

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

2019 MAY -2 AM 9:47

PA DEPARTMENT OF  
BANKING AND SECURITIES

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PENNSYLVANIA DEPARTMENT OF	:	
BANKING AND SECURITIES, BUREAU	:	
OF SECURITIES COMPLIANCE AND	:	
EXAMINATIONS	:	
	:	DOCKET No. 180077 (SEC-OSC)
v.	:	
	:	
CANDOR CAPITAL PARTNERS, LLC,	:	
SEAUN MCCUSKER	:	

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**NOTICE OF RIGHT TO APPEAL**

You are hereby notified that you have the right to appeal the attached Final Order ("Order") issued by the Pennsylvania Banking and Securities Commission.

**If you wish to appeal the attached Order you may file a petition for review with the Prothonotary of the Commonwealth Court of Pennsylvania that complies with the format and timing requirements of the applicable Pennsylvania Rules of Appellate Procedure. Pa. R.A.P. 1511-1561. Failure to file a petition for review within 30 days of the mailing date of this Order will result in the attached Order becoming final and unappealable. You may reach the Commonwealth Court at 717-255-1650.**

Please be advised that this Notice of Right to Appeal is not intended to and does not constitute legal advice. You may consult an attorney regarding your legal rights including your right to appeal the attached Order or your right to file an application for rehearing or reconsideration under the General Rules of Administrative Practice and Procedure. 1 Pa. Code § 35.241.



of Default Judgment that the Bureau subsequently filed, and that the hearing officer granted. Specifically, the Bureau had alleged that Respondents failed to submit a balance sheet to the Department of Banking and Securities (“Department”) for the fiscal year ending December 31, 2017, which is required under a regulation promulgated under the authority of the Pennsylvania Securities Act of 1972 (“1972 Act”). Based on the facts deemed admitted, the Commission concludes that the Bureau has adequately proven that Respondents willfully violated the 1972 Act and its regulation.

Accordingly, the Commission **ORDERS** that the investment adviser registration issued to Candor Capital Partners, LLC, CRD # 286626, and the investment adviser representative registration issued to Shaun McCusker, CRD # 2225299, are **INDEFINITELY SUSPENDED** pursuant to section 305(a)(v) and (xiii) of the 1972 Act, 70 P.S. §1-305(a)(v) and (xiii). The Commission further **ORDERS** that, pursuant to section 1-512(a) of the 1972 Act, 70 P.S. §1-512(a), Respondents are **TEMPORARILY BARRED** from each of the following activities:

1. Representing an issuer offering or selling securities in this Commonwealth;
2. Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this Commonwealth, or of a person who controls or is controlled by such issuer;
3. Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under Section 301 of the 1972 Act;
4. Being an affiliate of any person registered under Section 301 of the 1972 Act; or
5. Relying upon an exemption from registration contained in Section 202, 203 or 302 of the 1972 Act.

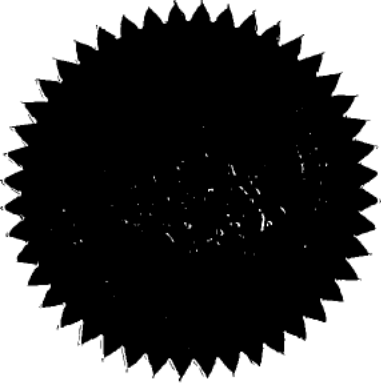
The Commission further **ORDERS** each Respondent, pursuant to section 602.1 (c) of the 1972 Act, 70 P.S. §1-602.1(c), to pay an administrative assessment in the amount of Two Thousand Dollars (\$2,000.00), for a total amount of Four Thousand Dollars (\$4,000.00).

Finally, the Commission **ORDERS** Respondents jointly and severally to pay the assessed costs of investigation and prosecution, if any, in an amount to be verified by the Bureau, pursuant to section 602.1(b) of the 1972 Act. 70 P.S. §1-602.1(b).

Upon payment by the Respondents of the administrative assessments in full and their submission to the Department of balance sheets for the fiscal year ending December 31, 2017, and December 31, 2018, and every subsequent fiscal year as applicable, the Department at Respondents' request will lift the suspension of their registrations and remove the temporary bars.

