

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the Matter of:

Complaint No. 328570

MANAIA CAPITAL MANAGEMENT, INC.  
IARD#155333

Respondent.

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Issued and entered  
This 1 day of August, 2016

NOTICE AND ORDER TO CEASE AND DESIST

Julia Dale, the Director of the Corporations, Securities & Commercial Licensing Bureau (the "Administrator"), pursuant to her statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq* ("Securities Act"), hereby orders Manaia Capital Management, Inc. ("Respondent") to cease and desist from failing to promptly file information updates regarding judgment liens to its investment adviser registration, and to cease and desist from filing false information with the administrator, contrary to the Securities Act. Respondent is notified of the opportunity to request a hearing in this matter.

**I. BACKGROUND**

**A. The Respondent**

1. Manaia Capital Management, Inc. (IARD#1506665) is a Michigan corporation, incorporated in or around February of 2003 by Anthony G. Manaia, its owner and a registered investment adviser representative of the firm.
2. Respondent has been registered as an investment adviser firm pursuant to the Securities Act in Michigan since on or around October 15, 2012.

**B. Findings of Fact**

1. The Bureau conducted an investigation of Respondent's Activities.
2. Respondent was a party to a Stipulation and Order Approving Conditional Registration and Resolving Notice and Order to Cease and Desist, dated February 12, 2014 related to its employee and registered investment adviser representative, Anthony G. Manaia. (Exhibit 1 – Conditional Registration Order).
3. On or around November 6, 2014, Respondent became subject to a civil judgment in favor of The Huntington National Bank in the amount of \$106,918.13; a lien was filed with the Oakland County Circuit Court on or around January 15, 2015. (Exhibit 2 – Notice of Judgment Lien).
4. Correspondence from Respondent's owner and chief compliance officer, Anthony G. Manaia, dated December 1, 2014 and an affidavit dated December 20, 2014 were received for filing by the Oakland County Circuit Court on December 30, 2014. (Exhibit 3 – Manaia's Letter to Oakland County Circuit Court). The correspondence disputed the validity of the judgment, but nonetheless recognized the judgment's existence.
5. Respondent filed updates to its Form ADV investment adviser registration on or around June 8, 2015. (Exhibit 4A – June 8, 2015 Manaia Capital Management, Inc. Form ADV Excerpt) and March 30, 2016 (Exhibit 4B – Manaia Capital Management, Inc. Form ADV Excerpt). The application specifically asked if Respondent was subject to any unsatisfied judgments or liens, and Respondent answered in the negative in both submissions. Respondent denied that it was the subject of any unsatisfied judgments or liens, notwithstanding the fact that its chief compliance officer, Mr. Manaia, was or should have been aware<sup>1</sup> of an unsatisfied judgment or lien, as evidenced by his December 2014 correspondence to the Oakland County Circuit Court (Exhibit 3).
6. Respondent, after a written inquiry and a follow-up telephone call to Respondent's attorney from a Bureau investigator (Exhibit 5 – Bureau Correspondence to Respondent), subsequently filed another update to its Form ADV investment adviser registration on or around April 18, 2016 to disclose the unsatisfied judgment or lien (Exhibit 6 – April 18, 2016 Form

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<sup>1</sup> Respondent's attorney also acknowledged that Mr. Manaia's bank account had been garnished by the judgment creditor, further undermining the assertion that he, whether in his individual capacity or his capacity as Respondent's CCO, did not know he was subject to an unsatisfied judgment or lien. (Exhibit 7).

ADV Excerpt). The registration information was inaccurate for over 17 months due to Respondent's failure to disclose the judgment or lien.

7. Respondent, through counsel, stated that its chief compliance officer first learned of the judgment or lien when the Bureau inquired about it in March of 2016 (Exhibit 7 – Correspondence from Attorney Kowalsky), notwithstanding the fact that Respondent's owner and chief compliance officer had submitted correspondence to the Oakland County Circuit Court acknowledging the judgment's existence in December 2014 (Exhibit 3).
8. Respondent, along with Mr. Manaia, submitted quarterly reports to the Bureau that included representations regarding the truth and accuracy of its Form ADV investment adviser application. Respondent represented that its Form ADV was accurate and current, which as discussed in paragraph I.B.4 herein, was not true at the time of the submission. (Exhibit 8 – Quarterly Report dated January 25, 2016). Respondent's representation that its Form ADV was accurate in the January 2016 quarterly report was false or misleading at the time the statement was made.

## **II. RELEVANT STATUTORY PROVISIONS**

1. Section 406 of the Securities Act, MCL 451.2406, states in part:
  - (1) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 611 and paying the fee specified in section 410 and any reasonable fees charged by the designee of the administrator for processing the filing. Each application must contain both of the following:
    - (a) The information or record required for the filing of a uniform application.
    - (b) If requested by the administrator, any other financial or other information or record that the administrator determines is appropriate.
  - (2) If the information or record contained in an application that is filed under subsection (1) is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

2. Section 505 of the Securities Act, MCL 451.2505 states:

A person shall not make or cause to be made, in a record that is used in an action or proceeding or filed under this act, 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, 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.

### **III. CONCLUSIONS OF LAW**

1. Respondent Manaia Capital Management, Inc. failed to promptly update its Form ADV investment adviser registration application to reflect a judgment or lien, contrary to section 406(2) of the Securities Act, MCL 451.2406(2). Respondent became subject to a judgment or lien on or around November 7, 2014. Respondent's owner and chief compliance officer acknowledged the existence of the judgment or lien in a letter dated December 1, 2014, and then failed to disclose the judgment or lien on the Firm's Form ADV until April 18, 2016.
2. Respondent Manaia Capital Management, Inc. filed false or misleading information with the Bureau, in violation of section 505 of the Securities Act, MCL 451.2505, by engaging in the following activities:
  - a. Respondent Manaia Capital Management, Inc. submitted correspondence, through counsel, which identified that Respondent's owner and chief compliance officer had not been aware of a judgment or lien until April of 2016, when in fact, Respondent's owner and chief compliance officer had submitted correspondence to the court that issued the judgment in or around December 2014 that acknowledged the existence of the judgment, even if Respondent disputed the judgment's validity.
  - b. Respondent Manaia Capital Management, Inc. represented in a January 2016 quarterly report that its Form ADV investment adviser registration was accurate and current, which it was not, as is discussed in paragraph I.B.4 and I.B.7, herein.

### **IV. ORDER**

IT IS THEREFORE ORDERED, pursuant to section 604 of the Securities Act, MCL 451.2604, that:

Notice & Order to Cease & Desist  
Manaia Capital Management, Inc. (CN 328570)  
IARD#155333

- A. Respondent shall immediately CEASE AND DESIST from failing to update its Form ADV investment adviser registration application and from filing false information with the Bureau, contrary to the Securities Act.
- B. Pursuant to section 604(2) of the Securities Act, this Notice and Order to Cease and Desist is IMMEDIATELY EFFECTIVE.
- C. In her Final Order, the Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intends to impose a civil fine of \$30,000.00 against Respondent.
- D. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

**V. NOTICE OF OPPORTUNITY FOR HEARING**

Section 604 of the Securities Act, MCL 451.2604, provides that Respondent has 30 days beginning with the first day after the date of service of this Notice and Order to Cease and Desist to submit a written request to the Administrator asking that this matter be scheduled for a hearing. If the Administrator receives a written request in a timely manner, the Administrator shall schedule a hearing within 15 days after receipt of the request. The written request for a hearing must be addressed to:

Corporations, Securities & Commercial Licensing Bureau  
Regulatory Compliance Division  
P.O. Box 30018  
Lansing, MI 48909

**VI. ORDER FINAL ABSENT HEARING REQUEST**

- A. Under section 604 of the Securities Act, MCL 451.2604, the Respondent's failure to submit a written request for a hearing to the Administrator within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** shall result in this order becoming a **FINAL ORDER** by operation of law. The **FINAL ORDER** includes the imposition of the fines cited described in section IV.C., and the fine amounts set forth below will become due and payable to the Administrator within sixty (60) days after the date this order becomes final:

Notice & Order to Cease & Desist  
Manaia Capital Management, Inc. (CN 328570)  
IARD#155333

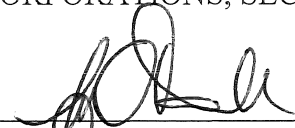
\$30,000.00 – Manaia Capital Management, Inc., under section 604 of the Securities Act, MCL 451.2604.

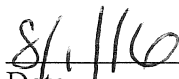
- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

Corporations, Securities & Commercial Licensing Bureau  
Final Order Monitoring  
P.O. Box 30018  
Lansing, MI 48909

- C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including the summary suspension or continued suspension of all registrations held by Respondent under the Securities Act, the denial of any registration renewal, and/or the denial of any future applications for registration, until full compliance is made. Respondent may voluntarily surrender or withdraw a registration under the Securities Act; however, the surrender or withdrawal will not negate the summary suspension or continued suspension of the relevant registrations or any additional administrative proceedings if a violation of this Order or the Securities Act occurred.
- D. Failure to pay the civil fines within six (6) months after this Order becomes final may result in the referral of the civil fines to the Michigan Department of Treasury for collection action against Respondents.

CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

  
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By: Julia Dale, Director, Corporations, Securities  
& Commercial Licensing Bureau

  
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Date