Respondent showed Dr. Ghods several documents on the products and explained that investing in "things such as oil" would have a higher return rate. Dr. Ghods recalled respondent being "very convincing." Dr. Ghods described himself as "financially illiterate" and stated that he had "always trusted [respondent.]" Dr. Ghods decided to invest $50,000 from his SETH IRA which had a balance of $112,000. Dr. Ghods understood that investment comes with risk, but he did not expect to lose the "whole lump sum" for the reasons that he did. He believed the money would be used to buy stock in a registered company and expected risk to be associated with economic downturns.

Dr. Ghods believed respondent was licensed to sell securities. Respondent did not disclose that he would make a commission. Dr. Ghods did not know that Mr. Dunakin had been barred from selling securities. Dr. Ghods did not know that the money would be invested in a Sacramento night club. If he had known the truth, he would not have invested. In the summer of 2012, Dr. Ghods was contacted by the DOJ. Dr. Ghods next contacted respondent who denied knowing that Mr. Dunakin "was a fraud or scam." He no longer trusts respondent.

j. Terri Jackson and her husband, Lloyd Robert Jackson, have known respondent for 20 years on both a personal and professional level. They are both in their 70s. They owned a sign and engraving company. Respondent helped them establish health and life insurance and an employee retirement plan. He also helped them transfer funds to publicly traded companies including American Fund, John Hancock, Putnam Investments, Scudder, Kemper, and Jackson National Life. In 2006 they received an inheritance of approximately $300,000 and invested it in ING. In

September 2011, respondent called them and arranged a meeting to discuss a new investment with PDH or PPH. He recommended they invest with the new fund because "it would do much better than at ING." Ms. Jackson recalled that ING had gone up 35.1 percent which in her opinion was "pretty good." However, respondent said that the new returns would be better in the long run. He showed them earnings charts saying how good the new fund and company was. Ms. Jackson said she trusted him and on September 30, 2011, they transferred $50,000 to the Dunakin product.

At the time of the investment, the Jacksons had retired and were living primarily on social security. They did not have a combined income over $300,000 or a net worth of $1 million. Yet, on January 18, 2012, after respondent showed them a positive earnings statement for PPH, they gave him another $53,000 which closed out the ING account. When they asked respondent if he had invested any of his own money, he told them he was "thinking about it."

After the DOJ became involved in their investigation, respondent was evicted from his penthouse in downtown Sacramento. He told the Jacksons he had nowhere else to go and his mom was "giving him a hard time." In the fall of 2012, Mr. Jackson agreed to allow respondent to stay in their home for a couple of days, which turned into months. Respondent would often remark that he had "no job, no license, and the Department of Corporations was messing around with his life and livelihood." Ms. Jackson assumed respondent was licensed to sell securities.

Respondent stayed with the Jacksons for three months and other than buying some of his own food and paying $500 for a camera, did not pay the Jacksons for his stay. They described his lifestyle as partying by night and sleeping by day. Finally, Mr. Jackson called respondent and told him to move out by December 31, 2012. Respondent informed them he was in Vegas and could not come to pick up his stuff. Mrs. Jackson packed his belongings into garbage bags and stored them in the garage. As she was filling the bags, some papers fell out. As a former tax preparer, she recognized them as W-2 G tax forms from Red Hawk and Thunder Valley Casinos. They added up to over $74,000 that respondent had won over three to four days in December 2012. The Jacksons cancelled their insurance through respondent and have had nothing to do with him as they no longer trust him. Mrs. Jackson feels that he could have reimbursed some of the money from his winnings.

Respondent's Case

21. Respondent is 44 years of age. He first met with Mr. Dunakin in July 2012, at Mr. Dunakin's home office in El Dorado Hills. Respondent saw "certifications on plaques" in Mr. Dunakin's office. He met Philip McAnelly who was discussing software to be used for trading. Respondent stated that Mr. Dunakin told him that Mr. McAnelly was the Chief Operations Officer. However, Philip McAnelly testified that he only contracted with Mr. Dunakin to do graphic design for the website.

22. Mr. Dunakin offered respondent office space, staff, equipment, and an office manager. Respondent stated that he was brought on as a 1099 Contractor with Dunakin Investments from July 2011 to May 2012. Mr. Dunakin gave respondent a roster, set up a professional office, and gave respondent at 2003 BMW automobile. Respondent stated that the car had over 200,000 miles on it, many mechanical problems, and needed new wheels. Mr. Dunakin introduced respondent to Chief Financial Officer Pat Finnegan. Mr. Finnegan is a CPA and was listed as the CFO on Articles of Organization filed with the Secretary of State.

