

STATE OF NEVADA
OFFICE OF THE SECRETARY OF STATE
SECURITIES DIVISION
2250 LAS VEGAS BOULEVARD NORTH, SUITE 400
NORTH LAS VEGAS, NEVADA 89030

In the Matter of:

**BRIAN A. WITTMAN INVESTMENT
COUNSEL, LLC, d/b/a WITTMAN
CAPITAL MANAGEMENT
INVESTMENT & ESTATE COUNSEL,
LLC, CRD No. 151676; and BRIAN ALAN
WITTMAN, CRD No. 4341176, an
individual,**

Respondents.

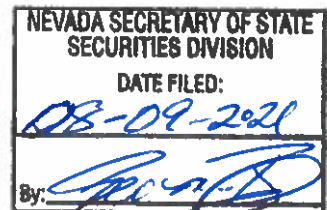
ADMINISTRATIVE CONSENT ORDER

File No. I16-157

**TO: Brian A. Wittman Investment Counsel, LLC
c/o Brian A. Wittman, its Registered Agent
11201 S. Eastern Avenue, Suite 100
Henderson, NV 89052**

**Brian A. Wittman
9 Corral de Tierra Place
Henderson, NV 89052**

**George P. Kelesis, Esq.
COOK & KELESIS
Counsel for Brian A. Wittman Investment Counsel, LLC and Brian A.
Wittman, an individual
517 South 9th Street
Las Vegas, NV 89101**



WHEREAS, Brian A. Wittman Investment Counsel, LLC, CRD No. 151676 ("BAW") is a Nevada domestic limited liability company organized on or about September 03, 2009, Nevada Business ID NV20091267709, licensed with the Nevada Securities Division ("Division") as a state regulated investment adviser.

WHEREAS, for all times relevant, Brian A. Wittman, CRD No.4341176 ("Wittman") has been a resident of Henderson, Nevada, the managing member and Chief Compliance Officer of BAW, and licensed with the Division as a representative of the investment adviser.

1 **WHEREAS**, pursuant to the authority provided in the Nevada Uniform Securities Act ("Act")
2 the Division initiated an investigation of Respondents to ensure compliance with and uncover
3 violations of the Act, codified in NRS Chapter 90, and the regulations promulgated thereunder and
4 codified in Chapter 90 of the Nevada Administrative Code ("NAC");

5 **WHEREAS**, based on the facts and circumstances revealed during the course of this
6 investigation, the Division has alleged that Respondent violated certain laws and regulations that
7 govern investment advisers and representatives of investment advisers in Nevada;

8 **WHEREAS**, pursuant to the Act and the regulations adopted thereunder, Respondents are
9 charged with complying with all applicable requirements while engaged in any securities-related
10 business in or from the State of Nevada;

11 **WHEREAS**, Respondents have provided written answers to the Division's inquiries and
12 provided other evidence;

13 **WHEREAS**, Respondents have advised the Division of their agreement to voluntarily resolve
14 the matters specified in this Administrative Consent Order ("Order") on the terms set forth herein;
15 and;

16 **WHEREAS**, in connection with this Order, and the associated terms and Conditions,
17 Respondent knowingly, willingly and intelligently waives all rights in connection with this
18 administrative matter. Respondent hereby knowingly, willingly and intelligently waives all rights
19 arising under the United States Constitution, the Nevada Constitution, the Nevada Administrative
20 Procedures Act, and any other legal rights that may be available to him or that may apply to him in
21 connection with the administrative proceedings resulting from this Order, including defense and/or
22 adjudication of any Complaint, and imposition of any disciplinary actions or sanctions ordered by the
23 Division. Respondent agrees to settle and resolve the allegations as set out by this Order, without a
24 hearing or any further proceedings and without the right to judicial review.

25 **WHEREAS**, as of the time of entering into this Consent Order, no formal hearing determining
26 the allegations has been held. Respondents acknowledge that the Division has a reasonable basis to
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1 allege that Respondents engaged in conduct that is grounds for discipline pursuant to Nevada Security
2 laws. The Division acknowledges that Respondent is not admitting or denying the Division's claims.

3 **NOW THEREFORE**, the Administrator of the Division, pursuant to the Act, hereby enters
4 this Order:

5 **RELEVANT FACTS**

6 1. Investor #1, at all times relevant, was an advisory client of the Respondents. Investor
7 #1 is not a financial institution engaged in the business of lending, a broker-dealer, or an affiliate of
8 the adviser.

