

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF
BANKING AND SECURITIES

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

Docket No.: 19 0091 (SEC-OSC)

v.

VITRUVIUS CAPITAL CONSULTANTS
DENNIS D. CROWLEY

FINAL ORDER

AND NOW, the Pennsylvania Banking and Securities Commission (“Commission”) issues this Final Order in the matter of *Commonwealth of Pennsylvania Department of Banking and Securities, Bureau of Securities Compliance and Examinations v. Vitruvius Capital Consultants and Dennis D. Crowley*, Docket No. 190091 (SEC-OSC).

The Commission reviewed the proposed report and proposed order of Hearing Officer John D. Kelly, which are attached. Pursuant to 1 Pa. Code § 35.207, the Commission served these documents on the parties by letter dated March 4, 2020, giving the parties 30 days to appeal the findings and recommendations by submitting exceptions to the Commission. No party filed exceptions. Accordingly, the Commission may proceed to issue a Final Order in the matter pursuant to the final adjudication authority granted it under Section 1122-A of the Department of Banking and Securities Code, 71 P.S. § 733-1122-A.

The Department of Banking and Securities, Bureau of Securities, Compliance and Examination (“Bureau”) made certain allegations in an Order to Show Cause (“OSC”) that it served on Vitruvius Capital Consultants and Dennis D. Crowley (“Respondents”) on November

15, 2019. When Respondents failed to respond to such allegations, the Bureau filed a Motion to Deem Facts Admitted and Entry of Default Judgment on January 23, 2020.

In his proposed report, the hearing officer deemed the Respondents to be in default and to have admitted the facts as alleged in the OSC. Based on these deemed facts admitted, as set forth in the attached proposed report, the hearing officer concluded that the Bureau has proven two willful violations of the Pennsylvania Securities Act of 1972 (“1972 Act”) and its regulations. First, Respondents failed to submit a balance sheet within 120 days of the end of the investment adviser’s 2018 fiscal year, a violation of section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and the Department regulation at 10 Pa. Code § 304.022(b) and (d). Second, Respondents refused to furnish information reasonably requested by the Department, which violated section 305(a)(xiii) of the 1972 Act, 70 P.S. § 1-305(a)(xiii)

With this Final Order, the Commission adopts the hearing officer’s proposed report as written, but modifies the proposed order as to the amount of the assessment. The Commission **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).

The Commission further **ORDERS** that, effective 30 days after the mailing date of this Final Order, the investment adviser registration issued to Vitruvius Capital Consultants, CRD # 283619, and the investment adviser representative registration issued to Dennis D. Crowley, CRD # 4254714, shall be **INDEFINITELY SUSPENDED** pursuant to section 305(a)(v) and (xiii) of the 1972 Act, 70 P.S. §1-305(a)(v) and (xiii), and that, pursuant to section 1-512(a) of the 1972

Act, 70 P.S. §1-512(a), Respondents shall be **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.

Upon payment by the Respondents of the administrative assessments in full and their coming into full compliance with the violations alleged by the Bureau in the OSC, the Bureau at Respondents' request will lift the suspension of their registrations and remove the temporary bars from securities activities.

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

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

So ORDERED this 1st day of September, 2020

FILED

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

PA DEPARTMENT OF
BANKING AND SECURITIES

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

v. :

Docket No. 190091 (SEC-OSC)

Vitruvius Capital Consultants :
and :
Dennis Crowley, :
Respondents :

