

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

James Scott McKee
(CRD No. 3222516),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010025217901

Hearing Officer:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Beginning in approximately February 2006 and continuing through September 2011 (the “relevant period”), James Scott McKee defrauded brokerage customers and others by persuading them through material misrepresentations and omissions to invest in various undisclosed outside real estate ventures in which he had a direct or indirect financial interest. McKee’s victims, each of whom placed their trust in McKee, included an 81-year old retiree, a local church, an owner of a small office supply company and other unsophisticated investors seeking conservative investments who believed, based upon McKee’s fraudulent misrepresentations and omissions, that their investments were in fact conservative.
2. McKee’s misrepresentations and omissions included promising unreasonably high rates of return unsupported by the underlying businesses, hiding the precarious financial condition of the underlying businesses, lying about how he would use the funds

invested, lying about the nature and terms of particular investments, falsely claiming to be an attorney, failing to disclose that he had an interest in the ventures for which he solicited investments, and failing to disclose the high risk of the investments.

3. McKee also improperly used or converted customer funds for his own use and benefit, or for the benefit of others. McKee induced one customer to give him money, telling the customer that it would be used to invest in one of his real estate ventures. But rather than invest the customer's funds, McKee used the funds to pay off another customer who had threatened legal action against McKee for wrongfully taking funds in connection with an earlier transaction.
4. McKee also recommended that a local church invest in a local coffee shop in which McKee had a business interest, knowing that this investment was inconsistent with the church's stated investment objectives and financial needs. At the time of McKee's recommendation, the church sought to make a safe, conservative investment rather than invest in a relatively high-risk start-up venture. To prevent his firm and regulators from discerning the unsuitable nature of the investment, McKee falsified customer suitability information on the church's account documents.
5. McKee also lied to an employing member firm, falsely indicating in a series of annual questionnaires that he had disclosed all of his outside business activities, when in fact he had failed to disclose certain real estate ventures and his ongoing solicitation of firm customers to invest in these ventures.
6. During FINRA's investigation, McKee serially failed to cooperate with FINRA staff and lied to FINRA staff during his sworn on-the-record testimony. He failed to respond timely or completely to FINRA's repeated requests made pursuant to FINRA Rule

8210 for information and documents. During his on-the-record examination, McKee falsely testified that he did not solicit brokerage customers to invest in certain real estate ventures in which he had a financial interest.

7. McKee's conduct violated myriad federal securities laws and FINRA rules: Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rule 2120 and FINRA Rule 2020 (which prohibit material misrepresentations and omissions in connection with the sale of securities); NASD Rule 2330 and FINRA Rule 2150 (which prohibit improper use and conversion of customer funds); NASD Rule 2310 (which prohibits unsuitable investment recommendations); FINRA Rule 2010 (which requires high standards of commercial honor and just and equitable principles of trade); NASD Rule 3040 (which prohibits engaging in private securities transactions without prior approval from the employing member firm); and FINRA Rule 8210 (which requires FINRA members to cooperate with a FINRA investigation).¹

RESPONDENT AND JURISDICTION

8. McKee was first associated with a FINRA member in April, 1999 when he became associated with a FINRA member firm where he obtained his Series 6 (May 1999), Series 7 (February 2000) and Series 24 (February 2001). He maintained these licenses at his employing member firms, until December 2010, at which point he was registered at his employing firm solely as a Series 7.
9. From November 2002 to September 2008, McKee was associated as a registered representative and principal with LPL Financial Corporation ("LPL"). From September

¹ Each of the violations herein also constituted a violation of FINRA's requirement that a member "observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 2110 is effective as to conduct committed prior to December 15, 2008; FINRA Rule 2010 is effective as to conduct committed on or after December 15, 2008.

2008 to November 2010, McKee was associated as a registered representative and principal with Berthel, Fisher & Company Financial Services, Inc. (“Berthel Fisher”).

10. From December 2010 to September 2011, McKee was associated as a registered representative and principal with Morgan Stanley Smith Barney (“Morgan Stanley”). On September 30, 2011, Morgan Stanley discharged McKee for persuading a firm customer to invest in an outside business venture owned by McKee without notifying or obtaining prior approval from the firm. McKee has not been registered or associated with a FINRA member since he was discharged by Morgan Stanley.
11. McKee remains subject to FINRA’s jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA’s By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of McKee’s registration with a FINRA member on October 5, 2011; and (2) the Complaint charges McKee with misconduct committed while he was registered or associated with a FINRA member.

