

1 MARY ANN SMITH
Deputy Commissioner
2 DOUGLAS M. GOODING
Assistant Chief Counsel
3 ERIK BRUNKAL (State Bar No.: 166086)
Senior Counsel
4 DEPARTMENT OF BUSINESS OVERSIGHT
5 1515 K Street, Ste. 200
6 Sacramento, California 95814
Telephone: (916) 322-8782
7 Facsimile: (916) 445-6985

8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of) CRD NO.s: 4460674 & 174064
13 THE COMMISSIONER of BUSINESS)
14 OVERSIGHT,) CONSENT ORDER
15 Complainant,)
16 v.)
17 MISSION ADVISORY SERVICES, Inc. and)
18 BRETT REED BARBER, an individual,)
19 Respondents.)

20 This Consent Order is entered into by and between the Complainant, California Department
21 of Business Oversight (“Department”), by and through Jan Lynn Owen, Commissioner of Business
22 Oversight ("Commissioner") and Respondents, Mission Advisory Services, Inc. (“Mission”) and
23 Brett Reed Barber (“Barber”), (hereinafter collectively referred to as the “Parties”).

24 RECITALS

25 A. On or about January 15, 2015, respondent Mission electronically filed an application on the
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1 Form ADV for investment adviser registration in the State of California.¹ The application stated
2 that respondent Mission was solely owned by its President, respondent Barber.

3 B. Upon receipt of respondent Mission’s application, a departmental review of the Central
4 Registration Depository (“CRD”) system² showed that respondent Barber was barred from
5 associating with any member of the Financial Industry Regulatory Authority, Inc. (FINRA) in any
6 capacity.³

7 C. The Commissioner’s investigation revealed that respondent Barber’s bar was a result of
8 disciplinary action initiated by FINRA which culminated in respondent Barber signing a Letter of
9 Acceptance, Waiver, and Consent (AWC) on February 3, 2012.

10 D. In the FINRA action, Respondent Barber accepted and consented to the following facts:

11 (1) On December 15, 2011, FINRA sent a letter to respondent Barber, through counsel,
12 requesting his appearance at an on-the-record (OTR) interview on January 25, 2012, as part of an
13 investigation into respondent Barber’s outside business activities at the FINRA District Office in
14 Los Angeles, California.

15 (2) The request was made pursuant to FINRA Rule 8210.

16 (3) Prior to the commencement of the OTR, respondent Barber produced documents.

17 (4) The OTR commenced at approximately 10:00 a.m. on January 25, 2012.

18 (5) After an afternoon break, respondent Barber refused to answer any further questions.

19 (6) By refusing to answer further questions, respondent Barber violated FINRA Rules
20 8210 and 2010.

21 (7) The following day, FINRA sent a letter to respondent Barber, via counsel, requesting
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23 ¹ The investment adviser application in issue is a “Form ADV (Paper Version) Uniform Application
24 for Investment Adviser Registration” promulgated by the Securities Exchange Commission
25 (“SEC”) pursuant to 17 Code of Federal Regulations 279.1 as amended by the SEC Release No. IA-
1916, 34-43758 (*see* Corp. Code § 260.231.2).

26 ² The CRD system contains the qualification, employment, and disclosure histories of securities
27 professionals.

28 ³ FINRA, formerly known as the National Association of Securities Dealers (“NASD”), is the
largest national securities association registered under the Securities Exchange Act of 1934.

1 his further appearance at an OTR on February 2, 2012, in order to obtain necessary information to
2 determine whether respondent Barber had committed any violations of NASD/FINRA Rules and/or
3 federal securities laws.

4 (8) On January 31, 2012, respondent Barber informed FINRA, through counsel, that he
5 would neither appear nor provide any further sworn testimony at any further OTRs in connection
6 with the FINRA investigation.

7 (9) By refusing to appear and provide further sworn testimony, respondent Barber
8 violated FINRA Rules 8210 and 2010.

9 E. Further, in the AWC, respondent Barber consented to the imposition of sanctions, barring
10 him from associating with any FINRA member in any capacity and, *inter alia*, waived his right to
11 appeal.

12 F. On March 16, 2014, based on the AWC, FINRA issued a permanent bar to respondent
13 Barber prohibiting him from associating with any FINRA member.

14 G. The Department's investigation has confirmed that Respondent is permanently barred from
15 association with any FINRA member.

16 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
17 forth herein, the Parties agree as follows:

18 TERMS AND CONDITIONS

19 1. **Purpose:** The purpose of this Agreement is to settle and resolve the matters between the
20 Parties hereto, for judicial economy and expediency, and to avoid the expense of a hearing, and
21 possible further court proceedings.

22 2. **Stipulation to an Order Denying Mission's Investment Adviser Application:** Based
23 upon the FINRA bar, Respondents Mission and Barber stipulate to the Commissioner's entry of an
24 Order denying Mission's January 15, 2015, application for Investment Adviser registration.