Respondents shall pay the administrative assessments by mailing to the following official a certified check, attorney's check, or U.S. Postal Service money order, made payable to the "Commonwealth of Pennsylvania," within thirty (30) days of the effective date of this Order:

Linnea Freeberg  
Docket Clerk  
Department of Banking and Securities  
Market Square Plaza  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101



**BY ORDER OF THE COMMISSION:**

Redacted

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**James R. Biery**  
**Chair**  
**Pennsylvania Banking and Securities Commission**

So ORDERED this 2<sup>nd</sup> day of May, 2019

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

FILED

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Commonwealth of Pennsylvania :  
Department of Banking and Securities, :  
Bureau of Securities Compliance and :  
Examinations :

PA DEPARTMENT OF  
BANKING AND SECURITIES

v. :

Docket No. 180077 (SEC-OSC)

Candor Capital Partners, LLC, and :  
Sean McCusker, :  
Respondents :

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PROPOSED REPORT

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Jackie Wiest Lutz  
Chief Hearing Officer

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF STATE  
OFFICE OF HEARING EXAMINERS  
P.O. Box 2649  
Harrisburg, PA 17105-2649

## HISTORY

On October 26, 2018, the Commonwealth of Pennsylvania, Department of Banking and Securities (“Department”), through the Bureau of Securities Compliance and Examinations (“Bureau”), issued and served upon Candor Capital Partners, LLC (“Respondent Candor”) and Shaun McCusker (“Respondent McCusker”) (collectively, “Respondents”) a *Notice to Answer and Request a Hearing* (“Notice”) and an *Order to Show Cause* (“OTSC”) why the Banking and Securities Commission (“Commission”) should not impose the sanctions and remedies described in the OTSC pursuant to the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101 *et. seq.* (“1972 Act”), based upon a *Statement of the Particulars and Matters Concerning Which the Bureau is Inquiring* contained within the OTSC.

The Notice and OTSC were served upon Respondents by certified and first-class mail on October 26, 2018 at the address listed by Respondents on their respective Uniform Application for Investment Adviser Registration form (“Form ADV”), i.e., Redacted (hereinafter, “ADV Address”). The United States Postal Service (“USPS”) tracking information for the certified mailings indicate that the certified mailing for Respondent Candor was marked “no authorized recipient available” on October 29, 2018, and “unclaimed being returned to sender” on November 30, 2018. The certified mailing for Respondent McCusker similarly indicates that the certified mailing was marked “no authorized recipient available” on October 29, 2018; however, the ordinary first-class mailings to Respondents were not returned to the Bureau as undeliverable within 15 days after mailing, and are, therefore deemed to have been received. *John Kenneth, Ltd., vs. Unemployment Compensation Board of Review*, 444 A. 2d 824, (Pa. Cmwlth. 1982)(citing, *Mihelic v. Unemployment Compensation Board of Review*, 399 A. 2d 825 (1979)(where notice, mailed to a party’s last known address, is not returned by the postal authorities as undeliverable, the party is presumed to have received notice).

Service of the Notice and OTSC upon Respondents in this manner was in accordance with the requirements of section 33.31 of the General Rules of Administrative Practice and Procedure (“GRAPP”), which provides, in pertinent part:

“Orders, notices and other documents originating with an agency, including forms of agency actions, complaints and similar process. . . shall be served by the office of the agency by mail. . . by mailing a copy thereof to the person to be served, addressed to the person designated. . . at his principal office or place of business. . . .

1 Pa. Code § 33.31.

The *Notice* advised Respondents of their right to challenge the OTSC by filing an Answer within 30 days. Respondents were specifically notified:

Your Answer must be in writing. Your Answer must specifically admit or deny the allegations in the Order, set forth the facts you rely upon, and state concisely the law upon which you rely. General denials of the allegations set forth in the Order are not sufficient; you must support your denials with specific facts. ***Failure to support your denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against you, without a hearing.*** (emphasis added).

Respondents did not file an Answer to the OTSC.