FACTUAL BACKGROUND

McKee Fraudulently Induced Brokerage Customers and Others to Invest In His Private Real Estate Ventures and Failed to Obtain Prior Approval to Solicit These Outside Investments

12. Beginning in early 2006 and continuing through September 2011, McKee persuaded brokerage customers and others, through material misrepresentations and omissions, to invest in various outside real estate ventures in which he had a direct or indirect financial interest. With respect to these private securities transactions, McKee failed to notify or obtain prior approval from his employing firms.

McKee's Rental Properties

13. In February 2006, while McKee was employed at LPL, he persuaded firm customer SS to invest \$45,000 in a local residential property by falsely promising to return the principal plus a flat fee of \$5,000 in 90 days. At the time, SS had no prior investment experience and was seeking conservative investments. To induce the investment, McKee falsely told SS that the money was to be used to remodel the house, so that the property could be sold or “flipped” for a profit. McKee did not provide SS documentation for the investment. The house was not sold within 90 days and McKee failed to pay SS the promised \$5,000 fee or return any of the principal.
14. In a separate instance, in March 2006, McKee persuaded SS to invest \$29,000 in another local residential property, again by falsely promising to return the principal plus a flat fee of \$3,000 in 90 days. McKee had SS make the check out to McKee. As with the earlier investment, McKee did not provide SS documentation for the investment and failed to pay SS the promised fee or return any of the principal.

Uptown Development No. 1, LLC

15. In 2007, McKee became co-owner of Uptown Development No. 1, LLC (“Uptown”), a real estate development venture in Eugene, Oregon. McKee owned half the shares of Uptown. His primary role was to raise private investment at a time when real estate ventures were having difficulty raising money.
16. From 2007 through 2010, Uptown developed two shopping centers: Coburg Station and Uptown Plaza. To fund these ventures, McKee solicited investments from his clients at LPL, and later Berthel Fisher, without notifying or obtaining prior approval from the firm and without disclosing to investors that he was an owner of Uptown.

17. To induce prospective investors, McKee falsely claimed in Uptown's promotional materials and elsewhere that he was an attorney who had provided legal advice to high-profile businesses throughout the Northwest, when in fact he never graduated from law school and never passed a bar examination.
18. In April 2007, McKee persuaded LPL customer KK to invest \$400,000 in Uptown in return for interest at an annual rate of 12.5 percent paid monthly. McKee did not notify or obtain approval from LPL for this outside investment. In December 2007, KK had a heart attack, incurring significant medical expenses. Accordingly, she contacted McKee seeking to liquidate her Uptown investment. McKee, fully aware of KK's need for money because of her medical issues, told her the money was tied up and that it would take time before it could be released.
19. In February 2008, and unbeknownst to KK, McKee caused Uptown to write two checks, each for \$200,000 made out to McKee, which McKee deposited in a personal bank account. McKee converted these funds to his own use, even though he told KK that the funds would be invested in Uptown and McKee knew that KK required these funds to help pay her mounting medical bills. KK continued to request McKee return her investment, only to be met with further delay. As of the date of this complaint, McKee has not returned KK's investment.
20. In August 2008, McKee solicited TM, a customer of Berthel Fisher and the owner of a local office supply company, to invest approximately \$100,000 in Uptown, without notifying or obtaining prior approval from the firm. McKee had TM make out a check for \$202,632 payable to Uptown. Uptown transferred \$100,000 of this amount to McKee, which he deposited in a bank account he controlled. In September 2008,

McKee used \$31,748.64 of that \$100,000 to purchase a cashier's check, which was used to pay an insurance premium for TM. McKee kept the remaining \$68,215.36 until April 2011 when TM threatened McKee with legal action.

21. In a letter to McKee dated April 7, 2011, TM, through counsel, accused McKee of failing to disclose to TM the terms of the unsecured Uptown note or that McKee was an owner of Uptown. After TM threatened legal action, McKee repaid TM \$68,215.36 using funds that he had misappropriated from another customer, LK.