25 3. **Waiver of Hearing Rights:** Respondent's Mission and Barber acknowledge the right to a
26 hearing under the Corporate Securities Law of 1968 in connection with this matter and further
27 acknowledge that a hearing is currently set in the Office of Administrative Hearings on April 26,
28 2016, in this matter. Respondents hereby waive the right to such a hearing, and to any

1 reconsideration, appeal, or other right to review which may be afforded pursuant to the Corporate
2 Securities Law of 1968, the California Administrative Procedure Act, the California Code of Civil
3 Procedure, or any other provision of law. By waiving such rights, Respondents consent to the
4 immediate imposition of the Order denying Mission's application.

5 4. **Acknowledgement and Stipulation to the Recital of Facts:** Respondents acknowledge
6 and stipulate to the foregoing recital of facts. The acknowledgment and stipulation by Respondents
7 is for the purpose of this and any other future proceedings that may be initiated by or brought before
8 the Department. The Parties agree that this Agreement and any acknowledgements hereunder shall
9 not be admissible or binding against Respondents in any action(s) brought against them by third
10 parties who are not signatories to this Agreement.

11 5. **Further Consideration:** In addition, Respondents Mission and Barber further agree that
12 they shall not apply to the Department for further certificates, registrations, or licenses unless and
13 until the FINRA bar is no longer in effect. If Respondents apply to the Department for certification,
14 registration, or licensure while the FINRA bar is still in effect, such application may be summarily
15 denied by the Department, without notice, opportunity for a hearing, or appeal rights.

16 6. **Future Actions by the Commissioner:** If the FINRA bar is no longer in effect at such time
17 that Respondent Mission or Barber applies for certification, registration, or licensure, then the
18 Commissioner reserves the right to consider any such application as it would any other application
19 under the law. Moreover, the Commissioner reserves the right to bring any future action(s) against
20 Respondents and/or any of the officers, directors, shareholders, or employees of Respondents for
21 any and all violations of the Corporate Securities Act of 1968. This Agreement shall not serve to
22 exculpate Respondents, or any of the officers, directors, shareholders, or employees of Respondents
23 from liability for any and all violations of the Corporate Securities Act of 1968.

24 7. **Effective Date:** This Agreement shall not become effective until signed and delivered by all
25 parties.

26 8. **Settlement Agreement Coverage:** The Parties hereby acknowledge and agree that this
27 Agreement is intended to constitute a full, final, and complete resolution of this matter. The Parties
28 further acknowledge and agree that nothing contained in this Agreement shall operate to limit the

1 Commissioner's ability to assist any other agency, county, state, or federal, with any prosecution,
2 administrative, civil, or criminal, brought by any such agency against Respondents based upon any
3 of the activities alleged in this matter or otherwise.

4 9. **Independent Legal Advice:** Each of the Parties represents, warrants, and agrees that it has
5 received or been advised to seek independent legal advice from its attorneys with respect to the
6 advisability of executing this Agreement.

7 10. **No Other Representation:** Each of the parties represents, warrants, and agrees that in
8 executing this Agreement it has relied solely on the statements set forth herein and the advice of its
9 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
10 Agreement it has placed no reliance on any statement, representation, or promise of any other party,
11 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
12 other person or entity to make any statement, representation or disclosure of anything whatsoever.
13 The parties have included this clause: (1) to preclude any claim that any party was in any way
14 fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol
15 evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

16 11. **Modifications and Qualified Integration:** No amendment, change, or modification of this
17 Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the
18 parties affected by it.

19 12. **Full Integration:** This Agreement is the final written expression and the complete and
20 exclusive statement of all the agreements, conditions, promises, representations, and covenants
21 between the parties with respect to the subject matter hereof, and supersedes all discussions
22 between and among the parties, their respective representatives, and any other person or entity, with
23 respect to the subject matter covered hereby.

24 13. **No Presumption From Drafting:** In that the parties have had the opportunity to draft,
25 review and edit the language of this Agreement, no presumption for or against any party arising out
26 of drafting all or any part of this Agreement will be applied in any action relating to, connected to,
27 or involving this Agreement. Accordingly, the parties waive the benefit of Civil Code section 1654
28 and any successor or amended statute, providing that in cases of uncertainty, language of a contract

1 should be interpreted most strongly against the party who caused the uncertainty to exist.

2 14. **Counterparts:** This Agreement may be executed in any number of counter-parts by the
3 Parties, and when each party has signed and delivered at least one such counterpart to the other
4 party, each counterpart shall be deemed an original and taken together shall constitute one and the
5 same Agreement.

6 15. **Headings and Governing Law:** The headings to the paragraphs of this Agreement are
7 inserted for convenience only and will not be deemed a part hereof or affect the construction or
8 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
9 accordance with, and governed by, the laws of the State of California.

10 16. **Authority For Settlement:** Each party warrants and represents that such party is fully
11 entitled and duly authorized to enter into and deliver this Agreement. In particular, and without
12 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to
13 enter into the covenants, and undertake the obligations set forth herein.

14 17. **Public Record:** Respondents Mission and Barber hereby acknowledge that this Agreement
15 will be a matter of public record.

16 18. **Voluntary Agreement:** The Parties each represent and acknowledge that he, she, or it is
17 executing this Agreement completely voluntarily and without any duress or undue influence of any
18 kind from any source.

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IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

JAN LYNN OWEN
Commissioner of Business Oversight

Dated: 4/8/16

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 4/7/16

Mission Advisory Services, Inc.
Brett Reed Barber, an individual

By _____
Brett Reed Barber