On January 2, 2019, Secretary of Banking and Securities Robin L. Wiessmann designated the undersigned to serve as the hearing officer for the Department in this matter.

On January 8, 2019, the Bureau filed and served upon Respondents a *Motion to Deem Facts Admitted and Entry of Default Judgment* (“MDFA”). The MDFA was served upon Respondents by first-class mail at their ADV address.

The MDFA alleged that on October 26, 2018, the Bureau issued the Notice and OTSC to Respondents, advising Respondents that they had 30 days to file an answer; that delivery of the certified mailings was not accomplished; that the first-class mailings sent to Respondents at their ADV address were not returned to the Bureau as undeliverable within 15 days of mailing; that Respondents did not



file an answer; and that given that more than thirty days have passed since the date of service of the OTSC with no answer having been filed, the facts as set forth in the OTSC should be deemed admitted.

Respondents filed no response to the MDFA.

On January 23, 2019, the hearing officer issued an *Order Deeming Facts Admitted and Entering Judgment by Default* ("January 23, 2019 Order"). The January 23, 2019 Order entered judgment by default against Respondents; deemed the factual allegations of Paragraphs 1 through 13 of the *OTSC* admitted; and advised Respondents that a Proposed Report recommending appropriate sanctions would be issued in due course.

As of the date of this Proposed Report, Respondents have not filed an answer to the OTSC or the MDFA. This proposed report is issued in accordance with the Secretary's delegation of January 2, 2019.

## FINDINGS OF FACT

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the 1972 Act. (OTSC, ¶ 1).
2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department. (OTSC, ¶ 2).
3. The Bureau operates from the Department's main office located at 17 North Second Street, Suite 1300, Harrisburg, PA 17101. (OTSC, ¶ 3)
4. Respondent Candor (CRD # 286626) was, at all relevant and material times, a Pennsylvania limited liability company with an address at: Redacted (OTSC, ¶ 4)
5. Respondent McCusker (CRD # 2225299) was, at all relevant and material times, the managing member and chief compliance officer of Respondent Candor. (OTSC, ¶ 5)
6. From in or about August 2017 until the present, Respondent Candor has been registered as an investment adviser, pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c). (OTSC, ¶ 6).
7. From in or about August 2017 until the present, Respondent McCusker has been registered as an investment adviser representative of Respondent Candor, pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c). (OTSC, ¶ 7)
8. As the managing member and chief compliance officer of Respondent Candor, Respondent McCusker acted as an "affiliate" of Respondent Candor within the meaning of Section 102(b) of the 1972 Act, 70 P.S. §1-102(b), and, as such, caused Respondent Candor to commit the violations at issue here. (OTSC, ¶ 8)
9. At all relevant and material times, Respondent Candor has had discretionary authority over client funds or securities. (OTSC, ¶ 9)

10. Pursuant to Regulation 304.022(b), an investment adviser with discretionary authority over client funds or securities shall file with the Department, within 120 days of the investment adviser's fiscal year end, a balance sheet, prepared in accordance with generally accepted accounting principles. 10 Pa. Code §304.022(d). (OTSC, ¶ 10)

11. Respondent Candor's fiscal year ended on December 31, 2017. (OTSC, ¶ 11)

12. On or about September 4, 2018, the Department contacted Respondent Candor, using the email address provided by Respondent on its Form ADV, to inform Respondent Candor that the Department had not received a balance sheet for the fiscal year ending on December 31, 2017. (OTSC, ¶ 12; Exhibit A)

13. To date, Respondent Candor has not filed a balance sheet with the Department for its fiscal year ending on December 31, 2017, as required by Regulation 304.022, 10 Pa. Code §304.022(b) and (d). (OTSC, ¶ 13)

14. On October 26, 2018, the Bureau issued and served upon the Respondents a *Notice to Answer and Request Hearing* ("Notice") and *Order to Show Cause* ("OTSC"), directing that Respondents show cause why the Commission should not impose sanctions and remedies against them for their violations of the 1972 Act. (MDFA, ¶ 1; Official Notice – Department records)<sup>1</sup>.