Sam's Uptown, LLC and Bedrocks Coffee, LLC

22. In 2009, certain tenants at both Uptown Plaza and Coburg Station began experiencing financial difficulties and required additional financing: Sam's Uptown, LLC ("Sam's"), a sports bar leasing space at Uptown Plaza, and Bedrocks Coffee, LLC ("Bedrocks"), a coffee shop leasing space at Coburg Station.
23. To assist Sam's and Bedrocks, and without notifying or obtaining prior approval from Berthel Fisher, McKee began soliciting customers of Berthel Fisher to invest directly in these companies. McKee induced investors with misrepresentations about the terms of the investments and with the promise of high rates of return ranging from 8 to 12 percent. In soliciting these investments, McKee failed to disclose that he had a financial interest in these ventures, that the ventures were experiencing financial difficulties or that the ventures were small, start-up companies with inexperienced management, a limited client base and no track record of success.
24. In October 2009, McKee persuaded a local church with no investment experience to invest \$100,000 in Bedrocks, without notifying or obtaining prior approval from Berthel Fisher. At the time of McKee's recommendation, the church informed McKee

it was seeking a conservative investment with limited risk primarily to generate income for incidental operational expenses. To induce the investment, McKee falsely informed the church that Bedrocks was part of a larger venture with other planned locations. McKee failed to inform the church that he had a business interest in the venture, that Bedrocks was experiencing financial difficulties, or that it was a small, start-up venture with uncertain prospects for success.

25. To camouflage the unsuitable nature of the recommendation, McKee provided false information on the church's account forms concerning the church's assets, risk tolerance, investment objective, time horizon and investment experience.
26. Specifically, McKee falsely indicated on the church's account forms (i) that its estimated net worth was \$250 million, when in fact it maintained only \$5,000 in its checking and savings accounts and had an annual income of only \$100,000 per year; (ii) that its risk tolerance was "moderate," when in fact it was "conservative;" (iii) that its investment objective was "growth," when in fact it was "income;" (iv) that its time horizon was over 10 years, when in fact it was under five years; and (v) that it had 35 years experience investing in stocks, bonds, mutual funds and annuities, when in fact, prior to October 2009, the church had no investing experience at all.
27. McKee prepared a schedule of the church's investments showing values as of August 2010. In this spreadsheet, McKee falsely recorded that the church gained \$5,833.33 for its investment in Bedrocks. In fact, the church never realized any gain from its investment in Bedrocks and lost all of the \$100,000 invested when Bedrocks filed for bankruptcy in November 2011.

28. McKee also lied to Berthel Fisher regarding his outside business activities. In Registered Representative Questionnaires for 2009 and 2010, McKee was asked whether he had disclosed all of his outside business activities and whether he had obtained written approval for these outside activities through submission of an Outside Business Activities form. McKee falsely answered “yes,” even though he had failed to disclose to Berthel Fisher his outside interests in Uptown, Sam’s and Bedrocks or his solicitation of firm customers to invest in these ventures.
29. In October 2009, McKee persuaded customer AS to invest \$48,000 in Bedrocks, without notifying or obtaining prior approval from Berthel Fisher. To induce AS to invest, McKee falsely described Bedrocks as a “real estate investment trust,” rather than a small, local coffee shop. McKee did not provide AS with any documentation describing or evidencing this investment.
30. In March 2010, McKee provided AS a schedule of investments, prepared by McKee, which falsely showed her investment in Bedrocks had paid a “dividend” of \$2,400. In fact, Bedrocks never paid AS any interest for her investment in Bedrocks and she lost all of her \$48,000 investment when Bedrocks filed for bankruptcy.
31. In November 2009, McKee induced customer KK to invest \$100,000 in Bedrocks promising that she would earn 12 percent interest, without notifying or obtaining prior approval from Berthel Fisher. To induce this investment, McKee falsely told KK that she would receive an interest payment every month, which she could use for needed living expenses. McKee also told KK that he would not recommend the investment if Bedrocks was not a viable business. He failed to disclose to KK that Bedrocks was experiencing financial difficulties or that, to bolster the company’s financial situation,

he was soliciting other customers to invest in the venture. From November 2009 to November 2010, when Bedrocks filed for bankruptcy, Bedrocks paid KK only one interest payment. Bedrocks also failed to return any of KK's \$100,000 investment.