23. Respondent testified that he trusted Mr. Dunakin, did not know he was "a con man," or that the company was a scam. Had he known, he would have left. He stated that his "livelihood, reputation, and personal relationships have greatly diminished." Respondent stated that he had numerous discussions with Cary Ackerly, the office manager, about whether anything was "missing or irregular." He stated that his step-father, Mohamnad Abdollahzadeh was one of the first investors and his mother, Azar Abdollahzedeh, "was duped" and "lost $25,000." It is noted that respondent did not invest any of his own money into the Dunakin companies.

24. Respondent denied any impropriety on his part while working at his former employer, Financial Network. He submitted a copy of his letter of resignation from Financial Network dated June 30, 2011. Evidence of respondent's FINRA record was introduced at hearing. Respondent addressed two complaints involving former clients David Daneshivir and Jeffrey Vagg. However, the substance of these two complaints is collateral to the primary issue of whether respondent acted appropriately in soliciting client funds for Dunakin companies. As such, these FINRA complaints are not considered for purposes of determining the truth of this Accusation.

25. Respondent denied having an expense account at Dunakin companies or any control over investment accounts. Investor money was wired to PPH or PDH. Mr. Dunakin told respondent that the funds were being managed by a firm in San Francisco and respondent believed him. Respondent stated that he asked Mr. Dunakin where he came up with the information for the financial statements. Mr. Dunakin told him the accounts had internal audits by JP Morgan Chase, US Tax Shield, and Pat Finnegan.

26. At hearing, respondent stated, "I did minimal due diligence" and "I wish I had done more." Regarding the information in Mr. Dunakin's FINRA record, respondent stated, "I wish I would have known." (Factual Finding 3.) He stated that knowing this, he would have left the office and not represented the product. When respondent first started at Dunakin companies, Ms. Ackerly and Mr. Dunakin would give him client spreadsheets bi-monthly. Respondent stated that he "noticed errors." For instance, under client name, the reports did not list both names on his mother's joint account with his step-father. Also, he noticed that the second installment of $50,000 for Lloyd Jackson was not reflected. Mr. Dunakin would tell respondent that

the change would be reflected on the next spreadsheet or they were "getting new software."

27. Respondent stated that Mr. Dunakin told him that the minimum investment term was three years or there would be "surrender charges." Respondent claimed to have told all clients that this applied to all products. Respondent reportedly asked Mr. Dunakin if he had invested his own or his family's money in the product. Mr. Dunakin told respondent he had invested $1.5 million of his own money, and his mother and sister had invested $1 million each. This claim of $3.5 million in deposits from Mr. Dunakin and his family is inconsistent with the bank account audit performed by Mr. Mandla as this figure exceeds total investor deposits. (Factual Finding 18.)

28. Respondent learned that the DOJ was investigating Mr. Dunakin in the summer of 2012. Respondent contacted Mr. Dunakin numerous times to say he wanted the clients' money back. Mr. Dunakin informed respondent that he had retained an attorney, but respondent learned that the attorney only represented Mr. Dunakin and not employees. According to respondent, Mr. Dunakin told respondent to have clients contact him directly and he would pay clients "first in, last out." Respondent stated that he relayed this information to 15 to 20 clients and directed or took several clients to the night club, Purgatory.

29. On September 4, 2012, respondent drafted and served a "Demand Letter" on Mr. Dunakin at Purgatory. The letter asserted that Mr. Dunakin had "yet to payout a single client of mine" and requested a refund without further delay. He wrote that his clients had not consented to invest in the nightclub. He stated his belief that Dr. Dunakin had "misappropriated funds without authorization, which is a clear act of fraud and negligence." Respondent asserted that failure to payout would result in a lien "against every asset, property, interest plus future earnings that you earn from any business entity over the next 30 years."

In an effort to further assist his clients, respondent stated that he called the Internal Revenue Service and obtained a Form 4684 used to "recover losses on taxes." Clients could purportedly "write off losses as catastrophic losses." Respondent distributed this form to four or five clients. Most clients he contacted did not respond.