9 2. On or about March 11, 2014, Wittman borrowed \$600,000.00 from Investor #1 and
10 issued and executed a promissory note in Investor #1's favor.

11 3. Prior to the Division initiating the Investigation, Respondent retired the loan with
12 Investor #1 by paying all funds, plus interest.

13 4. Under the Nevada Uniform Securities Act, it is a violation for an investment adviser
14 to borrow from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or
15 they are a financial institution engaged in the business of lending.

16 5. Investor #2, at all times relevant, was an advisory client of the Respondents. Investor
17 #2 is an older person and is not a financial institution engaged in the business of lending, a broker-
18 dealer, or an affiliate of the adviser.

19 6. Wittman recommended that Investor #2 invest in a sports figure related investment
20 and advised Investor #2 that quarterly payments of 12% would be paid on the investment. Investor #
21 2 invested \$ 150,000.00 on December 29, 2017 and \$ 50,000.00 on July 26, 2018 in this investment,
22 by transferring funds to American Colocation Services, LLC.

23 7. American Colocation Services, LLC is an entity owned and managed by Mark
24 Murphy, who has been an accountant for Brian Wittman.

25 8. The funds deposited in American Colocation Services, LLC were not utilized for an
26 investment, but rather were utilized by Mr. Wittman personally, by a transfer to him of \$45,000.00
27 on July 27, 2018 and by paying the Internal Revenue Services as follows: \$ 91,623.00 on January 5,
28 2018; and \$ 51,000.00 on January 23, 2018.

1 9. Millennial Lead Generation, LLC was an entity created by Respondent Wittman on or
2 about December 31, 2014. On May 1, 2020, Respondents provided information regarding Millennial
3 Lead Generation, LLC to the Division which included the following: that Millennial Lead Generation,
4 LLC never had any employees, that no clients of the investment adviser were involved in the business,
5 that it ceased doing business on 12/31/2018 and that it never generated any gross income. Millennial
6 Lead Generation, LLC's license to do business was revoked by the Secretary of State on December
7 31, 2018.

8 10. Based upon a subpoena response received by the Division on or about August 4, 2020
9 from JP Morgan Chase Bank, Millennial Lead Generation, LLC, paid quarterly payments of
10 \$6,000.00 to Investor #2 during 2019 and 2020. Investor #2 believed these payments were the interest
11 payments owed on the sports figure investment.

12 11. In 2020 Wittman advised Investor #2 that due to Covid and the fact that ball players
13 were not playing, she should get out of the fund.

14 12. On or about September 9, 2020 Investor #2 was repaid \$204,556.60 from American
15 Colocation Services, LLC and given a letter from setting out that these funds were payment in full
16 for the promissory notes issued by American Colocation Services, LLC.

17 13. Investor #2 was never told that Wittman personally utilized the funds invested.
18

19 14. Based upon the above facts, Respondents have violated NRS 90.570, 90.590 and
20 90.605 by failing to provide Investor #2 with accurate information, by utilizing Investor #2's funds
21 personally, and providing materially false information to the Nevada Securities Division regarding
22 the use of Investor #2's funds.

23 15. Wittman earned the designation of Accredited Asset Management Specialist
24 ("AAMS") in 2003. According to the College of Financial Planning, the issuer of this designation,
25 the program provides advisers with a "strong fundamental financial knowledge with a specific focus
26 on asset management and investments."

27 16. From the time BAW became licensed in Nevada, Respondents held Wittman out as
28

1 having that certification. The designation was utilized on various places that were accessible by the
2 public and Respondents' clients, including, but not limited to, Wittman's investment adviser business
3 card, and on BAW's website located at WittmanCapital.com.

4 17. The Brochure sections of Respondents' ADV filed during at least the time periods set
5 forth in the below paragraph 12, includes substantially the following information:

6 Mr. Wittman became an Accredited Asset Management Specialist (AAMS®) in
7 November of 2003. The AAMS® is awarded by the College for Financial Planning to
8 investment professionals who complete its 12-module AAMS® Professional
9 Education Program, pass an examination, commit to a code of ethics and agree to
10 pursue continuing education. Continued use of the AAMS® designation is subject to
ongoing renewal requirements. Every two (2) years the designee must renew their right
to continue using the AAMS® designation by completing 16 hours of continuing
education and reaffirming to abide by the Standards of Professional Conduct.