32. In April 2010, McKee persuaded Berthel Fisher customer FL, an 81-year old retiree, to invest \$59,078.66 in Sam's promising that he would earn 10 percent interest, without notifying or obtaining prior approval from Berthel Fisher. To induce this investment, McKee falsely told FL that the investment was safe because it was secured by the bar's equipment. McKee also falsely told FL that he could recover the investment at any time, when in fact FL had to wait five years to redeem his investment. McKee failed to disclose that he had an interest in the venture or that it was experiencing financial difficulties.
33. Throughout 2010, McKee experienced financial difficulties of his own, including mounting personal debts.
34. In October 2010, McKee persuaded customer LK to invest \$50,000 in Bedrocks promising that LK would earn 8 percent interest, again without notifying or obtaining prior approval from Berthel Fisher.
35. To satisfy his need for ready cash, and unbeknownst to LK, McKee demanded the owner of Bedrocks kick-back \$10,000 of the \$50,000 investment. McKee did not tell LK that he was to receive \$10,000 personally from her investment. McKee also failed to inform LK that he had an interest in Bedrocks or that Bedrocks was experiencing financial difficulties. Only one month after McKee solicited the investment, Bedrocks filed for bankruptcy, having failed to pay LK any interest and having failed to return any of her \$50,000 investment.

36. On November 18, 2010, Berthel Fisher permitted McKee to resign for soliciting Berthel Fisher customers to invest in Uptown, Sam's and Bedrocks, without notifying or obtaining prior approval from the firm.
37. In December 2010, McKee joined Morgan Stanley where he continued to solicit customers to invest in McKee's outside business interests.

Ventis Investment Properties, LLC

38. As of April 2011, McKee owned a 100 percent interest in Ventis Investment Properties, LLC ("Ventis"), a real estate company which invested in local residential properties.
39. In April 2011, McKee solicited LK, at the time a customer of Morgan Stanley, to invest \$100,000 in Ventis, without notifying or obtaining prior approval from Morgan Stanley.
40. To induce LK's investment in Ventis, McKee falsely told LK that Ventis invested in assisted living facilities in Springfield, Oregon, when in fact the company owned only two properties, a small office building and a small undeveloped parcel of land. McKee also falsely told LK that Ventis had developed a similar senior housing project that enjoyed 100 percent occupancy with a waiting list of seniors hoping to enjoy the project's moderate prices. No such housing project exists.
41. McKee went so far as to take LK on a tour of a local housing complex, falsely claiming to LK that Ventis had a role in developing it. McKee also showed LK a parcel of empty land in Springfield, Oregon, falsely claiming it was the location upon which he planned to build the housing project. In fact, at the time McKee was trying to sell the

land. McKee also falsely told LK that her investment in Ventis would pay a consistent return based upon rents, up to 20 percent per year.

42. Relying on these misrepresentations, LK gave McKee a \$100,000 cashier's check made out to Ventis. McKee endorsed the check and deposited the \$100,000 into a bank account he controlled. Despite LK's repeated requests, McKee did not provide LK with any documentation for the investment. Eventually, LK demanded McKee return the \$100,000 investment, which McKee refused to do.
43. McKee used LK's \$100,000 investment for purposes other than Ventis. Without informing LK, McKee used most of LK's \$100,000 to pay off TM, a customer of McKee whom McKee had induced to invest in Uptown and who was threatening McKee with legal action for wrongfully taking \$68,215.36 (as described in paragraphs 20–21 herein). McKee kept the balance of LK's investment for his own use.
44. On September 30, 2011, Morgan Stanley discharged McKee after it learned that he had solicited LK to invest in Ventis, and had personally accepted LK's funds, without notifying or obtaining prior approval from the firm.

***McKee Failed to Cooperate with FINRA Staff and Lied to FINRA staff
During His Sworn On-the-Record Testimony***

45. As detailed below, McKee failed to produce documents and information requested by FINRA staff pursuant to FINRA Rule 8210. During McKee's on-the-record examination, he lied to FINRA staff, falsely claiming that he did not solicit customers to invest in Uptown, Sam's or Bedrocks.

