

BEFORE THE DIVISION OF INSURANCE
DEPARTMENT OF LABOR AND REGULATION
STATE OF SOUTH DAKOTA

IN THE MATTER OF
PAUL J. MALCOLM

)
)
)

ORDER DENYING
REGISTRATION APPLICATION

TO: PAUL J. MALCOLM
3415 Platinum Point Place
Sioux Falls, SD 57108

MALCOLM CAPITAL MANAGEMENT
3415 Platinum Point Place
Sioux Falls, SD 57108

Larry Deiter, the Director of the South Dakota Division of Insurance and administrator of the South Dakota Uniform Securities Act, SDCL Ch. 47-31B pursuant to SDCL 47-31B-601 ("Director"), has determined the following regarding PAUL MALCOLM:

- 1) PAUL MALCOLM, whose last known address is 3415 Platinum Point Pl., Sioux Falls, SD 57108, is an applicant for a securities registration in the State of South Dakota;
- 2) PAUL MALCOLM applied for registration as an investment advisor in South Dakota on May 26, 2023 and his application has been pending since that time;
- 3) PAUL MALCOLM's registration application was initially rejected for insufficient funds because his account did not have at least \$50.00 dollars available, in violation of ARSD 20:08:05:15;
- 4) Pursuant to SDCL 47-31B-602(a)(1), the Director may conduct public or private investigations within or outside of this state which the Director considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate SDCL Chapter 47-31B, or to aid in the enforcement of the chapter or in the adoption of rules and forms under this chapter;
- 5) The Division of Insurance ("Division") reviewed PAUL MALCOLM's registration and disclosure history, where PAUL MALCOLM disclosed that he was engaged in business with Westward Inc. an unregistered investment firm in South Dakota. PAUL MALCOLM stated the following regarding his business with Westward Inc., "Paul Malcolm is primarily responsible for executing trades and other administrative functions.";
- 6) PAUL MALCOLM's own statement implied that he was transacting in securities without a proper registration, in violation of SDCL 47-31B-401;

- 7) Due to this apparent violation, the Division wrote to PAUL MALCOLM on June 28, 2023 asking for an explanation;
- 8) PAUL MALCOLM wrote back on June 29, 2023 stating that he did not know if the work he was performing for Westward Inc., required registration but did confirm that he filled out and entered trades for another individual and offered to cease this activity;
- 9) On July 6, 2023 the Division wrote back to PAUL MALCOLM advising him that his activity with Westward Inc. was indeed transacting in securities without a proper registration, in violation of SDCL 47-31B-401, instructed him to cease the activity, and advised him that his investment advisor application was still deficient;
- 10) On July 6, 2023 PAUL MALCOLM, wrote back providing the additional information needed to document his application, but also stated that "At this point I am not going to say that I certify I have ceased all broker-dealer activities." This indicated that PAUL MALCOLM may have been or was still violating SDCL 47-31B-401;
- 11) On July 7, 2023, after some correspondence with the Division, PAUL MALCOLM updated his U4 application, changing his explanation of his outside business with Westward Inc.;
- 12) Rather than clarifying his disclosures, PAUL MALCOLM's updates to his application and statements and answers provided to the Division were vague and contradictory to his original filing with the Division, in violation of SDCL 47-31B-505;
- 13) Pursuant to SDCL 47-31B-505, it is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading;
- 14) After much correspondence between PAUL MALCOLM and the Division, PAUL MALCOLM's application was eventually deemed complete;
- 15) After review, pursuant to SDCL 47-31B-412(a), the Director may deny the registration of any applicant if the agent has willfully failed to comply with any provision of SDCL Chapter 47-31B or any rule or order under SDCL Chapter 47-31B;
- 16) The Director has reasonable grounds pursuant to SDCL 47-31B-412(a) to deny PAUL MALCOLM's registration application based on the above stated violations;
- 17) PAUL MALCOLM violated the following subdivisions of SDCL 47-31B-412(d) because he:
 - (1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten years, which, as of the effective date of

1

registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten years;

(8) Refuses to allow or otherwise impedes the director from conducting an audit or inspection under 47-31B-411(d)...; and

(13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years;

18) Additionally, PAUL MALCOLM's past statements demonstrate that he does not understand or fully comprehend his obligations and duties under South Dakota law as follows:

1. PAUL MALCOLM claims he has two strategies for which he will manage client funds actively for capital appreciation opportunities. PAUL MALCOLM has refused to answer the Division's questions about his responsibility to offer alternatives. The SEC has clarified that having a limited product offering does not exempt an advisor from the duty of care. It would not be possible for PAUL MALCOLM to meet his duty of care and act in a client's best interest without considering alternatives that are reasonably available. These statements demonstrate that the applicant does not understand the fiduciary duty required of a registered investment advisor;
2. The agreement and brochure PAUL MALCOLM intends to use to advertise he business, states that he will send out suitability questionnaires every 1-3 years to reassess suitability. For a registered investment advisor, suitability must be evaluated with every transaction;
3. The Agreement that PAUL MALCOLM intends to use includes the following statement, "Malcolm . . . makes no guarantees of its ability to preserve capital for clients by timely selling positions." PAUL MALCOLM may not waive its fiduciary duty to a client and to lead a client to believe that it can, would fall under the category of fraudulent, deceptive, manipulative, or unethical practice, under ARSD 20:08:05:28 (20).
4. PAUL MALCOLM has made the following statement regarding suitability, "One can have reasonable grounds to believe a recommendation is suitable and yet still fail to make a suitable recommendation." This is incorrect, under South Dakota law. Any recommendation outside of a suitable one is in violation of state and federal rules. ARSD 20:08:05:28. Again, this demonstrates that PAUL MALCOLM does understand the duties and responsibilities of a registered investment advisor.

19) The following orders are necessary and appropriate in the public interest and for the protection of investors and are consistent with the policies and provisions of the South Dakota Uniform Securities Act, SDCL Chapter 47-31B;

20) That pursuant to SDCL 47-31B-604(d), the Division may impose a civil penalty of up to \$10,000 for each violation of SDCL Chapter 47-31B;

Now therefore, good cause appearing from the foregoing, IT IS HEREBY ORDERED, pursuant to SDCL 47-31-401, 47-31BA-412(a), (d)(1), (2), (8), and (13), and (f), and 47-31B-505, that PAUL MALCOLM's application for registration in South Dakota is hereby denied.

PAUL MALCOLM is hereby notified that he is entitled to a hearing pursuant to SDCL 47-31B-412(f). If a hearing is not requested by PAUL MALCOLM within thirty days after the date of service of this Order, the Order becomes final by operation of law. Any hearing in this matter shall be conducted according to procedures for contested cases as prescribed in SDCL Chapter 1-26.

If requested, a hearing will be scheduled within fifteen days after the Division receives a request at the Office of Hearing Examiners in Pierre, South Dakota. At hearing, the above-referenced parties may appear in person or be represented by counsel pursuant to SDCL Chapter 1-26. If a request for a hearing is not received by the Division within 30 days after the above-referenced parties receive this order, then this Order will become final.


If a hearing is requested or ordered, the Director, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate this order or extend it until final determination.

If the amount in controversy exceeds \$2,500 or if a property right may be terminated, any party to the contested case may require the Division to use the Office of Hearing Examiners by giving notice to the Division no later than 10 days after service of a notice of hearing issued pursuant to SDCL 1-26-17.

If requested, an administrative hearing is an adversary proceeding and any interested party has a right to be present at the hearing and to be represented by an attorney during the hearing. Due process rights will be forfeited if they are not exercised at a hearing. A default order may be issued against any party not appearing at a hearing. Any action taken at the hearing, if requested, may be appealed to the Circuit Court and the Supreme Court pursuant to SDCL Chapter 1-26. Handicapped persons who wish to attend should contact the Division so the hearing can be held in a place readily accessible to them.

A person who is not an original party to a contested case and whose pecuniary interests would be directly affected by the Division's Order, may become a party to a hearing, if requested, by intervention if timely application therefore is made to the Division, pursuant to SDCL 1-26-17.1.

Dated at Pierre, South Dakota this 21st day of November, 2023.



Larry Deiter, Director
South Dakota Division of Insurance

BEFORE THE DIVISION OF INSURANCE
DEPARTMENT OF LABOR AND REGULATION
STATE OF SOUTH DAKOTA

IN THE MATTER OF
PAUL J. MALCOLM

)
)
)

NOTICE OF ENTRY OF
ORDER DENYING
REGISTRATION APPLICATION

NOTICE IS HEREBY GIVEN, that attached hereto, is a true and correct copy of the Order Denying
Registration Application entered by Larry Deiter, Director of the South Dakota Division of Insurance,
on November 21st, 2023.

Dated this 21st day of November, 2023.



Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396

CERTIFICATE OF SERVICE

I, Clayton Grueb, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Order Denying Registration Application with respect to the above-entitled action was sent U.S. Certified Mail and U.S. first class mail thereon, to the following:

PAUL J. MALCOLM
3415 Platinum Point Place
Sioux Falls, SD 57108

MALCOLM CAPITAL MANAGEMENT
3415 Platinum Point Place
Sioux Falls, SD 57108

I further certify , a true and correct copy of the Order Denying Registration Application with respect to the above-entitled action was sent via email to the following:

Paul Malcolm, pauljmalcolm@gmail.com

Dated this 21 day of November, 2023 in Rapid City, South Dakota.



Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396