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NEW APPLICATION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

TOM FORESE - Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

In the matter of:

Robert Nico Martinelli, formerly known as
Robert Apgar Zakian (CRD #2387821), a
single man, and

Guardian Wealth Management, LLC,
formerly known as AIM Investment Group,
LLC (CRD #148536), an Arizona limited
liability company,

Respondents.

DOCKET NO. S-21026A-17-0327

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER FOR
ADMINISTRATIVE PENALTIES, ORDER OF
REVOCATION AND ORDER FOR OTHER
AFFIRMATIVE ACTION**

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents Robert Nico Martinelli, formerly known as Robert Apgar Zakian (CRD #2387821), and Guardian Wealth Management, LLC, formerly known as AIM Investment Group, LLC (CRD #148536), have engaged in acts, practices, and transactions that constitute violations of the Arizona Investment Management Act, A.R.S. § 44-3101 et seq. ("IM Act").

**I.
JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the IM Act.

Arizona Corporation Commission
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1 III.

2 FACTS

3 **The Commission's 1997 Order Revoking Martinelli's Securities Salesman Registration**

4 12. From November 22, 1993 through August 7, 1995 Martinelli was registered as a
5 securities salesman with the Commission through PaineWebber Incorporated.

6 13. In October 1995, Martinelli became registered as a securities salesman with
7 SunAmerica Securities, Inc. ("SunAmerica").

8 14. In the course of his employment, SunAmerica required that Martinelli pass the Series
9 24 Qualifications Exam ("Series 24 Exam").

10 15. On January 16, 1996, Martinelli sat for the Series 24 Exam. At the time of taking the
11 Series 24 Exam, Martinelli possessed and used unauthorized materials pertaining to the examination.
12 A proctor at the examination confronted Martinelli about the unauthorized materials, and Martinelli
13 surrendered them and left the test site.

14 16. On February 2, 1996, SunAmerica terminated Martinelli for his conduct at the Series
15 24 Exam.

16 17. On May 29, 1996, Martinelli signed a Notice of Acceptance, Waiver and Consent
17 ("Consent") with the National Association of Securities Dealers ("NASD")¹ relating to his possession
18 and use of unauthorized materials during the Series 24 Exam ("Exam Incident"). Pursuant to the
19 Consent, Martinelli was barred from association with any NASD member for two years in any
20 capacity and five years in a principal capacity, and fined \$5,000.00.

21 18. On June 13, 1996, Martinelli submitted an application to the Division for his
22 company, AIM Financial Group, Inc. ("AIM"), to become an Arizona-licensed investment adviser.
23 Martinelli was the sole owner and president of AIM. Martinelli also applied to become an Arizona-
24 licensed investment adviser representative.

25 _____
26 ¹ In July 2007, the NASD and the member regulation, enforcement and arbitration operations of the
New York Stock Exchange were consolidated to form the Financial Industry Regulatory Authority
("FINRA").

1 19. On August 8, 1996, the Securities Division brought an administrative enforcement
2 action seeking an order denying AIM's investment adviser application, denying Martinelli's
3 investment adviser representative application, and revoking Martinelli's registration as a securities
4 salesman.

5 20. Following an administrative hearing at which Martinelli was represented by counsel, on
6 January 21, 1997, the Commission entered an Order ("1997 Order") that found, among other things, that
7 when he took the Series 24 Exam, Martinelli "used unauthorized materials pertaining to the
8 examination."

9 21. The Commission further found: "[Martinelli] has engaged in dishonest or unethical
10 practices in the securities industry.... [Martinelli] is lacking in integrity or is not of good business
11 reputation within the meaning of A.R.S. § 44-1962(4)."

12 22. The Commission further wrote: "[Martinelli's] Incident during the Series 24 Exam, his
13 failure to disclose the NASD Consent to his clients, and his misleading statement to [a former coworker]
14 to further hide the matter from a client are all dishonest or unethical practices within the securities
15 industry.... [Martinelli] placed his own reputation above his clients' right to know material information
16 about his own integrity."

17 23. The Commission denied AIM's investment adviser application and Martinelli's
18 investment adviser representative application.

19 24. The Commission also revoked Martinelli's registration as a securities salesman.

20 25. The Commission further ordered that Martinelli could not reapply for registration as
21 a securities salesman, as an investment adviser or as an investment adviser representative until he
22 was no longer subject to the NASD's membership bar.

23 **Respondents' 2008 Applications for Licensure as an Investment Adviser and**

24 **Investment Adviser Representative.**

25 26. On December 4, 2008, Martinelli filed with the Division a Form ADV uniform
26 application for GWM to become an Arizona-licensed investment adviser. On December 5, 2008,

1 Martinelli filed with the Division a Form U4 uniform application to become an Arizona-licensed
2 investment adviser representative.

3 27. Form ADV consists of two parts. Part 1, Item 11 states to the applicant firm: “[W]e ask
4 for information about your disciplinary history and the disciplinary history of all your advisory affiliates.
5 We use this information to determine whether to grant your application for registration, to decide
6 whether to revoke your registration or to place limitations on your activities as an investment adviser....”

7 28. Form ADV, Part 1 defines “advisory affiliates” to include (i) the firm’s employees
8 (excluding those performing clerical, administrative or support functions), (ii) the firm’s officers,
9 partners or directors, and (iii) all persons who directly or indirectly control the firm.

10 29. As the sole owner, member and manager of GWM, and its Chief Compliance Officer,
11 Martinelli has at all times been an advisory affiliate of GWM.

12 30. Form ADV, Part 2 contains disclosures that the investment adviser is required to provide
13 to clients and potential clients.

14 31. Form U4 is filed with the Division by an applicant seeking to become licensed as an
15 investment adviser representative. The Division reviews Form U4 in deciding whether to grant an
16 applicant’s license and whether to seek to suspend or revoke an investment adviser representative’s
17 license.

18 32. The Form U4 Martinelli filed on December 5, 2008, asked: “Item 14I. Have you ever
19 been named as a respondent/defendant in an investment-related ... civil litigation which alleged that you
20 were involved in one or more sales practice violations and which ... is still pending?”

21 33. Martinelli answered “No.” His answer was false, inaccurate and misleading. When
22 Martinelli provided that answer he was a defendant in a pending civil lawsuit captioned *Meyer v.*
23 *Ramsour et al.*, Maricopa County Superior Court, Case No. CV2007-011095 (filed June 22, 2007) (“the
24 *Meyer* lawsuit”). The *Meyer* plaintiffs alleged Martinelli, as their investment counselor, defrauded them
25 in connection with investments in real estate loans.
26

1 34. The Form U4 Martinelli filed on December 5, 2008, also asked: “Item 14J. Have you
2 ever voluntarily resigned, been discharged or permitted to resign after allegations were made that
3 accused you of: (1) violating investment-related statutes, regulations, rules, or industry standards of
4 conduct?”

5 35. Martinelli answered “No.” His answer was false, inaccurate and misleading. After the
6 NASD accused Martinelli of possessing and using unauthorized materials when he sat for the Series
7 24 Exam, SunAmerica either discharged him or he voluntarily resigned.

8 36. In addition to the questions set forth above, the Form U4 Martinelli filed on December
9 5, 2008, asked: “Do you have any unsatisfied judgments or liens against you?”

10 37. Martinelli answered “No.”

11 38. The Form U4 Martinelli filed on December 5, 2008, required him to “agree to update
12 this form by causing an amendment to be filed on a timely basis whenever changes occur to answers
13 previously reported.”

14 39. On February 24, 2009, in the *Meyer* lawsuit, the Maricopa County Superior Court
15 entered a \$30,000.00 Judgment against Martinelli (“the *Meyer* Judgment”).

16 40. Martinelli did not satisfy the *Meyer* Judgment until October 18, 2011.