30. A certified court record was presented as evidence of respondent's arrest on October 24, 2009, for driving under the influence of drugs and/or alcohol in violation of Vehicle Code section 23152, subdivision (a), and being under the influence of cocaine in violation of Health and Safety Code section 11550, subdivision (a). On September 17, 2010, the court granted the Sacramento County District Attorney's (D.A.) motion to dismiss Case Number 09M11061, on grounds of "insufficient evidence." Respondent submitted a letter from the D.A.'s Office dated August 30, 2010, that explained that the arresting officer had falsified information in several arrest reports. As a result, respondent's matter was identified for dismissal.

Based on this dismissal, absolutely no weight is given to the arrest or charges. The criminal court case cannot and will not be used for any purpose as grounds for a decision in this administrative matter.

31. Respondent submitted two character letters from clients of his insurance services. Bruce Ermann, M.D. wrote a letter dated October 9, 2007, describing his business relationship with respondent. The other letter, dated September 6, 2007, was written by Cathy Taylor who owned Luxury Home Magazine. Both clients described respondent in positive terms. However, both letters predate respondent's involvement with Mr. Dunakin by two years. Neither reference would have knowledge of respondent's unlicensed activity leading to substantial losses for many former insurance clients. It is noted that all of respondent's former insurance clients who spoke at hearing were satisfied with his services prior to 2011. The two letters submitted do not mitigate or show relevant rehabilitation of respondent's character for honesty and due diligence.

Cross-Examination of Respondent

32. On cross-examination, respondent stated that he took "full responsibility for not doing due diligence and being too trusting." Yet, he stood by his earlier statement that "past performance does not guarantee future results." When asked if he was blaming his clients, he responded, "We are all responsible for our own actions." Respondent admitted that he did not review the documentation "as well as I should have" which he later learned was "cut and pasted" in part from a Canadian investment prospectus and contained an incorrect fund commencement date of September 29, 2008. He stated that Mr. Dunakin told him the business had undergone a financial audit, however, he admitted that he never saw any notation on the reports indicating they were audited statements. He stated that he only had brief contact with Pat Finnegan, the CFO of record, and he never asked Mr. Finnegan if he had audited the financial statements.

33. Regarding knowledge of Mr. Dunakin's license status, respondent claimed to have asked Mr. Dunakin before he started working for the company whether Mr. Dunakin was licensed. Mr. Dunakin told respondent that his license was "pending" and that "he had some problems with his license in 2009. Yet, respondent did not take the precautionary step of looking up Mr. Dunakin's FINRA record on-line. Respondent testified that he thought only clients could look up history on a securities broker, not agents. In light of the fact that respondent passed the Series 6 and 63 exams, holds an undergraduate degree in business, and is a licensed insurance agent, his claimed belief that a client has more standing to look up a license is not credible or reasonable.

34. Regarding respondent's own license status, respondent testified that he did not know he needed a Series 7 license to sell securities. He claimed to have asked Mr. Dunakin if he needed a license and Mr. Dunakin told him he did not need one

because Mr. Dunakin had a license. Again reliance on Mr. Dunakin's assertion is curious in that respondent never confirmed if or when Mr. Dunakin's "pending" license became a valid license. Further, having held other licenses and registrations, he is reasonably expected to understand the importance and necessity of being properly licensed to transact regulated business. Respondent testified that he told "some" clients that he had limited experience offering private placement securities. None of those clients testified at hearing. The clients who testified universally stated that respondent met them with assurances and guarantees of aggressive and positive returns with Dunakin's private placement offerings. Respondent feigned ignorance in reading financial statements stating, "I only had a Series 6." When asked if he told clients that he did not fully understand having only held a Series 6, he answered, "I don't recall."

35. Respondent consistently denied that he ever registered to take a Series 7 examination. His applications to work for Quest Securities and International Financial Solutions were terminated because he failed to complete the U4 paperwork. He stated that he did not complete the U4 paperwork because he decided to join Dunakin Investments. This explanation fails because respondent joined Mr. Dunakin in July 2011, well before seeking employment from these two companies. According to FINRA records, respondent's application for IFS was open from December 15, 2011 to February 10, 2012, and his application for Quest was open from October 25, 2012 to January 10, 2012.

Respondent stated that he relied upon the trust he placed in Mr. Dunakin. As he only knew Mr. Dunakin for a brief time, his reliance was not reasonable; especially given glaring inconsistencies such as PPH earnings charts going back to September 2007 when the company originated in 2009. (Factual Finding 13.)