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<sup>1</sup> Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code §31.1 *et. seq.*, at §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert...

1 Pa. Code §35.173.

Official notice is also permitted under case law. *See*, for example, *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A. 2d 991 (Pa. Cmwlth. 1987), in which the Commonwealth Court explained:

"Official notice" is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files, in addition to those facts which are obvious

15. The Notice and OTSC were served on Respondents at their ADV address, via certified mail, return receipt, and first-class mail, postage prepaid. (MDFA, ¶'s 1, 6 and 7; Official Notice – Department records)

16. Service of the Notice and OTSC upon Respondents via certified mail was not accomplished. (MDFA, ¶ 6, Exhibit A; Official Notice – Department records)

17. The Notice and OTSC that was served upon Respondents via first-class mail, postage prepaid, was not returned as undeliverable within 15 days after mailing and are presumed delivered. (MDFA, ¶ 7, Exhibit B)

18. Respondents were notified that an Answer must be filed in writing within 30 days of the date of the October 24, 2018 OTSC; that the Answer must specifically admit or deny the allegations in the OTSC; that general denials of the allegations set forth in the OTSC are not sufficient; and that a failure to support any denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against Respondents without a hearing. (Notice and OTSC; Official Notice – Department records).

19. Respondents did not file an Answer to the OTSC within 30 days of the date of the OTSC. (MDFA, ¶'s 11-12; Official Notice – Department records).

20. On January 8, 2019, the Bureau filed an MDFA against Respondents and mailed a copy of the MDFA to Respondents by first-class mail, postage prepaid, at Respondents' ADV address. (Department records; MDFA, certificate of service)

21. Respondents did not file a response to the MDFA. (Official Notice – Department records).

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and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

22. By Order dated January 23, 2019, the factual allegations set forth in paragraphs 1 through 13 of the OTSC were deemed admitted, and judgment by default was entered against the Respondents. (Official Notice – Department records; January 23, 2019 Order).

23. Respondents were served with the OTSC, MDFA and all subsequent orders, notices, documents and pleadings filed in this matter. (Department records)

### CONCLUSIONS OF LAW

1. The Department has jurisdiction in this matter. (Findings of Fact Nos. 1-2)
2. Respondents received notice of the charges against them and were afforded, but declined, an opportunity to be heard. (Findings of Fact Nos. 14-23)
3. Respondents Candor and McCusker failed to file with the Department a balance sheet, prepared in accordance with generally accepted accounting principles within 120 days of Respondent Candor's fiscal year end, which authorizes the Department to deny, suspend, revoke, or condition the registration of Respondents or to censure the Respondents pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. §1-305(a)(v), and Regulation 304.022(b) and (d), 10 Pa. Code §304.022(b) and (d). (Findings of Fact Nos. 1-13).
4. Respondents Candor and McCusker failed to furnish information reasonably requested by the Department, which authorizes the Department to deny, suspend, revoke, or condition the registration of Respondents or to censure the Respondents pursuant to Section 305(a)(xiii) of the 1972 Act, 70 P.S. §1-305(a)(xiii). (Findings of Fact Nos. 1-13).

## DISCUSSION

The Bureau's OTSC charges Respondents with violating section 305(a)(v) and (xiii) of the 1972 Act, 70 P.S. § 1-305(a)(v) and (xiii), and section 304.022(b) and (d) of the regulations duly promulgated thereunder, which provide, in relevant part, as follows:

### **§ 1-305. Denial, suspension, revocation and conditioning of registration**

(a) The department may, by order, deny, suspend, revoke or condition any registration or may censure any registrant if it finds that such order is in the public interest and that such registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate thereof, whether prior or subsequent to becoming associated with such person:

...

(v) Has wilfully violated any provision of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the Securities Exchange Act of 1934, the Trust Indenture Act of 1939 (53 Stat. 1149, 15 U.S.C. § 77aaa et seq.), the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.), the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), the Commodity Exchange Act, [footnote omitted] any law of a foreign country governing or regulating any aspect of the business of securities, commodities futures or banking or this act, or of any rule, regulation or order under any of such statutes within the previous ten years; or

...