McKee Failed to Produce Documents and Information

46. As set forth on the attached Schedule A, McKee failed, despite repeated requests under FINRA Rule 8210, to produce certain documents and information including, among other things, personal bank records, bank records relating to his brokerage business and bank records relating to Uptown and Ventis. McKee also failed to provide certain loan applications concerning Uptown Plaza and Coburg Station, and failed to provide written explanations of suspicious financial transactions concerning investments he solicited in Uptown and Ventis.
47. On April 25, 2011, FINRA staff sent a letter to McKee requesting, pursuant to FINRA Rule 8210, certain documents and information. This letter was sent by certified mail return receipt requested to his last residential address as reflected in the Central Registration Depository (“CRD”).
48. By letters dated May 20 and June 2, 2011, McKee, through counsel, produced to the staff certain documents and information in partial response to the staff’s April 25, 2011 requests. McKee, however, without explanation, failed to produce, among other things, most of the bank records requested on April 25, 2011.
49. On July 14, 2011, FINRA staff sent a letter to counsel for McKee, by email, requesting for a second time that, pursuant to FINRA Rule 8210, McKee produce bank records first requested on April 25, 2011. In its July 14, 2011 letter, the staff further requested that, pursuant to FINRA Rule 8210, McKee provide a written description of the steps taken by him to obtain the requested bank records.
50. By emails dated July 14, July 20 and July 28, 2011, counsel for McKee produced additional documents in partial response to FINRA’s April 25, 2011 request, but again

failed to produce requested bank records and failed to provide a written description of McKee's efforts to obtain such records.

51. On August 5, 2011, FINRA staff sent a letter to McKee's counsel, by email, requesting for a third time that, pursuant to FINRA Rule 8210, McKee produce certain bank records first requested on April 25, 2011. In its August 5, 2011 letter, the staff requested for a second time that, pursuant to FINRA Rule 8210, McKee provide a written description of the steps taken by him to obtain the requested bank records.
52. By separate letter dated August 5, 2011, sent to McKee's counsel by email, FINRA staff requested that, pursuant to FINRA Rule 8210, McKee produce certain documents and information concerning loan documents for certain of McKee's ventures, and certain additional bank records.
53. By email dated August 10, 2011, counsel for McKee acknowledged the delay in responding to FINRA's requests but stated that McKee was recovering from adult chicken pox and was hampered by "other responsibilities" and the "very expensive process" in responding to FINRA requests.
54. By letter dated August 11, 2011, counsel for McKee produced additional documents in partial response to FINRA's April 25, 2011 request, but again failed to produce certain of the requested bank records and again failed to provide a written description of McKee's efforts to obtain such records, as requested in FINRA letters dated July 14 and August 5, 2011.
55. On August 25, 2011, FINRA staff sent a letter to counsel for McKee, by email, requesting for the fourth time that, pursuant to FINRA Rule 8210, McKee produce

certain bank records first requested on April 25, 2011. In its August 25, 2011 letter, the staff requested for the third time that, pursuant to FINRA Rule 8210, McKee provide a written description of the steps taken by him to obtain bank records first requested on April 25, 2011. In its August 25, 2011 letter, the staff requested for the second time that, pursuant to FINRA Rule 8210, McKee produce the loan documents and bank records requested on August 5, 2011.

56. On September 2, 2011, counsel for McKee informed FINRA staff by email that he was no longer representing McKee as of that date. Accordingly, on September 15, 2011, FINRA staff sent a letter to McKee, by certified mail, to his residential address as listed in the CRD, requesting that, pursuant to FINRA Rule 8210, McKee immediately comply with the staff's requests dated April 25, July 14, August 5 and August 25, 2011. FINRA enclosed copies of these requests with the September 15, 2011 letter.
57. On September 20, 2011, McKee informed FINRA staff by email that he had retained new counsel. Accordingly, on September 22, 2011, FINRA staff sent a letter to McKee's new counsel, by certified mail and email, requesting again that, pursuant to FINRA Rule 8210, McKee immediately comply with FINRA requests dated April 25, July 14, August 5, August 25 and September 15, 2011. FINRA enclosed copies of these requests with the September 22, 2011 letter.
58. In its September 22, 2011 letter, FINRA staff further requested that, pursuant to FINRA Rule 8210, McKee produce, no later than October 6, 2011, certain documents and information concerning his solicitation of LK to invest in Ventis.