36. Finally, there is independent evidence to support a finding that respondent had gambling and drug use problems that may have affected his decision making. Respondent's bank statements show that he had only a few hundred dollars when he left Financial Network. Mr. Dunakin gave respondent a commission of 9.25 percent on each dollar invested by his clients. His bank statements also show a great deal of spending at gambling casinos. Respondent stated that he offered to repay his clients "as soon as I am able to." He admitted earning thousands of dollars gambling. He explained that he got a W2 tax form anytime he won over $1,200 on slot machines. He added, "On tables you get a Title 31 if you are cashing out more than $10,000 within a 24-hour period." Respondent explained that it had to do with the Federal Anti-Money Laundering Act. But, he explained, "The money I won went in and out...The winnings were gambled within minutes." He denied it was a problem and stated that it did not affect his work life. He added that he went to gamble to "not think about my business life." He described his personal and professional troubles as "embarrassing and degrading."

Also, respondent admitted to using cocaine on several occasions in 2009 and 2010. He stated that he never used during business time. He denied using during his first meeting with Mr. Dunakin. However, he added, "Mr. Dunakin mentioned to me that he used cocaine."

Cost Recovery

37. The Department submitted a Declaration of attorney's fees and investigative expenses. The Department's costs of investigation and prosecution through the hearing date of May 23, 2013, are $20,787.75. This is based upon 56.5 hours of investigative services at $76 per hour. The total cost of investigative services was $4,294. The Department also requests the costs of prosecution of the matter. This is based upon 162.5 hours of attorney services at $101.50 per hour. The total cost of attorney services was $16,493.75. Professional work performed by counsel included pleading preparation, discovery, witness-related and trial preparation. The costs incurred by the Department in connection with this case are reasonable.

Transaction-Based Commissions

38. The Department submitted a Declaration in support of their claim for ancillary relief. During the period from July 1, 2011, through June 30, 2012, respondent received a commission of approximately nine percent which was deposited by wire into his account at Bank of America (Acct No. ending -73000). Respondent's bank account statements were obtained by the Department pursuant to a subpoena served on October 4, 2012. A review of respondent's bank statements shows that transaction-based commissions he received during the relevant time period totaled $127,625.26. Respondent also received additional miscellaneous payments directly from Mr. Dunakin in the amount of $18,361.63.

LEGAL CONCLUSIONS

Applicable Laws

1. Corporations Code section 25110 states: "It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120), whether or not by or through underwriters, unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification

order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale."

2. "Broker-dealer" means any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account. (Corp. Code, § 25004, subd. (a).) Corporations Code section 25210 states, in relevant part:

(a) Unless exempted under the provisions of Chapter 1 (commencing with Section 25200) of this part, no broker-dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless the broker-dealer has first applied for and secured from the commissioner a certificate, then in effect, authorizing that person to act in that capacity.

(b) No person shall, on behalf of a broker-dealer licensed pursuant to Section 25211, or on behalf of an issuer, effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless that broker-dealer and agent have complied with any rules as the commissioner may adopt for the qualification and employment of those agents.

3. Corporations Code section 25230, subdivision (a) provides that:

(a) It is unlawful for any investment adviser to conduct business as an investment adviser in this state unless the investment adviser has first applied for and secured from the commissioner a certificate, then in effect, authorizing the investment adviser to do so or unless the investment adviser is exempted by the provisions of Chapter 1 (commencing with Section 25200) of this part or unless the investment adviser is subject to Section 25230.1.

4. Corporations Code section 25401 states: "It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

5. Corporations Code section 25216, subdivision (a) provides: "No broker-dealer or agent shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive or other fraudulent scheme, device, or contrivance. The commissioner shall, for the purposes of this subdivision, by rule define such schemes, devices or contrivances as are manipulative, deceptive, or otherwise fraudulent."

6. The commissioner has promulgated regulations to define the phrase "manipulative, deceptive, or other fraudulent scheme, device, or contrivance."

a. California Code of Regulations, title 10, section 260.216 defines the phrase as used in Corporations Code section 25216 to mean: "(a) Any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; and (b) Any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, if the person making the statement or omission knows or has reasonable grounds to believe that it is untrue or misleading."

b. California Code of Regulations, title 10, section 260.216.2 also defines the phrase to include: "[A]ny act of any broker-dealer designed to effect for or with the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker-dealer at or before completion of such transaction, gives or sends to such customer written notification disclosing: ... (7) If it is acting as agent for such customer, for some other person, or for both such customer and some other person: ... (B) The amount of any remuneration received or to be received by it from such customer in connection with the transaction, unless remuneration paid by such customer is determined, pursuant to a written agreement with such customer, otherwise than on a transaction basis; ..."

c. California Code of Regulations, title 10, section 260.216.4 also defines the phrase to include: "[A]ny act of any broker-dealer or agent designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker-dealer or agent is participating or is otherwise financially interested unless such broker-dealer or agent, at or before the completion of each such transaction, notifies such customer of the existence of such participation or interest."