PROPOSED REPORT

John D. Kelly
Hearing Examiner

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

This matter arose on the filing by the Department of Banking and Securities (“Department”) of an Order to Show Cause (“OSC”) charging Vitruvius Capital Consultants (“Vitruvius”) and Dennis Crowley (“Crowley”) (collectively, “Respondents”) with three (3) Counts of violations of the Pennsylvania Securities Act of 1972¹ (“1972 Act”). Specifically, the first Count of the OSC charged that Respondents are subject to disciplinary action under section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), because they willfully violated the Department’s regulation at 10 Pa. Code § 304.022(b) and (d) by failing to timely file with the Department a balance sheet, prepared in accordance with generally accepted accounting principles, for the fiscal year ending December 31, 2018. The second Count of the OSC charged that Respondents are subject to disciplinary action under section 305(a)(xiii) of the 1972 Act, 70 P.S. § 1-305(a)(xiii), because they failed to furnish information as reasonably requested by the Department. The third Count of the OSC charged that Respondents are subject to disciplinary action under section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v) and Regulation 303.012(i), 10 Pa. Code § 303.012(i) in that they failed to take steps necessary to ensure that material information contained in their “Form ADV” and exhibits remained current and accurate. These violations would subject Respondents to the denial, suspension, revocation, or conditioning of their registrations, or censure as registrants.

By letter dated January 10, 2020, Secretary of Banking and Securities Robin L. Wiessmann (“the Secretary”) delegated this matter to the undersigned hearing officer to conduct proceedings

¹ Act of December 5, 1972 (P L 1280, No 284), as amended, 70 P S §§ 1-101 – 1-704

(Footnote continued on next page)

in accordance with the General Rules of Administrative Practice and Procedure² (“GRAPP”), including filing the of a proposed adjudication and order.

The Bureau served the OSC on Respondents on November 15, 2019, in accordance with the requirements of § 33.31 of GRAPP, 1 Pa. Code § 33.31. The OSC directed Respondents to file an answer thereto within 30 days. However, Respondents did not do so. Therefore, on January 23, 2020, the Bureau filed a Motion to Deem Facts Admitted and for Entry of Default Judgment (“MDFA”), copies of which were served upon Respondents that same date by first-class mail, postage prepaid, at the same address at which the OSC had been served. Respondents have not filed any answer or objections to the MDFA. This proposed adjudication and order is now issued in accordance with the Secretary’s letter of January 10, 2020.

² 1 Pa Code §§ 31.1-35 251

FINDINGS OF FACT

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the 1972 Act. (OSC, ¶ 1)
2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department. (OSC, ¶ 2)
3. The Bureau operates from the Department's main office located at 17 N 2nd Street, Suite 1300, Harrisburg, Pennsylvania 17101. (OSC, ¶ 3)
4. Vitruvius (CRD # 283619) was, at all relevant times herein, a Pennsylvania company with an address at Redacted . (OSC, ¶ 4)
5. Crowley (CRD # 4254714), was, at all material times herein, the direct owner and chief compliance officer of Vitruvius. (OSC ¶ 5)
6. From in or about July 2018 until present, Vitruvius has been registered pursuant to section 301-C of the 1972 Act, 70 P.S. § 1-301(c), as an investment advisor. (OSC ¶ 6)
7. From in or about July 2018 until present, Crowley has been registered pursuant to section 301-C of the 1972 Act, 70 P.S. § 1-301(c), as an investment advisor representative of Vitruvius. (OSC ¶ 7)
8. As the direct owner and chief compliance officer of Vitruvius, Crowley acted as an affiliate of Vitruvius within the meaning of section 102 the of the 1972 Act 70 P.S. § 1-102(b) and as such, caused Vitruvius to commit the acts which are found to be fact herein. (OSC ¶ 8)
9. At all times material herein, Vitruvius had discretionary authority over client funds or securities. (OSC ¶ 9)
10. Pursuant to Regulation 304.022(b), an investment adviser with discretionary authority over client funds or securities shall file with the Department a balance sheet, prepared in

accordance with generally accepted accounting principles. 10 Pa. Code § 304.022(b). The balance sheet is to be filed with the Department within 120 days of the investment advisor’s fiscal year end. 10 Pa. Code § 304.022(d). (OSC ¶ 10)

11. Vitruvius’ fiscal year ended on December 31, 2018. (OSC ¶ 11)

12. On or about June 5, 2019, the Department contacted Vitruvius using the email address provided on the Uniform Application for Investment Advisor Registration (“UAIAR”), to inform Vitruvius that the Department had not received a balance sheet for the fiscal year ending on December 31, 2018. (OSC ¶ 12)

13. On or about July 9, 2019, the Department mailed Vitruvius a second notice to the address listed in the UAIAR. (OSC ¶ 13)

14. On or about July 30, 2019, a Bureau staff member contacted Vitruvius by telephone and left a message requesting the balance sheet. (OSC ¶ 14)

15. On or about October 7, 2019, a Bureau staff member mailed Vitruvius a third notice to the address listed in the UAIAR. (OSC ¶ 15)

16. On October 16, 2019, the Bureau received a handwritten note from an unidentified individual who indicated that Crowley had moved to Dallas, Texas and has not lived in Pennsylvania since July 2018. (OSC ¶ 16)

17. Regulation 303.012(i) provides that “an investment advisor registered under the Act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate the investment advisor shall file with the Commission an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.” 10 Pa. Code § 304.012(i). (OSC ¶ 17)

18. Respondents' Form ADV on file with the Department does not contain an amendment to the address for Respondents. (Board records)

19. To date, Vitruvius has not filed a balance sheet with the Department for the fiscal year ending on December 31, 2018, as required by Regulation 304.022. 10 Pa. Code § 304.022(b), (d).

20. The Respondents' balance sheet for the fiscal year ending December 31, 2018 was reasonably requested by the Department. (OSC ¶¶ 10, 17)

21. On November 15, 2019, the Bureau filed an OSC against Respondents under the 1972 Act. (Official notice of Department records.³ MDFA, ¶1)

22. On November 15, 2019, the Bureau served the OSC on Respondents by mailing a copy to Vitruvius at the ADV Address and a copy to Crowley at the ADV Address, both via certified mail return receipt and first-class mail postage prepaid. (Department records; MDFA, ¶ 6 and attached Exhibit A)

23. The United States Postal Service tracking information for the certified mailings indicates that delivery of the OSC was not accomplished. (Department records; MDFA, ¶ 7 and attached Exhibit A)

24. On November 15, 2019, the Bureau mailed the OSC via ordinary, first-class mail to both Vitruvius and Crowley at the ADV Address. (Department records; MDFA, ¶ 8 and attached Exhibit A)

25. The Department also mailed the OSC via ordinary first-class mail to an address in

³Official notice is taken of docket entries in this matter in accordance with the GRAPP rule that an administrative agency may take official notice of its own records 1 Pa. Code § 35.173; *see also, Falasco v Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A 2d 991 (Pa. Cmwlth. 1987) (The doctrine of official notice 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); *Gleeson v. State Bd. of Medicine*, 900 A 2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A 2d 316 (Pa. 2007) (licensing board may take official notice of its own records). All subsequent such references will be cited as "Department records."

Dallas, Texas, based upon an anonymous tip that Crowley may have moved to a new address.
(MDFA, ¶ 9)

26. The ordinary, first-class mailings sent to both Vitruvius and Crowley at the ADV address were not returned to the Department as undeliverable. (MDFA, ¶ 10)

27. The OSC directed Respondents to file an Answer within 30 days of its date. (OSC, Notice)

28. Neither Respondent requested an extension of time to file an Answer. (Department records; MDFA, ¶ 11)

29. Neither Respondent filed with the Department an Answer to the OSC. (Department records; MDFA, ¶ 12)

30. As of the date of this proposed adjudication and order, Respondents have not responded to the OSC or the MDFA. (Department records)

31. Respondents have been served with the OSC and all subsequent notices, documents and pleadings filed in this matter. (Department records)

CONCLUSIONS OF LAW

1. The Department has jurisdiction in this matter under sections 304(a) and 601(a) of the 1972 Act, 70 P.S. §§ 1-304(a) and 1-601(a), and sections 1122-A and 1141-A of the Department of Banking and Securities Code⁴, 71 P.S. §§ 733-1122-A and 733-1141-A. (Findings of Fact 1 - 8)

2. Respondents received notice of this proceeding and were afforded an opportunity to be heard in accordance with section 4 of the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact 21 - 26)

3. Because Vitruvius and Crowley failed to file with the Commission a balance sheets, prepared in accordance with generally accepted accounting principles, within 120 days of the investment adviser's fiscal year end, Respondents have willfully violated the Department's regulation at 10 Pa. Code § 304.022(b) and (d), subjecting Respondents to the denial, suspension, revocation of, or imposition of conditions upon, their registrations, or censure of them as registrants, pursuant to the 1972 Act at section 305(a)(v), 70 P S § 1-305(a)(v), or the imposition of an administrative assessment of up to \$100,000 for each act or omission that constitutes a violation of the 1972 Act or any rule issued under it, pursuant to the 1972 Act at section 602.1(c)(1)(i), 70 P S. § 1-602.1(c)(1)(i). (Findings of Fact 1 – 11, 19)

4. Because Vitruvius and Crowley refused to furnish information (i.e. the Vitruvius fiscal 2018 balance sheet) reasonably requested by the Department, Respondents have willfully violated the 1972 Act at section 305(a)(xiii), 70 P.S. § 1-305(a)(xiii), subjecting Respondents to the denial, suspension, revocation of, or imposition of conditions upon, their registrations, or censure of them as registrants, pursuant to the or the imposition of an administrative assessment

⁴ Act of May 15, 1933 (P.L. 565, No. 111), *as amended*, 71 P.S. §§ 733-1 – 733-1203.

of up to \$100,000 for each act or omission that constitutes a violation of the 1972 Act or any rule issued under it, pursuant to the 1972 Act at section 602 1(c)(1)(i), 70 P.S. § 1-602.1(c)(1)(i).

(Findings of Fact 1 – 11, 19 - 20)

5. There is insufficient evidence to support a conclusion by a preponderance of evidence that Vitruvius and Crowley failed to take steps necessary to ensure that material information, namely their mailing address, contained in the Form ADV and exhibits remains current and accurate under Bureau Regulations at 10 Pa. Code § 304.022(b) and (d). (Findings of Fact 1 – 18)

DISCUSSION

Service/Default

The Bureau served the OSC on Respondents by certified and first-class mail at their joint ADV address as well as to Crowley at a Texas address provided by an anonymous informant. While, according to the MDFA, the certified mailing was “not accomplished,” the first-class mailings were not returned to the Department as undeliverable, thus creating the presumption of delivery to both Respondents at their ADV address. *Cf. John Kenneth, Ltd. v. Com., U.C.B.R.*, 66 Pa. Cmwlth. 377, 379, 444 A.2d 824, 826 (1982) (“[w]here 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”).

The OSC directed Respondents to file an Answer to its allegations within 30 days, and advised them that failure to file a timely Answer could result in a final order against them without a hearing. The OSC further notified Respondents that they could be barred from certain acts of practice or being registered under the 1972 Act; that they could be ordered to pay the costs of the investigation; and that they could be ordered to pay an administrative assessment of up to \$100,000 for each willful violation of the 1972 Act. Nonetheless, Respondents failed to file an Answer or otherwise respond to the OSC’s allegations within the specified 30-day period. Accordingly, on January 23, 2020, the Bureau filed its MDFA, copies of which were served upon Respondents by first-class mail postage prepaid at the same addresses at which the OSC had been served.

In the MDFA, the Bureau asked that Respondents be deemed in default under the GRAPP at 1 Pa. Code § 35.37 for their failure to answer the allegations set forth in the OSC and further that those allegations be deemed admitted. Section 35.37 of the GRAPP provides as follows:

§ 35.37. Answers to orders to show cause.

A person upon whom an order to show cause has been served under § 35.14 (relating to orders to show cause) shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations or charges which may be made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon. Mere general denials of the allegations of an order to show cause which general denials are unsupported by specific facts upon which respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings. **A respondent failing to file answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.**

1 Pa. Code § 35.37 (emphasis added).

Having failed to file Answers to either the OSC or the MDFA⁵ within the time allowed, Respondents are deemed to be in default per GRAPP section 35.37. Respondents having been afforded adequate notice of the charges and an opportunity to be heard on them, it is now proper to proceed to enter a final order in this disciplinary proceeding without a hearing. *See Celane v Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980).

Violations

The OSC alleges that Respondents violated the 1972 Act by having failed to file a balance sheet for their fiscal year ending on December 31, 2018 and by having failed to file with the Department an amendment to the address listed on Form ADV. According to the charging paragraphs of the OSC, these omissions gave rise to three separate violations of the Act, in Counts set forth as follows.

In its first Count, the Bureau first charged that Respondents are subject to disciplinary

⁵ Pursuant to the GRAPP at 1 Pa Code § 35 179, Respondents were required to file any answer or objection to the MDFA within ten days.

(Footnote continued on next page.)

action under section 305(a)(v) of the 1972 Act,⁶ 70 P.S. § 1-305(a)(v), because they violated the Department's regulations at 10 Pa. Code § 304.022(b)(1)⁷ by failing to submit a balance sheet for the fiscal year ending December 31, 2018, that was prepared in accordance with generally accepted accounting principles.

Regarding this Count, as established by the facts deemed admitted, Vitruvius is a registrant of the Department under section 301(c) of the 1972 Act,⁸ 70 P.S. § 1-301(c), as an investment

⁶ **Section 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 willfully violated** any provision of the Securities Act of 1933 ..., the Securities Exchange Act of 1934, the Trust Indenture Act of 1939 ..., the Investment Advisers Act of 1940 ..., the Investment Company Act of 1940 ..., the Commodity Exchange Act, 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 made any material misrepresentation to or withheld or concealed from or omitted to state to the department or any of its representatives any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or has refused to furnish information reasonably requested by the department within the previous ten years;**

* * *

70 P.S. § 1-305(a) (emphasis supplied).

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

* * *

(b) **An investment adviser** registered under section 301 of the [1972 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.

* * *

10 Pa. Code § 304.022(b) (emphasis supplied)

⁸ **Section 301. Registration requirement**

Unless exempted under section 302 hereof:

* * *

(Footnote continued on next page)

adviser with discretionary authority over client funds or securities. Vitruvius' fiscal year ended on December 31, 2018. Accordingly, it was required by § 304.022(b) to submit to the Department a balance sheet prepared in accordance with generally accepted accounting principles. Respondents were also required by § 304.022(d) to submit that balance sheet within 120 days of December 31, 2018 (i.e. May 1, 2019). Respondents submitted no balance sheet within the allotted time. By failing to do so, they violated § 304.022(b)(1), thus subjecting them to disciplinary action under section 305(a)(v) of the 1972 Act.

At the second Count of its OSC, based at least in part⁹ on the same averment of the first Count regarding Respondents' failure to file a balance sheet, the Bureau charges that Respondents refused to furnish information reasonably requested by the Department, willfully violating the 1972 Act at section 305(a)(xiii), 70 P.S. § 1-305(a)(xiii) and subjecting Respondents to the denial, suspension, revocation of, or imposition of conditions upon, their registrations, or censure of them as registrants or the imposition of an administrative assessment of up to \$100,000 pursuant to the 1972 Act at section 602.1(c)(1)(i), 70 P.S. § 1-602.1(c)(1)(i). Given the plain averments of the OSC and Respondents' failure to file an Answer to them, they are deemed to be in default and to have admitted that they failed to furnish the balance sheet. Given that the regulations require the filing of a balance sheet, it is readily concluded that such sheets constitute reasonably requested

(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.

70 P.S. § 1-301(c)

⁹ The second count incorporates the first twenty-one (21) paragraphs of the OSC by reference. Those paragraphs contain both the allegation regarding Respondents' failure to file the balance sheet as well as the allegation regarding their failure to update their ADV address. As discussed below, even though the facts have been deemed admitted, the admitted averments do not prove that Respondents failed to update their ADV. Nonetheless, the second Count may be found to have been proven based on Respondents' deemed admission that they did not file a 2018 fiscal year balance sheet as reasonably requested.

information. Therefore, Respondents are subject to disciplinary action under section 305(a)(xiii) of the 1972 Act, 70 P.S. § 1-305(a)(v).

Finally, at the third Count of the OSC, the Bureau alleges that because of their failure to file an amendment to their Form ADV address, Respondents failed to take steps necessary to ensure that material information contained in the Form ADV and exhibits remains current and accurate and therefore they have willfully regulation at 10 Pa. Code § 303.012(i). This Count is based on the premise that Respondents no longer are located at their ADV address. However, the only deemed-admitted averment in the OSC regarding Respondents' location is the same averment on which the Bureau relies to prove proper service of the OSC under the GRAPP.

Obviously, the Bureau cannot have it both ways – that Respondents are located at their address of record, Redacted for purposes of service of the OSC but they are *not* located at that address and therefore violated the 1972 Act by failing to an updated ADV address. Given the conclusion herein that Respondents were properly served with the OSC and MDFA at the Redacted address, it cannot be concluded that they were not located at that address on the date the charges were filed and that they thereby violated the 1972 Act by not filing a change of address. Accordingly, Respondents are not subject to disciplinary action under section 305(a)(xiii) of the 1972 Act, 70 P.S. § 1-305(a)(v), as charged in the third Count of the OSC.

Per the charging paragraphs of the OSC, Respondents are subject to the denial, suspension, revocation of, or imposition of conditions upon their registrations or censure of them as registrants, pursuant to the 1972 Act at section 305(a)(xiii), 70 P.S. § 1-305(a)(v), or the imposition of an administrative assessment of up to \$100,000 for each act or omission that constitutes a violation of the 1972 Act or any rule issued under it pursuant to the 1972 Act at section 602.1(c)(1)(i), 70 P.S. § 1-602.1(c)(1)(i). Crowley is a registrant of the Department under section 301(c) of the 1972

Act, as an investment adviser representative of Vitruvius. Crowley is also the president and owner of Vitruvius and acted as an “affiliate”¹⁰ of Vitruvius within the meaning of the 1972 Act. Crowley caused Vitruvius’s acts in this matter in violation of the 1972 Act. As an affiliate who caused Vitruvius to fail to timely submit to the Department a balance sheet prepared in accordance with generally accepted accounting principles and to refuse to furnish information reasonably requested by the Department, Crowley is similarly subject to disciplinary action under sections 305(a)(v) and (xiii) of the 1972 Act.

Sanction

For their willful violation of the Department’s regulation at 10 Pa. Code § 303.022(b) and refusal to furnish information reasonably requested by the Department, Respondents are subject to the imposition of sanctions. Under section 305(a) of the 1972 Act, the Department may deny, suspend, revoke or condition any registration, or censure any registrant or affiliate of an investment adviser. Additionally, the Department may impose an administrative assessment (another term for “civil penalty”) of up to \$100,000 for each violation of the 1972 Act or any rule issued under it. Section 602.1(c)(1)(i) of the 1972 Act, 70 P.S. § 1-602.1(c)(1)(i).¹¹

¹⁰ The 1972 Act defines an “affiliate” as “a person that directly controls the person specified” Section 102(b) of the 1972 Act, 70 P S § 1-102(b)

¹¹ **Section 602.1. Assessments.**

* * *

(c) After giving notice and opportunity for a hearing, the department 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[n] . investment adviser or investment adviser representative registered under section 301 or an affiliate of any. . . investment adviser where the department determines that the person within the previous ten years willfully has violated this act or a rule or order of the department under this act

(1) The department, 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 investment adviser or investment adviser representative registered under section 301 or an affiliate of any investment adviser, the department may impose

(Footnote continued on next page)