(xiii) . . . has refused to furnish information reasonably requested by the department within the previous ten years; or

...

70 P.S. § 1-305(a)(v), (xiii).

### **§304.022. Investment adviser required financial reports.**

...

(b) An investment adviser registered under section 301 of the act that has discretionary authority over client funds or securities, but not custody, shall file with the Department a balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet is not required to be audited but shall be prepared in accordance with generally accepted accounting principles.

(2) The balance sheet must contain a representation by the investment adviser that it is true and accurate.

...

(d) . . . investment advisers required to file the reports of financial condition set forth in subsections (a) – (c) shall file the reports with the Department within 120 days of the investment adviser's fiscal year end.

10 Pa. Code §304.022(b) and (d).

The Bureau bears the burden of proving the allegations in the OTSC by a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). Here, the factual allegations of the OTSC have been deemed admitted, by default. Any objections by Respondents regarding the accuracy of the factual averments are therefore waived. The Bureau has satisfied its burden of proof.

The deemed admitted facts establish that at all relevant and material times, Respondent McCusker was the managing member and chief compliance officer of Respondent Candor, which has been registered as an investment advisor, pursuant to Section 301(c) of the 1972 Act<sup>2</sup> since in or around August of 2017. Respondent McCusker became registered as an investment adviser representative of Respondent Candor at or around the same time, i.e., August 2017. As the managing member and chief compliance officer of Respondent Candor, Respondent McCusker acted as an "affiliate"<sup>3</sup> of Respondent Candor and, as such, caused Respondent Candor to commit the offenses at issue here.

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<sup>2</sup> Section 301 of the 1972 Act relevantly provides:

**§ 1-301. Registration requirement**

Unless exempted under section 302 (*footnote omitted*) hereof:

(c) It is unlawful for any person to transact business in this State as an investment adviser unless he is so registered or registered as a broker-dealer under this act or unless he is exempted from registration. It is unlawful for any person to transact business in this State as an investment adviser representative unless he is so registered or exempted from registration.

10 P.S. § 1-301(c).

<sup>3</sup> The term "affiliate" is defined under section 102(b) of the 1972 Act to mean: "a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified." 70 P.S. §1-102.



As to those offenses, the factual findings reveal that at all relevant and material times, Respondent Candor had discretionary authority over client funds or securities. Regulations duly promulgated under the 1972 Act provide that an investment adviser that has its principal place of business in the Commonwealth and has discretionary authority over client funds or securities shall file with the Department a balance sheet as of the end of its fiscal year. There is no dispute that Respondent Candor's fiscal year ended on December 31, 2017.

The deemed admitted facts reveal that on or about September 4, 2018, the Department contacted Respondent Candor to inform Respondent that the Department had not received a balance sheet for Respondent Candor's fiscal year ending December 31, 2017. Respondent was advised:

. . . If you are an investment adviser with discretionary authority and have not submitted the required financial statement, the Department may take immediate administrative action. Should you need additional guidance or have questions, do not hesitate to contact Susan Courtney at (717) 783-4221 or Robyn Galloway at (717) 783-4211.

(OTSC, Exhibit A)

Despite this notification, Respondent Candor failed to file a balance sheet with the Department for its fiscal year ending December 31, 2017, and, to date, continues to be out of compliance with Regulation 304.022. Respondents' failure to comply with Regulation 304.022, and to respond to the Department's reasonable request to furnish such information constitutes grounds under section 305(a)(v) and (xiii) of the 1972 Act, and Regulation 304.022(b) and (d), 10 Pa. Code §304.022(b) and (d), to impose sanctions against Respondents.

### **Sanctions**

When the Commission determines that a person has willfully violated the 1972 Act, the sanctions that may be imposed by the Commission are wide-ranging. Under Section 512 of the 1972 Act, 70 P.S. §1-512(a), the Commission may issue an order which bars, conditionally or unconditionally and either permanently or for such period of time as it shall determine, such person from:

- (1) Representing an issuer offering or selling securities in this State;
- (2) Acting as promoter, officer, director or partner of an issuer (or an individual occupying a similar status of performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;
- (3) Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under section 301 of the 1972 Act;
- (4) Being an affiliate of any person registered under section 301 of the 1972 Act; or
- (5) Relying upon an exemption from registration contained in section 202, 203 or 302 of the 1972 Act.