7. Corporations Code section 25212, provides that the commissioner may, after appropriate notice and opportunity for hearing, censure, deny, suspend or revoke the certificate of any broker-dealer or any agent employed by the broker-dealer while so employed, if the commissioner finds that such action is in the public interest and the broker-dealer or agent has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor. (Corp. Code, § 25212, subd. (e).)

8. Corporations Code section 25213, provides that the commissioner may, after appropriate notice and opportunity for hearing, censure, suspend, deny, or bar from any position of employment, management or control of any broker-dealer or investment adviser, any officer, director, partner, agent, employee of, or person performing similar functions for, a broker-dealer, or any other person, if the commissioner finds that the censure, suspension, denial, or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25212. (Corp. Code, § 25213.)

9. Corporations Code section 25252, provides that the commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

(b) Any broker-dealer or investment adviser that willfully violates any provision of this division to which it is subject, or that willfully violates any rule or order adopted or issued pursuant to this division and to which it is subject, is liable for administrative penalties of not more than five thousand dollars ($5,000) for the first violation, not more than ten thousand dollars ($10,000) for the second violation, and not more than fifteen thousand dollars ($15,000) for each subsequent violation.

(c) The administrative penalties shall be collected by the commissioner and paid into the State Corporations Fund.

(d) The administrative penalties available to the commissioner pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the commissioner to enforce the provisions of this division.

10. Corporations Code section 25254 provides for ancillary relief including costs of investigation and prosecution as follows:

(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit

into the State Corporations Fund for the use of the Department of Corporations.

11. Corporations Code section 25532 authorizes the commissioner to issue an order to desist and refrain from activity regulated under the Securities Law as follows in relevant part:

(a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law ...

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

Cause for Discipline

12. The Department met its burden of establishing legal cause for disciplinary action against respondent by clear and convincing evidence. By reason of the matters set forth in Factual Findings 1 through 36, respondent willfully violated the Corporate Securities Law as described below.

13. Respondent solicited clients to invest in Dunakin's companies (Dunakin Investments, PPH, PPD), none of which securities in issuer transactions were registered with the SEC or Department, or registered as exempt. The securities respondent offered and sold were unqualified and nonexempt and subject to qualification under the Corporate Securities Law commencing with Corporations Code section 25100, in direct violation of Corporations Code section 25110.

14. Respondent offered and sold unqualified and nonexempt securities, by means of written and oral communications that included untrue statements of material fact and omitted material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. Respondent used documents with erroneous earnings data, false claims that the private offering was exempt, prospectus data that was cut and pasted from foreign companies; and articulated false claims of aggressive earnings that would triple the principal in three years, false claims of product safety, false claims of sound management; and omitted the purportedly pending status of the broker's license and his own lack of a Series 7

license. Respondent's actions and omissions were misleading and in direct violation of Corporations Code section 25401.

15. Respondent, between July 2011 and April 2012, offered and sold securities on behalf of an issuer, Dunakin companies, and induced and attempted to induce the purchase and sale of securities without having obtained authorization from the Commissioner authorizing him to act as a broker-dealer in violation of Corporations Code section 25210.

16. Respondent between July 2011 and April 2012, offered and sold securities and induced and attempted to induce the purchase and sale of securities by means of manipulative or other fraudulent scheme, device, or contrivance. Respondent sat for and passed the Series 6 and Series 63 examinations and as such, possessed sufficient knowledge of State securities laws. Respondent knew that a Series 7 license was needed to transact securities in this state and failed to disclose his lack of qualification to his clients. Respondent also failed to disclose Mr. Dunakin's lack of a valid broker license to his clients. Respondent also made exaggerated claims and relayed inconsistent information to investor clients on potential earnings and returns. Respondent transacted securities by manipulative, deceptive, and other fraudulent schemes, devices, and contrivances in violation of Corporations Code section 25216.

Grounds for Specific Sanctions.