11 18. According to the College for Financial Planning, although the designation was subject
12 to renewal every two years, Wittman had not renewed his designation since October 31, 2009 and
13 therefore was not entitled to use the designation.

14 19. Although Wittman was no longer entitled to use the designation, the Respondents'
15 ADV Brochure set forth the language in paragraph 10 above in each of the Brochure versions filed
16 on the following dates:

- 17 a. March 31, 2015
- 18 b. January 18, 2016
- 19 c. December 19, 2016
- 20 d. March 30, 2017
- 21 e. March 26, 2018
- 22 f. March 27, 2018
- 23 g. May 23, 2018

24 20. Up to and including September 11, 2020, the Respondents' website noted that Wittman
25 still held the AAMS designation.

1 21. Based upon the above facts, Respondents violated NRS 90.425 by claiming that
2 Wittman held the AAMS designation for nearly eight years while Wittman was no longer entitled to
3 use such designation.

4 22. Each ADV Brochure filing with the Division made from March 30, 2015 through May
5 23, 2018 contained the false information regarding the AAMS designation.

6 23. According to records maintained by the Clark County Recorder, the following tax liens
7 have been recorded against Wittman:

8 a. On or about July 27, 2010 the Internal Revenue Service recorded a lien ("2010
9 Lien") in the amount of \$14,613.28, which was not released until September 14,
10 2010.

11 b. On or about May 23, 2017 the Internal Revenue Service lien recorded in the
12 amount of \$49,652.31. The lien was not released until March 14, 2018.

13 c. On or about October 18, 2019, the Internal Revenue Service a lien recorded in the
14 amount of \$ 50,913.28. The lien was not released until May 4, 2020.

15 24. Pursuant to NAC 90.3911(2) an investment adviser and a representative of an
16 Investment adviser are required to update Form U-4's within 30 days of the change to the U-4
17 information, which required the reporting of the above tax liens. No U-4 filed for Wittman or ADV
18 filed by BAW ever identifies any lien against Wittman.

19 25. As an investment adviser, and representative of an investment adviser, Respondents are
20 required to provide information about the firm and its staff to the Division, through the required filing
21 and updating of its form ADV and in its brochure on the IARD/CRD system, the filing of U-4's and
22 through the audit and investigation process.

23 26. Respondents are required to provide information and update Wittman's U-4 through the
24 IARD/CRD system regarding changes. The U-4 form requires that the applicant swear and affirm
25 that they have read and understand the instructions and that the applicant's answers are true and
26 complete to the best of their knowledge. The representatives also acknowledge that they are subject
27 to administrative, civil or criminal penalties if they give false or misleading answers.
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27. Similarly, the signature page to the form ADV provides that the individual signer and the investment adviser both certify, under penalty of perjury, that the information and statements made in the ADV are true and correct.

28. BAW has filed an ADV-W and Wittman has filed a U-5 setting forth that both are no longer providing investment advice, effective March 31, 2021.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to the Act, which authorizes the Division to regulate any person or entity acting as an investment adviser or representative of an investment adviser.

2. The Act, as codified in Chapter 90 of the Nevada Revised Statutes (“NRS”) regulates investments advisers providing investment advice in or from the State of Nevada.

3. Based upon the above facts, Respondents have violated NRS 90.425.

4. Based upon the above facts, Respondent Wittman has violated NAC 90.3864(1) relative to the loan from Investor #1.

5. Based upon the above facts, Respondents have violated NRS 90.570, 90.575, 90.590 and 90.605 regarding the investment made by Investor #2.

6. Based upon the above facts, Respondents have each violated NAC 90.3911(2) by failing to update Wittman's U-4 with the information regarding the three tax liens recorded by the Internal Revenue Service.

7. Pursuant to NRS 90.600 and NRS 90.605, Respondents are required to file accurate records and responses with the Division. Based upon the above facts, Respondents have violated NRS 90.600 and 90.605.

8. As set forth in NRS 90.630 and NRS 90.420, if the Administrator of the Division reasonably believes that a person is acting in violation of the Act, the Administrator may take action set forth in those sections of the Nevada Uniform Securities Act.

1 On the basis of the foregoing Findings of Facts, Conclusions of Law, and Respondents'
2 consent to this Order and voluntarily resolve this matter, the following Order is appropriate and in the
3 public interest.

4 **IT IS HEREBY ORDERED:**

5 1. Respondents will cease from violating the Act and the regulations adopted hereunder
6 and will comply with said Act and regulations now and in the future.

7 2. Respondent Brian A. Wittman's license, CRD # 4341176, as a representative of an
8 investment adviser is hereby revoked, and Brian A. Wittman is barred from providing any services
9 as a representative of an investment adviser, sales representative of an issuer, sales representative of
10 a broker or dealer, act in any capacity as a representative of an investment adviser or sales
11 representative, or be associated with a broker-dealer or investment adviser. All Nevada exemptions
12 for the licensing of representatives of an investment adviser and sales representative are hereby
13 revoked for Brian A. Wittman, and he shall not act in any capacity as a representative of an
14 investment adviser or sales representative.

15 3. Respondent Brian A. Wittman Investment Counsel, LLC, dba Wittman Capital
16 Management Investment & Estate Counsel, LLC's investment adviser registration/licensing, CRD #
17 151676, is hereby revoked and this entity is barred from seeking any license as an investment
18 adviser or broker-dealer. All Nevada exemptions for the licensing of an investment adviser and
19 sales representative are hereby revoked for Brian A. Wittman Investment Counsel LLC, dba
20 Wittman Capital Management Investment & Estate Counsel, LLC.

21 4. This Order shall be binding on Brian A. Wittman and Brian A. Wittman Investment
22 Counsel, LLC and shall be fully enforceable by the Division and/or the State of Nevada should
23 either Respondent violate the terms of this Order.

24 5. Nothing in this Order is intended to limit or create for third parties, any private
25 remedies against Respondents. Respondents' agreements and admissions are not intended or made
26 for any other use, such as in the context of another state or federal government regulatory agency
27 proceeding, state or federal civil or criminal proceeding.
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1 6. This Order fully resolves any causes of action that may be asserted against
2 Respondents with respect to the facts set forth above. The compliance investigation of Respondents
3 file no. I16-157 shall be closed as to the above Respondents.

4 7. Nothing in this Order shall be construed as a waiver of the Division's right to
5 investigate and pursue any violations by either Respondent in connection with actions other than the
6 actions set forth herein. Nothing in this Order shall preclude the Division from investigating
7 additional violations or referring a matter for criminal prosecution on circumstances or facts other
8 than those set forth above.

9 8. All agreements and admissions made by Respondents are solely for final disposition
10 of this matter and any subsequent proceedings or litigation involving the Division and Respondents,
11 or the State of Nevada's enforcement of this Order or any other violation of the Nevada Securities
12 laws not based upon the above facts. Respondents shall not refute or deny any portion of this Order
13 in any such action.

14 9.. That Respondents shall pay the costs of investigation in the sum of \$ 6,202.63 on or
15 before the date of execution of this Order.

16 10. This Order shall be effective as of the date on which it is signed by the Administrator.

17 **IT IS SO ORDERED,** 9th day of August, 2021.

18 NEVADA SECURITIES DIVISION
19 OFFICE OF THE SECRETARY OF STATE

20 Erin M. Houston
21 ERIN M. HOUSTON, ADMINISTRATOR
22 DEPUTY SECRETARY OF STATE FOR SECURITIES
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1
2 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY**
3 **BRIAN A. WITTMAN INVESTMENT COUNSEL, LLC**

4 Brian A. Wittman Investment Counsel, LLC ("BAW") hereby acknowledges that it has been
5 served with a copy of this Administrative Order, has read the foregoing Order, is aware of its right to a
6 hearing and appeal in this matter, and has waived the same.

7 BAW admits the jurisdiction of the Nevada Securities Division and consents to entry of this
8 Order by the Nevada Securities Division as settlement of the issues contained in this Order.

9 BAW states that no promise of any kind or nature whatsoever was made to it to induce it to
10 enter into this Order and that it has entered into this Order voluntarily.

11 Brian A. Wittman represents that he is the sole managing member of BAW and that, as such,
12 has been authorized by BAW to enter into this Order for and on behalf of BAW.