17 41. Martinelli never amended his Form U4 filed on December 5, 2008, to disclose the
18 \$30,000.00 unsatisfied *Meyer* Judgment against him.

19 42. On April 15, 2009, the Division approved GWM’s and Martinelli’s applications, and
20 they became licensed as an investment adviser and an investment adviser representative, respectively.

21 **Respondents’ Failure to Disclose a 2009 Fraud Lawsuit against Martinelli**

22 43. On May 26, 2009, Martinelli was served with a civil lawsuit captioned *Henderson v.*
23 *Great Western Financial Group, Inc. et al.*, Maricopa County Superior Court, Case No. CV2009-
24 011850 (filed April 15, 2009) (“the *Henderson* lawsuit”). The *Henderson* plaintiffs alleged they had
25 employed Martinelli to provide them with investment advice. They further alleged Martinelli breached
26 his fiduciary duty and defrauded them in connection with investments in real estate loans.

1 44. The *Henderson* lawsuit alleging fraud was a material change to the facts stated in the
2 Form ADV GWM filed on December 4, 2008, and the Form U4 Martinelli filed on December 5, 2008.

3 45. Pursuant to A.R.S. § 44-3159(A)(1), Respondents had a duty to file with the
4 Commission a supplemental statement disclosing the *Henderson* lawsuit against Martinelli.

5 46. Respondents never supplemented GWM's Form ADV filed on December 4, 2008, or
6 Martinelli's Form U4 filed on December 5, 2008, to disclose the *Henderson* lawsuit against Martinelli.

7 **Respondents' Failure to Disclose the 2010 Felony Theft Charge against Martinelli**

8 47. The Form U4 Martinelli filed on December 5, 2008, asked: "Have you ever ... been
9 charged with any felony?" Martinelli answered, "No."

10 48. Similarly, the Form ADV GWM filed on December 4, 2008, asked: "In the past ten
11 years, have you or any advisory affiliate ... been charged with any felony?" On behalf of GWM,
12 Martinelli answered "No."

13 49. On August 30, 2010, the Maricopa County Attorney's Office filed a criminal complaint
14 charging Martinelli with felony theft. The State alleged Martinelli misused an accounting client's bank
15 routing information to pay his credit card and utility bills.

16 50. The felony theft charge was a material change to the facts stated in the Form ADV GWM
17 filed on December 4, 2008, and the Form U4 Martinelli filed on December 5, 2008.

18 51. Pursuant to A.R.S. § 44-3159(A)(1), Respondents had a duty to file with the
19 Commission a supplemental statement disclosing the felony theft charge against Martinelli.

20 52. Respondents never supplemented GWM's Form ADV filed on December 4, 2008, or
21 Martinelli's Form U4 filed on December 5, 2008, to disclose the felony theft charge against Martinelli.

22 53. On January 14, 2011, in the *Henderson* lawsuit, the Maricopa County Superior Court
23 entered a Judgment for \$474,975.74 against Martinelli ("the *Henderson* Judgment"). In the Judgment,
24 the court found that the plaintiffs' allegations of fraud and breach of fiduciary duty against Martinelli
25 were true and correct.

26

1 54. On June 14, 2011, the Maricopa County Attorney's Office filed a motion to dismiss the
2 felony charge against Martinelli without prejudice, and the Superior Court granted the dismissal.

3 **January 2011-April 2012: Respondents Were Unlicensed But Received Investment**

4 **Advisory Fees**

5 55. From the approval of their licensure applications on April 15, 2009, until December
6 31, 2010, GWM and Martinelli were licensed in Arizona as an investment adviser and an investment
7 adviser representative, respectively.

8 56. Pursuant to A.R.S. § 44-3158 of the IM Act, all investment adviser and investment
9 adviser representative licenses expire on December 31 of each year unless they are renewed before
10 that date by paying the annual license fees required by A.R.S. § 44-3181.

11 57. Respondents failed to pay their license renewal fees by December 31, 2010.
12 Accordingly, as of January 1, 2011, GWM was not licensed in Arizona as an investment adviser, and
13 Martinelli was not licensed in Arizona as an investment adviser representative.

14 58. In 2011, despite not being licensed, Respondents received at least \$2,311.07 in
15 investment advisory fees based on assets they managed.

16 59. Between January 1 and April 30, 2012, despite not being licensed, Respondents
17 received at least \$2,811.60 in investment advisory fees based on assets they managed.

18 **Respondents' 2011 Applications for Licensure as an Investment Adviser and**

19 **Investment Adviser Representative**

20 60. On December 19, 2011, Martinelli filed with the Division a Form ADV uniform
21 application for GWM to again become an Arizona-licensed investment adviser, and a Form U4 uniform
22 application for himself to again become an Arizona-licensed investment adviser representative.

23 61. The Form ADV GWM filed on December 19, 2011, asked: "In the past ten years, have
24 you or any advisory affiliate ... been charged with any felony?" On behalf of GWM, Martinelli
25 answered "No." Similarly, the Form U4 Martinelli filed on December 19, 2011, asked: "Have you ever
26 ... been charged with any felony?" Martinelli answered, "No."

1 62. Respondents' answers to these questions regarding felony charges were false, inaccurate
2 and misleading. As set forth above, on August 30, 2010, the Maricopa County Attorney's Office
3 charged Martinelli with felony theft for allegedly misusing a client's bank routing information to pay
4 his credit card and utility bills.

5 63. The Form U4 Martinelli filed on December 19, 2011, also asked: "Item 14I. Have you
6 ever been named as a respondent/defendant in an investment-related ... civil litigation which alleged
7 that you were involved in one or more sales practice violations and which ... resulted in ... [a] civil
8 judgment against you, regardless of amount?" Martinelli answered "No."

9 64. Similarly, the Form ADV GWM filed on December 19, 2011, asked: "[Has] any
10 advisory affiliate ... or any management person been found liable ... in a civil ... proceeding involving
11 ... fraud, false statement or omission?" On behalf of GWM, Martinelli answered "No."

12 65. Respondents' answers were false, inaccurate and misleading. Both the *Meyer* lawsuit
13 and the *Henderson* lawsuit alleged that Martinelli defrauded his clients in connection with investments
14 in real estate loans, and both lawsuits resulted in Judgments against Martinelli.

15 66. The Form U4 Martinelli filed on December 19, 2011, also asked: "Item 14J. Have you
16 ever voluntarily resigned, been discharged or permitted to resign after allegations were made that
17 accused you of: (1) violating investment-related statutes, regulations, rules, or industry standards of
18 conduct?"

19 67. Martinelli answered "No." His answer was false, inaccurate and misleading. After the
20 NASD accused Martinelli of possessing and using unauthorized materials when he sat for the Series
21 24 Exam, SunAmerica either discharged him or he voluntarily resigned.

22 68. The Form U4 Martinelli filed on December 19, 2011, also asked: "Do you have any
23 unsatisfied judgments against you."

24 69. Martinelli answered "No." His answer was false, inaccurate and misleading because as
25 of December 19, 2011, Martinelli had not satisfied the \$474,975.74 *Henderson* Judgment against him.
26 That Judgment remained unsatisfied until July 25, 2014.

1 the Commission pursuant to A.R.S. § 44-3201. Specifically, revocation of Respondents' licenses would
2 be in the public interest, and Respondents have:

3 a) Filed licensure applications that are incomplete, inaccurate and/or misleading,
4 within the meaning of A.R.S. § 44-3201(A)(1);

5 b) Accepted investment advisory fees based on assets under management between
6 January 1, 2011, and April 30, 2012, when Guardian Wealth Management, LLC was not licensed as an
7 investment adviser and Martinelli was not licensed as an investment adviser representative, in violation
8 of A.R.S. §§ 44-3101(5) and (6), and 44-3151;

9 c) Martinelli has been found liable by a court of competent jurisdiction in a civil
10 action that was not subsequently reversed, suspended or vacated, for a fraudulent act or practice in
11 connection with an aspect of the securities business, within the meaning of A.R.S. § 44-3201(A)(11);
12 and

13 d) Respondents have engaged in dishonest or unethical practices in the securities
14 industry, within the meaning of A.R.S. § 44-3201(A)(13) and A.A.C. R14-6-203(8). Specifically,
15 Respondents have misrepresented to clients and/or potential clients the qualifications of GWM and
16 Martinelli and/or omitted to state material facts necessary to make the statements made regarding their
17 qualifications, in light of the circumstances under which they were made, not misleading. Respondents'
18 conduct includes but is not limited to:

19 i) Respondents' failure to disclose in GWM's firm brochure the *Henderson* Judgment;

20 ii) Respondents' statement in GWM's firm brochure that "There has never been a client
21 complaint against Robert Martinelli," when both the *Meyer* and *Henderson* lawsuits
22 constitute client complaints that were brought against Martinelli before he changed
23 his name from "Zakian."

24 iii) Respondents' statements in GWM's firm brochure regarding the Series 24 Exam
25 Incident that Martinelli "was not cheating" and the NASD only "subjected him to a
26 one year revocation." Those statements are false, inaccurate and misleading because:

1 (i) both the Commission's 1997 Order and the NASD's Consent found that
2 Martinelli used unauthorized materials during the Series 24 Exam, and (ii) the NASD
3 barred him from association with any NASD member for two years in any capacity
4 and five years in a principal capacity.

5 iv) Respondents' failure to disclose in GWM's firm brochure the Commission's 1997
6 Order finding that Martinelli engaged in dishonest or unethical practices in the
7 securities and revoking his securities salesman registration; and

8 v) Respondents' failure to disclose in GWM's firm brochure the 2010 felony theft
9 charge against Martinelli.

10 84. Respondents' conduct is grounds to assess penalties and/or take appropriate affirmative
11 action pursuant to A.R.S. § 44-3201. Specifically, Respondents have engaged in dishonest or unethical
12 practices in the securities industry.

13 **VI.**

14 **VIOLATION OF A.R.S. § 44-3241**

15 **(Fraud in the Provision of Investment Advisory Services)**

16 85. Respondents engaged in a transaction or transactions within or from Arizona involving
17 the provision of investment advisory services in which Respondents, directly or indirectly: (i) employed
18 a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state
19 material facts that were necessary in order to make the statements made not misleading in light of the
20 circumstances under which they were made; (iii) misrepresented professional qualifications with the
21 intent that the client rely on the misrepresentation; or (iv) engaged in transactions, practices, or courses
22 of business that operated or would operate as a fraud or deceit. Respondents' conduct includes, but is
23 not limited to, the following:

24 a) Respondents' failure to disclose in GWM's firm brochure the *Henderson*
25 Judgment;

VIII.**HEARING OPPORTUNITY**

Each respondent may request a hearing pursuant to A.R.S. § 44-3212 and A.A.C. R14-4-306. **If a Respondent requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon, ADA Coordinator, voice phone number (602) 542-3931, e-mail kcannon@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

IX.**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by

1 calling (602) 542-3477 or on the Commission's Internet web site at
2 <http://www.azcc.gov/divisions/hearings/docket.asp>.


3 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
4 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
5 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
6 addressed to James D. Burgess, Esq.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the
8 original signature of the answering respondent or respondent's attorney. A statement of a lack of
9 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
10 denied shall be considered admitted.

11 When the answering respondent intends in good faith to deny only a part or a qualification of
12 an allegation, the respondent shall specify that part or qualification of the allegation and shall admit
13 the remainder. Respondent waives any affirmative defense not raised in the Answer.

14 The officer presiding over the hearing may grant relief from the requirement to file an Answer
15 for good cause shown.

16 Dated this 30th day of October, 2017.

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18 
19 _____
20 Mark Dinell
21 Assistant Director of Securities
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