17. *Bar.* Grounds exist and it is in the public interest for the Commissioner to bar respondent from any position of employment, management, or control of any broker-dealer or investment adviser, any officer, director, partner, employee of, or person performing similar functions for, a broker-dealer, or any other person; based on respondent's violation of the Corporate Securities Law, as is set forth in Legal Conclusions 12 through 16. (Corp. Code, §§ 25212, subd. (e), & 25213.)

18. *Administrative Penalty.* Grounds exist for the Commissioner to levy administrative penalties against respondent based on respondent's violation of the Corporate Securities Law, as is set forth in Legal Conclusions 12 through 16. (Corp. Code, § 25252, subd. (b).) Twenty-one victims were identified at hearing, each establishing separate violations of Corporations Code sections 25110, 25401, 25210, and 25216. (Factual Finding 20.) Pursuant to Corporations Code section 25252, subdivision (b), the maximum administrative penalty for all victims identified in this matter is $1,245,000, as is set forth below:

a. The maximum penalty the commissioner may apply for respondent's violation of Corporations Code section 25110 is $300,000 ($5,000 for the first violation, $10,000 for the second violation, and $15,000 for the remaining 19 violations).

b. The maximum penalty the commissioner may apply for respondent's violation of Corporations Code section 25401 is $315,000 ($15,000 for each of the 21 violations of this section).

c. The maximum penalty the commissioner may apply for respondent's violation of Corporations Code section 25210 is $315,000 ($15,000 for each of the 21 violations of this section).

d. The maximum penalty the commissioner may apply for respondent's violation of Corporations Code section 25216 is $315,000 ($15,000 for each of the 21 violations of this section).

19. *Claim for Ancillary Relief.* Grounds exist and it is in the public interest for the Commissioner to seek ancillary relief including restitution, disgorgement, or damages on behalf of victims injured by his violations of the Corporate Securities Law as is set forth in Legal Conclusions 12 through 16. (Corp. Code, § 25254, subd. (a).) The Department seeks an order disgorging respondent of the transaction-based commissions he received during the period of July 1, 2011 through June 30, 2012. Respondent received $127,625.26 in transaction-based commissions during the relevant time period. Victims injured by respondent's acts are entitled to this relief.

Grounds also exist for the Commissioner to seek reimbursement for the reasonable costs of investigation and prosecution of this administrative Accusation against respondent. (Corp. Code, § 25254, subd. (b).) A total cost of $20,787.75 was established as the reasonable cost of investigation and prosecution of this matter. (Factual Finding 37.) The Department is entitled to reimbursement of these costs.

20. *Order to Desist and Refrain.* Grounds exist for the Commissioner to order respondent to desist and refrain from offering unqualified securities, including but not limited to, limited liability membership interests, or acting as a broker-dealer or investment adviser, or engaging in broker-dealer or investment adviser activities, or making written or oral misstatements of material facts while engaging in such activities. (Corp. Code, § 25532, subds. (a) & (b).)

ORDER

1. Damien Payman Alexander, based on violations of the Corporate Securities Law, as set forth in Legal Conclusion 17, is barred from any position of employment, management or control of any broker-dealer or investment adviser, any officer, director, partner, agent, employee of, or person performing similar functions for, a broker-dealer, or any other person. (Corp. Code, § 25252, subd. (b).)

2. Damien Payman Alexander, based on violations of the Corporate Securities Law, as set forth in Legal Conclusion 18, is ordered to pay an

administrative penalty in the amount of $1,245,000 to the Commissioner. (Corp. Code, § 25252, subds. (b), (c), & (d).)

3. Damien Payman Alexander, based on violations of the Corporate Securities Law, as set forth in Legal Conclusion 19, is ordered to pay the reasonable costs of investigation and prosecution of this matter in the amount of $20,787.75, to the Commissioner. (Corp. Code, § 25254, subd. (b).)

4. Damien Payman Alexander, based on violations of the Corporate Securities Law, as set forth in Legal Conclusion 19, is ordered to disgorge all transaction-based commissions received during the period of July 1, 2011 through June 30, 2012, in the amount of $127,625.26, and remit this amount to the Commissioner. (Corp. Code, § 25254, subd. (a).)

5. Damien Payman Alexander, based on violations of the Corporate Securities Law, as set forth in Legal Conclusion 20, is ordered to immediately desist and refrain from offering unqualified securities or acting as a broker-dealer or investment adviser, or engaging in broker-dealer or investment adviser activities, or making written or oral misstatements of material facts while engaging in such activities. (Corp. Code, § 25532, subds. (a) & (b).)

It is so ORDERED.

DATED: July 25, 2013

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings