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PA DEPARTMENT OF
BANKING AND SECURITIES

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

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, BUREAU OF SECURITIES	:	
COMPLIANCE AND EXAMINATIONS	:	Docket No.: 210091 (SEC-OSC)
	:	
	:	
v.	:	
	:	
AIRACOBRA CAPITAL MANAGEMENT, LLC	:	
NICHOLAS R. STONE	:	
	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Securities Compliance and Examinations ("Bureau"), investigated the business practices of Nicholas R. Stone ("Stone"), Airacobra Capital Management, LLC, ("Airacobra"), and its officers and employees. Based on the results of its investigation, the Bureau has concluded that Stone and Airacobra operated in violation of the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101 *et seq.* ("1972 Act"). Stone and Airacobra, in lieu of litigation, and without admitting or denying the allegations herein, and intending to be legally bound, hereby agrees to the terms of this Consent Agreement and Order ("Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the 1972 Act.
2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department.

3. Airacobra (CRD No. 283350) was, at all times material herein, a Pennsylvania limited liability company with an address at Redacted Redacted

4. Stone (CRD No. 2062998) was, at all times material herein, the managing member and chief compliance officer of Airacobra.

FACTUAL ALLEGATIONS

5. From in or about June 2018, until the present, Airacobra has been registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c), as an investment adviser.

6. From in or about January 2017, until the present, Stone has been registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c), as an investment adviser representative for Airacobra.

7. Airacobra, in connection with its advisory services, directly or indirectly held client funds or securities with the authority to obtain possession of them or the ability to appropriate them, and thus had "custody" over client funds or securities as defined in Regulation 102.021, 10 Pa. Code § 102.021.

8. Regulation 304.022(a)(1)-(a)(2), 10 Pa. Code 304.022(a)(1)-(a)(2), requires that an investment adviser that has custody of client funds or securities shall file an audited balance sheet and an accountant's supplementary opinion as of the end of its fiscal year.

9. Stone and Airacobra did not timely file an audited balance sheet with the Department after their fiscal year ended on December 31, 2020.

10. At all times material herein, Airacobra had discretionary authority over client funds or securities.

11. 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 shall be filed with the Department within 120 days of the investment adviser's fiscal year end. 10 Pa. Code § 304.022(d).

12. Stone and Airacobra did not timely file a balance sheet with the Department after their fiscal year ended on December 31, 2020.

VIOLATION

13. By engaging in the acts and conduct set forth in paragraphs 5 through 9 above, Airacobra and Stone, having custody of client funds or securities, failed to file with the Department an audited balance sheet and an accountant's supplementary opinion as of the end of Airacobra's fiscal year, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Airacobra and Stone pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.022 (a)(1)-(a)(2), 10 Pa. Code § 304.022(n)(1)-(a)(2).

14. By engaging in the acts and conduct set forth in paragraphs 5 through 6 and paragraphs 10 through 12 above, Stone and Airacobra failed to file with the Department a balance sheet, prepared in accordance with generally accepted accounting principles, within 120 days of Airacobra's fiscal year end, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Stone and Airacobra or censure Stone and Airacobra pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.022(b), (d), 10 Pa. Code § 304.022(b), (d).

RELIEF

15. Stone and Airacobra shall pay the Department an administrative assessment in the amount of \$4,500. Payment shall be made within thirty (30) days of the Effective Date of this Order by certified check or money order that is made payable to the "Department of Banking and

Securities" and shall be mailed or delivered in person to the Bureau of Securities Compliance and Examinations located at 17 N. Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

16. Stone and Airacobra are ORDERED to comply with the 1972 Act, and Regulations adopted by the Department, and in particular Regulation 304.022.

17. Should Stone and Airacobra fail to pay the assessment as set forth in paragraph 15 above, the sanctions set forth elsewhere in the Order shall continue in full force and effect until full payment is made. However, this provision shall not be construed as affording Stone and Airacobra the option of either paying the assessment or being indefinitely subject to the sanctions.

18. Should Stone and Airacobra fail to comply with any and/or all provisions of this Order, the Department may impose additional sanctions and costs and seek other appropriate relief subject to Airacobra's right to a hearing pursuant to the 1972 Act.

FURTHER PROVISIONS

19. Consent. Stone and Airacobra hereby knowingly, willingly, voluntarily, and irrevocably consent to the entry of this Order pursuant to the Bureau's authority under the 1972 Act and agrees that it understands all of the terms and conditions contained herein. Stone and Airacobra, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions, and/or penalties set forth in this Order.

20. Entire Agreement. This Order contains the entire agreement between the Department, Stone, and Airacobra. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Department, Stone, and Airacobra.

21. Binding Nature. The Department, Airacobra, and all officers, owners, directors, employees, heirs and assigns of Airacobra intend to be and are legally bound by the terms of this Order.

22. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

23. Effectiveness. Stone and Airacobra hereby stipulates and agrees that the Order shall become effective on the date the Bureau executes the Order ("Effective Date").

24. Other Enforcement Action.

(a) The Department reserves all its rights, duties, and authority to enforce all statutes, rules, and regulations under its jurisdiction against Stone and Airacobra in the future regarding all matters not resolved by this Order.

(b) Stone and Airacobra acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department, or office regarding matters within this Order.

25. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

26. Counterparts. This Order may be executed in separate counterparts, by facsimile and/or by PDF.

27. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

28. Finding. The Department finds that it is necessary and appropriate, in the public interest for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue this Order.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the

Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities
Compliance and Examination, Nicholas R. Stone and Airacobra Capital Management, LLC,
intending to be legally bound, do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF SECURITIES COMPLIANCE AND EXAMINATIONS

Redacted

Eric Pistilli, Deputy Secretary for Securities

Date: 05/04/2022



FOR AIRACOBRA CAPITAL MANAGEMENT, INC.

Redacted

(Signature)

Nicholas P. Stone
(Print Officer Name)

Date: 5-2-2022

NICHOLAS R. STONE

Redacted

(Signature)

Nicholas P. Stone
(Print Officer Name)

Date: 5-2-2022