In addition, section 602.1 of the 1972 Act authorizes and, in some instances, requires assessments to be imposed. For example, subsection (b) provides:

#### **§1-602.1. Assessments**

(b) *A registrant, applicant for registration, issuer or other person upon whom the [commission] has conducted an examination, audit, investigation or prosecution and who has been determined by the [commission] to have violated this act or rule or order of the [commission] under this act shall pay for all the costs incurred in the conduct of such examination, audit, investigation or prosecution.* These costs shall include, but not be limited to, the salaries and other compensation paid to clerical, accounting, administrative, investigative, examiner and legal personnel, the actual amount of expenses reasonably incurred by such personnel and the [commission] in the conduct of such examination, audit, investigation or prosecution, including a pro-rata portion of the [commission's] administrative expenses.

70 P.S. §1-602.1(b)(emphasis added). Neither the OTSC nor the MDFA specify or document the amount of any costs incurred by the Bureau in the investigation and prosecution of this matter; hence, no *specific* dollar award of such costs is proposed.<sup>4</sup>

Subsection (c) similarly provides, in pertinent part:

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<sup>4</sup> The Hearing Officer has no information by way of factual averments, testimony or otherwise, to determine the actual costs of investigation under section 602.1(b). Since the Commission's mandate to assess such costs on Respondent is statutorily based, to the extent that the Bureau has documentation to substantiate the costs and expenses it incurred during the course of its investigation, a recommendation from the Hearing Officer should not be necessary in order to allow the Bureau to recoup its costs.

(c) After giving notice and opportunity for a hearing, the [commission] may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in the amounts provided in paragraph (1) against a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser where the [commission] determines that the person within the previous ten years **willfully**<sup>5</sup> has violated **this act or a rule** or order of the department under this act...;

(1) The [commission], in issuing an order under this subsection, may impose the administrative assessments set forth below. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

(i) In issuing an order against any broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser, the [commission] may impose a maximum administrative assessment of up to one hundred thousand dollars (\$100,000) for each act or omission that constitutes a violation of the act or rule or order issued under this act...

70 P.S. §1-602.1(c). (emphasis added).

In its OTSC, the Bureau requests the Commission to issue an order under Section 305 of the 1972 Act that the registration of Respondents be suspended, revoked, or conditioned, or that Respondents be censured. The Bureau also requests the Commission to issue an order implementing the statutory bars set forth in Section 512 of the 1972 Act,<sup>6</sup> and that Respondents be ordered to pay the costs

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<sup>5</sup> (w) "Wilful and wilfully" mean the following:

(1) As used in all sections of the act except section 511 with respect to a wilful violation of section 401(a) [citation omitted] of the act, and notwithstanding any law or statute to the contrary, wilful means that the person acted intentionally in the sense that the person intended to do the act and was aware of what the person was doing. Proof of evil motive or intent to violate the act or knowledge that the person's conduct violated the act is not required.

70 P.S. § 1-1-02(w).

<sup>6</sup> Section 512 of the 1972 Act provides:

**§ 1-512. Statutory bars.**

(a) After giving notice and opportunity for a hearing, the department, where it has determined that a person willfully violated this act or any rule or order thereunder or knowingly aided in the act or transaction constituting such violation, may issue an order accompanied by written findings of fact and conclusions of law which bars, conditionally or unconditionally and either permanently or for such period of time as the department shall determine, such person from:

(1) Representing an issuer offering or selling securities in this State;

of the investigation pursuant to Section 602.1(b) of the 1972 Act.