13 Dated this 6 day of August, 2021.

14 Brian A. Wittman Investment Counsel, LLC

15 By: [Signature]

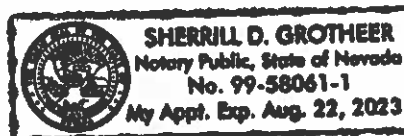
16 Title: Managing Member

17 STATE OF NEVADA

18 COUNTY OF CLARK

19 Acknowledged before me this 6th day of August, 2021 by Brian A. Wittman in his
20 capacity as Managing Member of Brian A. Wittman Investment Counsel, LLC.

21 [Signature]
22 Notary Public in and for the
23 State of Nevada, County of Clark
24 My Commission expires:




1
2 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER**
3 **BY BRIAN A. WITTMAN**

4 **Brian A. Wittman** hereby acknowledges that he has been served with a copy of this
5 Administrative Consent Order ("Order"), has read the foregoing Order, is aware of his rights to a
6 hearing and appeal in this matter, and has waived the same.

7 **Brian A. Wittman** admits the jurisdiction of the Securities Division of the Office of the
8 Secretary of State, State of Nevada ("the Division") and consents to entry of this Order by the Nevada
9 Securities Division as settlement of the issues contained in this Order.

10 **Brian A. Wittman** states that no promise of any kind or nature, other than the consideration
11 set forth in the Order, was made to him to induce him to enter into this Order and that he has entered
12 into this Order voluntarily.

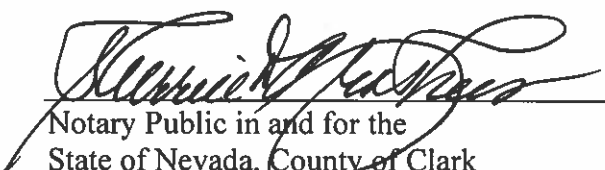
13 DATED this 6 day of August, 2021.

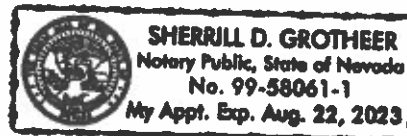
14 
15 **Brian A. Wittman**

16 STATE OF NEVADA

17 COUNTY OF CLARK

18 Acknowledged before me on this 6th day of August, 2021, by Brian A. Wittman.

19 
20 Notary Public in and for the
21 State of Nevada, County of Clark
22 My Commission expires:



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BRIAN A. WITTMAN / Mr. COUNSEL
46 BRIAN A. WITTMAN, REG.
11201 S. EASTERN AVE, #100
HENDERSON NV 89052



9590 9402 6809 1074 8398 89

2. Article Number (Transfer from service label)

7019 2280 0002 0388 460

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

LEE
AGST

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery (over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GEORGE P. KELESIS, Esq.
517 S. 9TH STREET
LAS VEGAS, NV 89101



9590 9402 6809 1074 8399 19

2. Article Number (Transfer from service label)

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery (over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
 Domestic Mail Only
 For delivery information, visit our website at www.usps.com
OFFICIAL USE

38 4617
 38 4617

PS Form 3800, April 2015 PSN 7530-02-000 9047
 See Reverse for Instructions

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
 Domestic Mail Only
 For delivery information, visit our website at www.usps.com
OFFICIAL USE

Sent To: **B.A.M. INVESTMENT COUNSEL, LLC**
 Street and Apt. No., or PO Box No.: **11201 S. EASTERN AVE, STE 100**
 City, State, Zip+4: **HERNDON, NV 89052**

Postage: **716-157**
 Total Postage and Fees: **8-9.21**

Extra Services & Fees (check box, add fee as appropriate):
☐ Adult Signature Restricted Delivery
☐ Adult Signature Restricted
☐ Certified Mail Restricted Delivery
☐ Return Receipt (hardcopy)
☐ Return Receipt (electronic)
☐ Certified Mail Restricted Delivery
☐ Adult Signature Restricted
☐ Adult Signature Restricted Delivery

Certified Mail Fee: **ACU**
 Here: **MAILED**
 Postmark: **8-9-21**

CERTIFIED MAIL

7019 2280 0002 0388 4655
 7019 2280 0002 0388 4655

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BRIAN A. WITTMAN
9 CORRAL DE TIERRA PLACE
HERNDON, NV 89052



9590 9402 6809 1074 8399 26

2. Article Number (Transfer from service label)

7019 2280 0002 0388 4600

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

C. Date

D. Is delivery address different from item 1? If YES, enter delivery address below:

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Registered Delivery
- ☐ Signature Restricted

