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Acting California Corporations Commissioner
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7
8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10 In the Matter of)	FILE NO. 925-2761
11)	
12 THE CALIFORNIA CORPORATIONS)	FINAL ORDER LEVYING
13 COMMISSIONER,)	ADMINISTRATIVE PENALTIES PURSUANT
14)	TO CORPORATIONS CODE SECTION 25252
15)	
16)	
17)	
18)	
19)	

20 Complainant,

21 v.

22 AUSTIN LEMOINE CAPITAL

23 MANAGEMENT, (AUSTIN JOSEPH

24 LEMOINE, DBA),

25 Respondent.

20 TO: Mr. Austin Joseph Lemoine, dba
Austin Lemoine Capital Management
21 1020 Guinda Street
22 Palo Alto, California 94301

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1 Wayne P. Strumpfer, the Acting California Corporations Commissioner ("Commissioner") of
2 the Department of Corporations ("Department"), alleges and charges as follows:

3 1. Austin Lemoine Capital Management (Austin Joseph Lemoine DBA) ("Austin") holds
4 a valid and unrevoked investment adviser certificate issued by the Commissioner pursuant to
5 Corporations Code section 25230 on March 4, 1998. Austin is an investment adviser business
6 located at 1020 Guinda Street, Palo Alto, California 94301. Austin Joseph Lemoine is Austin's sole
7 proprietor.

8 2. On or about February 26, 1999, the Commissioner commenced a regulatory
9 examination of Austin. The examination revealed violations of the Corporate Securities Law of
10 1968 (Corporations Code section 25000 et seq.) and the regulations enacted thereunder (California
11 Code of Regulations, title 10 section 260.000 et seq.).

12 3. These violations included Austin's failure to reconcile bank accounts and the failure to
13 prepare and maintain monthly computations of net capital and aggregate indebtedness for Austin.
14 (California Code of Regulations ("CCR"), Title 10, section 260.241.3, subdivision (a)(4) & (j)). An
15 investment adviser is required to reconcile its bank accounts and to prepare and maintain monthly
16 computations of net capital and aggregate indebtedness, in part, to provide the Department with a
17 regulatory mechanism to validate a firm's liquidity and financial integrity to ensure that licensees
18 maintain the necessary net capital for the protection of the public. Austin's violation of these books
19 and records provisions prevents the Department from determining as part of its regulatory exam, if
20 Austin meets the capital requirements imposed by the Corporate Securities Law of 1968 and the
21 regulations enacted thereunder.

22 4. Corporations Code section 25241 provides that investment advisers are required to
23 maintain books and records that are subject to examination by the Commissioner. Section 25241
24 provides, in relevant part, as follows:

25 [E]very investment adviser licensed under Section 25230 shall make and keep such
26 accounts, correspondence, memoranda, papers, books, and other records and shall file such
27 financial and other reports as the commissioner by rule requires, . . .
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1 5. California Code of Regulations, Title 10, section 260.241.3 sets forth the specific books
2 and records required to be maintained by investment advisers. Subdivisions (a)(4) and (j) of section
3 260.241.3 provide as follows¹:

4 (a) Every licensed investment adviser shall make and keep true, accurate and current the
5 following books and records relating to such person's investment advisory business:

6 (4) All check books, bank statements, cancelled checks and cash reconciliations of the
7 investment adviser.

8 (j) Any investment adviser who is subject to the minimum financial requirements of Section
9 260.237.1 or Section 260.237.2 as applicable, shall, in addition to the records otherwise
10 required under this section, maintain a record of the proof of money balances of all ledger
11 accounts in the form of trial balances and a record of the computations of net capitals and
12 aggregate indebtedness pursuant to Section 260.237.1 of these rules or minimum net worth
13 pursuant to Section 260.237.2 of these rules (as of the trial balance date). The trial balances
14 and computations shall be prepared currently at least once a month.

15 6. Prior to April 3, 2003, California Code of Regulations, Title 10, section 260.237.1 set
16 forth the capital requirements for investment advisers. Subdivision (a)(2) of section 260.237.1
17 provided, in relevant part, as follows:

18 (a) No investment adviser who has any power of attorney from any investment advisory
19 client to execute transactions . . . shall permit its total aggregate indebtedness to exceed 500%
20 of its tangible net capital or permit its current aggregate indebtedness to exceed its current net
21 capital; and,

22 (2) If the investment adviser has any power of attorney from any investment advisory client
23 to execute transactions and does not have regular or periodic custody or possession of any of
24 its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions
25 for periodic publications, or other investment advisory services, it shall at all times have and
26 maintain tangible net capital of not less than \$5,000... .

27 Subdivision (c) of section 260.237.1 provided that for purposes of section 260.237.1,
28 subdivision (a), all financial information shall be determined in accordance with generally accepted
accounting principles ("GAAP").