As an investment adviser with discretionary authority over client funds or securities, and an investment adviser representative, respectively, Respondents have a statutory obligation to comply with the 1972 Act and regulations, and to respond to reasonable requests for information from the Department. Regulations of the Department are clear: An investment adviser registered under section 301 of the act that has discretionary authority over client funds or securities, shall file with the Department a balance sheet as of the end of its fiscal year. The requirement to file a balance sheet at the end of the fiscal year is not discretionary; it is mandatory. Respondents failed to do so. In like vein, despite receiving notice of the charges, and being afforded an opportunity to be heard, Respondents chose not to contest the Bureau's actions. Consequently, the record is devoid of any evidence that might be reasonably considered in mitigation of any sanction.

The requirement that an investment advisor that has discretionary authority over client funds or securities files required documents and reports with the Bureau, responds to Bureau inquiries, and complies with the safeguards established by the 1972 Act and regulations promulgated thereunder to ensure the proper management of client funds, is paramount to the integrity of the industry. An annual balance sheet is an important resource by which the Department can detect any abuse of that discretion or other misconduct.

Owing to the nature of the violations at issue, and the Commission's responsibility to regulate the securities industry in a manner that safeguards the public, Respondents registrations will be suspended until Respondent Candor submits to the Department a balance sheet for its fiscal years ending

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(2) Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;

(3) Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under section 301;

(4) Being an affiliate of any person registered under section 301; or

(5) Relying upon an exemption from registration contained in section 202, 203 or 302.

December 31, 2017 and December 31, 2018 in accordance with Regulation 304.022(b). Additionally, to cement in Respondents the importance of complying with their regulatory responsibilities, and to respond to reasonable requests of the Department, Respondents will each be assessed a \$2,000.00 administrative assessment, and actual costs of investigation as mandated under section 602.1(b) of the 1972 Act. Finally, during the time that Respondents registrations remain suspended, Respondents shall also be barred as provided in section 512 of the 1972 Act, 70 P.S. § 1-512, from engaging in certain regulated activity.

The following order will therefore issue:

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES**

<b>Commonwealth of Pennsylvania</b>	:	
<b>Department of Banking and Securities,</b>	:	
<b>Bureau of Securities Compliance and</b>	:	
<b>Examinations</b>	:	
	:	<b>Docket No. 180077 (SEC-OSC)</b>
v.	:	
	:	
<b>Candor Capital Partners, LLC, and</b>	:	
<b>Seun McCusker,</b>	:	
<b>Respondents</b>	:	

**PROPOSED ORDER**

AND NOW, this 28<sup>th</sup> day of January 2019, in accordance with the foregoing findings of fact, conclusions of law, and discussion, it is **ORDERED** that Respondents, Candor Capital Partners, LLC, and Seun McCusker, shall each pay an **ADMINISTRATIVE ASSESSMENT** of **Two Thousand Dollars (\$2,000.00)** in the total amount of **Four Thousand Dollars (\$4,000.00)**.

It is further **ORDERED** that the investment adviser registrations issued to Respondent Candor Capital Partners, LLC, CRD # 286626, and Respondent Seun McCusker, CRD # 2225299, shall be **INDEFINITELY SUSPENDED**, and that Respondents, individually and collectively, shall be **TEMPORARILY BARRED**, pursuant to section 512 of the 1972 Act from:

- a. Representing an issuer offering or selling securities in this State;
- b. Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;

- c. Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under section 301 of the 1972 Act;
- d. Being an affiliate of any person registered under section 301 of the 1972 Act; or,
- e. Relying upon an exemption from registration contained in section 202, 203 or 302 of the 1972 Act.

Lastly, it is **ORDERED** that Respondents Candor Capital Partners, LLC, and Sean McCusker, shall jointly and severally be assessed costs of investigation, if any, in an amount verifiable by the Bureau, as mandated by section 602.1(b) of the 1972 Act.

The indefinite suspension of Respondents' registrations and temporary bar shall remain in effect until such time that Respondents, individually and collectively: a) come into full compliance with the Regulation 304.022(b), 10 Pa. Code §304.022(b); b) pay in full the administrative assessments assessed herein; c) pay in full the costs, if any, incurred by the Bureau in the conduct of its examination, audit, investigation, and prosecution, as mandated under 70 P.S. §1-602.1(b); and d) petition the Bureau for reinstatement of their registrations.