59. On September 23, 2011, counsel for McKee acknowledged receipt of FINRA's September 22, 2011 letter and enclosures. Counsel informed FINRA staff that he had discussed the letter and enclosures with McKee.
60. On October 7, 2011, FINRA staff reminded counsel for McKee, by email, that McKee's responses to all of FINRA's requests for documents and information (other than the information requested for the first time on September 22, 2011), sent pursuant to FINRA Rule 8210, were significantly past due. Counsel for McKee did not respond to the staff's October 7, 2011 email.
61. On October 14, 2011, FINRA staff again reminded counsel for McKee, by email, that McKee's responses to FINRA requests for documents and information, sent pursuant to FINRA Rule 8210, were significantly past due. That day, counsel for McKee responded by email, informing the staff that he had met with McKee and that he had impressed upon McKee "the importance of attending to this task."
62. On October 18, 2011, FINRA staff sent counsel for McKee a letter, by certified mail, requesting that, pursuant to FINRA Rule 8210, McKee immediately comply with FINRA requests dated April 25, July 14, August 5, August 25, September 15 and September 22, 2011. FINRA enclosed copies of these requests with the October 18, 2011 letter.
63. In its October 18, 2011 letter, the staff requested for a second time that, pursuant to FINRA Rule 8210, McKee produced certain documents and information concerning his solicitation of LK to invest in Ventis. Neither McKee nor his counsel ever responded to FINRA's October 18, 2011 request.

McKee Lied to FINRA Staff

64. On April 25, 2011, FINRA staff sent a letter to McKee requesting, pursuant to FINRA Rule 8210, his on-the-record testimony on May 17 and 18, 2011 at FINRA offices located at 1801 K Street, NW, Washington DC. By agreement with counsel, FINRA staff rescheduled McKee's testimony for June 14 and 15, 2011.
65. During his on-the-record examination, McKee lied to FINRA staff, falsely claiming that he never solicited customers to invest in Uptown, Sam's or Bedrocks, when in fact he had solicited customers to invest in these ventures.
66. McKee falsely testified that there were no investors in Uptown other than himself and his business partner. FINRA staff asked McKee about an entry on Uptown's balance sheet as of December 31, 2008, which showed a long term liability of \$2,459,662.10 recorded as "investor equity."

Q. At this time, the end of 2008, any time during 2008, were you soliciting investments in Uptown Development?

A. No. And we didn't have any investment in Uptown Development. So my thought is that this is [McKee's business partner's] money and that he thought the building was worth \$2 million more than our liabilities. But I can go and ask and then I can go over every asset. Because remember I never solicited stuff. If someone wanted to do one, he had his own real estate person.

* * *

Q. Wait a minute. You know people who are invested in Uptown Development Number 1 other than you and [McKee's business partner]?

A. No. Number 1 is just me and [McKee's business partner].

* * *

Q. Is it your testimony that you did not solicit investments from your clients in Uptown Development No. 1?

A. Correct. We sold Master Equity Fixed, or Master Fixed.

67. McKee also falsely testified that he did not know why customer FL's investment in Sam's appeared on FL's account statement, even though McKee personally solicited the investment and even took FL to meet the owner:

Q. What is Sam's Uptown?

A. I don't know what Sam's is, but I know what Uptown is.

* * *

Q. And you are telling me you don't know what Sam's Uptown is?

A. I don't. I don't think it exists.

* * *

Q. So there is \$59,078.66 floating around and you have no idea what it is in?

A. Well, Noteworld knows where the money is, but until he brings me the Noteworld statement I can't know. Remember I didn't do the investment.

68. McKee also falsely testified that he did not solicit investments in Bedrocks.

Q. Okay. How is it that so many of your clients invested in Bedrocks Coffee?

A. I have several guesses, but I don't know for sure.

* * *

Q. So your answer is, "I don't know."

A. Correct.

Q. You didn't have any involvement in these clients' investment in Bedrocks Coffee?

A. We didn't have any involvement in the solicitation of Bedrocks Coffee, but when clients started whining that they didn't get paid, we had lots of involvement in Bedrocks Coffee.

* * *

Q. Did you advise [customer AS] to invest in Bedrocks?

A. No.

69. During his sworn on-the-record examination, McKee relied upon deception to hamper FINRA's investigation of his fraudulent conduct.