¹ Various provisions of the California Code of Regulations, Title 10, were amended and became effective April 3, 2003. This administrative action is based on violations that occurred under statutes and rules prior to the effective date of the amendments.

1 7. The Department's examiner found during the regulatory exam on February 26, 1999,
2 that Austin did not reconcile its bank accounts. (California Code of Regulations, Title 10, section
3 260.241.3, subdivision (a)(4)). Additionally, Austin did not prepare and maintain trial balances and
4 computations of net capital and aggregate indebtedness on a monthly basis. (California Code of
5 Regulations, Title 10, section 260.241.3, subdivision (j)). Therefore, the Department was unable to
6 determine at the time of the examination if Austin was in compliance with the net capital
7 requirements under California Code of Regulations, Title 10, section 260.237.1.

8 8. On March 3, 1999, the Department sent Austin a regulatory letter notifying the firm of
9 the exceptions discovered during the February 26, 1999 examination, including the violations of
10 California Code of Regulations, Title 10, section 260.241.3, subdivisions (a)(4) and (j). Austin
11 responded that he would acquire new accounting computer software and henceforth would use it to
12 maintain the company's general ledger, from which bank statements would be reconciled and
13 monthly trial balances and capital computations would be prepared.

14 9. The Department's examiner found during a subsequent regulatory exam on January 15,
15 2003, that Austin still failed to reconcile its bank accounts. (California Code of Regulations, Title
16 10, section 260.241.3, subdivision (a)(4)). Additionally, Austin did not prepare and maintain trial
17 balances and computations of net capital and aggregate indebtedness on a monthly basis. (California
18 Code of Regulations, Title 10, section 260.241.3, subdivision (j)). Therefore, the Department was
19 unable to determine at the time of the examination if Austin was in compliance with the net capital
20 requirements under California Code of Regulations, Title 10, section 260.237.1.

21 10. On April 17, 2003, Austin responded to the Department's regulatory letter noting the
22 exceptions to the January 15, 2003 examination. Austin pledged to reconcile its bank statements and
23 maintain monthly computations of the net capital balance and prepare written net capital reports as
24 part of its advisory records.

25 11. The Department's examiner found during a subsequent regulatory exam on July 17,
26 2003, that Austin still failed to reconcile its bank accounts. (California Code of Regulations, Title
27 10, section 260.241.3, subdivision (a)(4)). Additionally, Austin did not prepare and maintain trial
28 balances and computations of net capital and aggregate indebtedness on a monthly basis. (California

1 Code of Regulations, Title 10, section 260.241.3, subdivision (j)). Therefore, the Department was
2 unable to determine at the time of the examination if Austin was in compliance with the net capital
3 requirements under California Code of Regulations, Title 10, section 260.237.1.

4 12. On September 26, 2003, Austin responded to the Department's regulatory letter
5 noting the exceptions to the July 17, 2003 examination. Austin stated that it believed it had
6 adequately reconciled its bank statements and that its monthly computations of the net capital
7 balance were adequate.

8 13. Corporations Code section 25252, which became effective January 1, 1999,
9 authorizes the Commissioner to issue an order levying administrative penalties against any
10 investment adviser for willful violations of any provision of the California Securities Law of 1968
11 and any rule promulgated thereunder. Specifically, Corporations Code section 25252 provides, in
12 relevant part:

13 The Commissioner may, after appropriate notice and opportunity for hearing, by order levy
14 administrative penalties as follows:

15 ...

16 (b) Any broker-dealer or investment adviser that willfully violates any provision of this
17 division to which it is subject, or that willfully violates any rule or order adopted or issued
18 pursuant to this division and to which it is subject, is liable for administrative penalties of not
19 more than five thousand dollars (\$5,000) for the first violation, not more than ten thousand
20 dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars
21 (\$15,000) for each subsequent violation.

22 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the
23 commissioner finds that Austin Joseph Lemoine, d.b.a. Austin Lemoine Capital Management has
24 willfully violated California Code of Regulations, Title 10, section 260.241.3, subdivisions (a)(4)
25 and (j) and hereby orders Austin Joseph Lemoine, d.b.a. Austin Lemoine Capital Management to pay
26 the Commissioner administrative penalties in the amount of \$2,250. Payment will be personally
27 delivered to (or postmarked on or before July 3, 2006) the attention of Sean Rooney, Enforcement
28 Division, the Department of Corporations, 320 West 4th Street, Suite 750, Los Angeles, California,
91106. Otherwise Austin Lemoine Capital Management will be deemed by the Commissioner to be

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in violation of the Order Levying Administrative Penalties Pursuant to Corporations Code 25252 and
may be subject to further action provided for by law.

Dated: May 30, 2006
Los Angeles, California

WAYNE P. STRUMPFER
Acting California Corporations Commissioner

By: _____
ALAN S. WEINGER
Acting Deputy Commissioner