Payment of the administrative assessment and costs shall be by certified check, attorney's check, cashier's check or U.S. Postal Service money order, made payable to the "Commonwealth of Pennsylvania," and shall be delivered within thirty (30) days of the effective date of the Commission's Final Order in this matter, to:

Gerard Mackarevich, Counsel  
Banking and Securities Commission  
Market Square Plaza  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101

Respondents may petition the Commission for reinstatement of their registrations, and for removal of the temporary bar upon a showing, to the satisfaction of the Bureau, that Respondents have satisfied the sanctions imposed herein, and all applicable legal and administrative requirements necessary for the reinstatement of their registrations.

**BY ORDER:**

Redacted

**Jackie Wiest Lutz**  
**Chief Hearing Officer**

**For the Bureau:** John Chiappetta, Esquire  
Assistant Counsel  
Office of Chief Counsel  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
Market Square Plaza  
17 N. 2<sup>nd</sup> Street  
Suite 1300  
Harrisburg, PA 17101

**For Respondents:** Candor Capital Partners, LLC  
Redacted  
Redacted  
  
Sean McCusker  
Redacted  
Redacted

**Docket Clerk:** Linnea Freeberg  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
Market Square Plaza  
17 N. Second Street  
Suite 1300  
Harrisburg, PA 17101

**Date of Mailing:** 1/29/19



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

FILED

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COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF BANKING AND	:	PA DEPARTMENT OF
SECURITIES, BUREAU OF SECURITIES	:	BANKING AND SECURITIES
COMPLIANCE AND EXAMINATIONS	:	
	:	
PETITIONER,	:	
v.	:	Docket No. : 180077 (SEC-OSC)
	:	
CANDOR CAPITAL PARTNERS, LLC AND	:	
SEAUN MCCUSKER	:	
	:	
RESPONDENTS	:	
	:	

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CERTIFICATE OF SERVICE

I hereby certify that on January 29<sup>th</sup>, 2019, I served a true and correct copy of the attached Letter and Proposed Report in accordance with the requirements of 1 Pa. Code § 33.31 (relating to service by agency), in the manner indicated below:

**By United States First Class Mail:**

John Chiappetta, Esquire  
Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
301 5<sup>th</sup> Avenue, Suite 290  
Pittsburgh, PA 15222

**By United States First Class Mail:**

Candor Capital Partners, LLC  
Redacted  
Redacted  
  
Seaun McCusker  
Redacted  
Redacted

By:

Redacted  
\_\_\_\_\_  
Linnea Freeberg, Docket Clerk  
PA Department of Banking and Securities  
17 North Second Street, Suite 1300  
Harrisburg, Pennsylvania 17101

FILED

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

2019 MAY -2 AM 9:47

PENNSYLVANIA DEPARTMENT OF  
BANKING AND SECURITIES, BUREAU  
OF SECURITIES COMPLIANCE AND  
EXAMINATIONS

v.

CANDOR CAPITAL PARTNERS, LLC  
SEAUN MCCUSKER

PA DEPARTMENT OF  
BANKING AND SECURITIES

DOCKET No. 180077 (SEC-OSC)

CERTIFICATE OF SERVICE

On behalf of the agency, I certify that I have this day caused to be served a copy of the foregoing *Final Order* upon the following persons pursuant to 1 Pa. Code §§ 33.31:

BY CERTIFIED AND FIRST-  
CLASS MAIL:

Candor Capital Partners, LLC  
Redacted  
Redacted  
  
Sean McCusker  
Redacted  
Redacted

BY ELECTRONIC MAIL:

John Chiappetta, Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
301 5<sup>th</sup> Avenue, Suite 290  
Pittsburgh, PA 15222  
*Counsel for the Bureau of Securities  
Compliance and Examinations*

Dated this 2<sup>nd</sup> day of May, 2019

Redacted

Linnea Freeberg, Docket Clerk  
PA Banking and Securities Commission  
17 N. 2nd Street, Suite 1300  
Harrisburg, PA 17101  
Telephone: (717) 787-5783