Respondents were required to, but did not, timely submit to the Department a balance sheet prepared in accordance with generally accepted accounting principles. In order to vindicate the Department's authority to enforce the law, Respondents' registrations will be suspended until such time as a proper balance sheet is submitted to the Department. Additionally, an administrative assessment of \$2,000 is necessary to deter future violations of the 1972 Act and to emphasize to Respondents and other similarly situated registrants the importance of timely submitting proper documentation to the Department. During the time that Respondent's registrations are suspended, they shall also be barred as provided in section 512 of the 1972 Act, 70 P.S. § 1-512,¹² from engaging in certain regulated activity.

Accordingly, based upon the foregoing discussion, the following proposed order shall issue:

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)(1)(i)

¹² **Section 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;
- (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.

70 P S § 1-512(a)

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

Commonwealth of Pennsylvania,	:	
Department of Banking and Securities,	:	
Bureau of Securities Licensing,	:	
Compliance and Examinations,	:	
Petitioner	:	
	:	
v.	:	Docket No. 190091 (SEC-OSC)
	:	
Vitruvius Capital Consultants	:	
and	:	
Dennis Crowley,	:	
Respondents	:	

PROPOSED ORDER

AND NOW, this 20th day of February, 2020, in accordance with the foregoing findings of fact, conclusions of law and discussion, it is **ORDERED** that Vitruvius Capital Consultants, and Dennis Crowley (“Respondents”) are **IN DEFAULT** of filing an Answer to the Order to Show Cause that had been issued against them in the above-captioned matter, and therefore they are **DEEMED TO HAVE ADMITTED** the averments of the Order to Show Cause;

IT IS THEREFORE FURTHER ORDERED that Respondents shall pay an **ADMINISTRATIVE ASSESSMENT** of **\$2,000.00 and**, effective 30 days after the final order of the Banking and Securities Commission, Respondent Vitruvius’ investment adviser registration CRD # 283619 and Respondent Crowley’s investment adviser representative registration CRD # 4254714 **shall be SUSPENDED** and they 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.

Payment of the administrative assessment 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 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

At any time, Respondents may request that their registrations be reinstated and that the temporary bar be removed. The Commission will administratively reinstate Respondents' registrations and remove the temporary bar if Respondents have paid the administrative assessment in full and have provided a balance sheet for Vitruvius Capital Consultants as of the fiscal year ended December 31, 2018, prepared in accordance with generally accepted accounting principles and have **otherwise complied with all administrative requirements.**

The Banking and Securities Commission has announced its intention to review this Proposed Report in accordance with 1 Pa. Code § 35.226(a)(2).

BY ORDER:

Redacted

John D. Kelly
Hearing Examiner

For the Bureau:

Carlton M. Smith, Esquire
Assistant Counsel
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF BANKING AND SECURITIES
Market Square Plaza
17 North Second Street, Suite 1300
Harrisburg, PA 15090

Respondents:

Vitruvius Capital Consultants
Redacted

Dennis Crowley
Vitruvius Capital Consultants
Redacted

Dennis Crowley
Redacted

Docket Clerk:

Linnea Freeberg
DEPARTMENT OF BANKING AND SECURITIES
17 North Second Street, Suite 1300
Harrisburg, PA 17101

Date of mailing:

2/28/2020

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF
BANKING AND SECURITIES

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

Docket No.: 19 0091 (SEC-OSC)

v.

VITRUVIUS CAPITAL CONSULTANTS
DENNIS D. CROWLEY

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:

BY HAND DELIVERY:

Vitruvius Capital Consultants
Redacted

Dennis D. Crowley
Redacted

Dennis D. Crowley
Redacted

Carlton Smith, Assistant Counsel
Commonwealth of Pennsylvania
Department of Banking and Securities
17 North Second Street, Suite 1300
Harrisburg, PA 17101
*Counsel for the Bureau of Securities
Compliance and Examinations*

Dated this 1st day of September, 2020

Redacted

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