FIRST CAUSE OF ACTION
Fraud
(Section 10(b) of the Securities Exchange Act,
Rule 10b-5, NASD Rule 2120 and FINRA Rule 2020)

70. The Department realleges and incorporates by reference paragraphs 1–69 above.
71. As detailed above, during the relevant period, McKee knowingly and recklessly induced customers, through material misrepresentations and omissions, and through the use of the means and instrumentalities of interstate commerce, and of the mails, to invest in securities concerning various real estate ventures.
72. In February and March 2006, McKee knowingly and recklessly induced LPL customer SS, through material misrepresentations and omissions, to invest a total of \$74,000 in two real estate ventures.
73. In October 2009, McKee knowingly and recklessly induced Berthel Fisher customer AS, through material misrepresentations and omissions, to invest \$48,000 in Bedrocks.
74. In November 2009, McKee knowing and recklessly induced Berthel Fisher customer KK, through material misrepresentations and omissions, to invest \$100,000 in Bedrocks.

75. In October 2010, McKee knowingly and recklessly induced Berthel Fisher customer LK, through material misrepresentations and omissions, to invest \$50,000 in Bedrocks.
76. In April 2011, McKee knowingly and recklessly induced Morgan Stanley customer LK, through material misrepresentations and omissions, to invest \$100,000 in Ventis.
77. As a result of the foregoing conduct, McKee willfully violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rules 2120 and 2110 and FINRA Rules 2020 and 2010.

**SECOND CAUSE OF ACTION
Improper Use/Conversion
(NASD Rule 2330 and FINRA Rule 2150)**

78. The Department realleges and incorporates by reference paragraphs 1–77 above.
79. As detailed above, during the relevant period, McKee improperly used or converted customer funds, without the customers' knowledge or consent, for his own use and benefit.
80. In February and March 2006, McKee improperly used or converted \$74,000 belonging to SS for his own use and benefit.
81. In February 2008, McKee improperly used or converted \$400,000 belonging to KK for his own use and benefit.
82. In August 2008, McKee improperly used or converted \$68,215.36 belonging to TM for his own used and benefit.
83. In October 2010, McKee improperly used or converted \$10,000 belonging to LK for his own use and benefit.

84. In April 2011, McKee improperly used or converted \$100,000 belonging to LK for his own use and benefit. McKee improperly used most of these funds to pay off TM, after TM threatened McKee with legal action, and converted the balance of these funds to his own use and benefit.
85. As a result of the foregoing conduct, McKee violated NASD Rules 2330 and 2110 and FINRA Rules 2150 and 2010.

THIRD CAUSE OF ACTION
Unsuitable Investment Recommendations
(NASD Rule 2310)

86. The Department realleges and incorporates by reference paragraphs 1–85 above.
87. In October 2009, McKee recommended that a local church with no investment experience invest \$100,000 in Bedrocks, a small, high-risk, start-up venture.
88. At the time, the church was seeking a conservative, income-generating investment with limited risk. McKee’s investment recommendation was inconsistent with the church’s stated investment objectives and financial needs.
89. McKee sought to disguise the unsuitable nature of the investment by recording false suitability information, including false assets, investment objectives and risk tolerances, on the church’s account documents.
90. In November 2010, Bedrocks filed for bankruptcy and the church lost all of its \$100,000 investment.
91. As a result of the foregoing, McKee violated NASD Rules 2310 and 2110 and FINRA Rule 2010.

FOURTH CAUSE OF ACTION
False Statements
(FINRA Rule 2010)

92. The Department realleges and incorporates by reference paragraphs 1–91 above.
93. McKee lied to an employing member firm, falsely indicating in a series of annual questionnaires that he had disclosed all of his outside business activities, when in fact he had failed to disclose his outside activities in Uptown, Sam’s and Bedrocks and failed to disclose his ongoing solicitation of firm customers to invest in these ventures.
94. As a result of the foregoing, McKee violated FINRA Rule 2010.

FIFTH CAUSE OF ACTION
Selling Away
(NASD Rule 3040)

95. The Department realleges and incorporates by reference paragraphs 1–94 above.
96. As detailed above, during the relevant period, McKee engaged in private securities transactions involving outside real estate ventures: Uptown, Sam’s, Bedrocks and Ventis. He solicited investments in these outside ventures without notifying or obtaining prior approval from his employing firms.
97. As a result of the foregoing, McKee violated NASD Rules 3040 and 2110 and FINRA Rule 2010.

SIXTH CAUSE OF ACTION
Failure to Cooperate
(FINRA Rule 8210)

98. The Department realleges and incorporates by reference paragraphs 1–97 above.

99. During FINRA's investigation, McKee failed to cooperate with FINRA staff. As detailed above and on Schedule A hereto, McKee failed to produce documents and information requested by FINRA staff pursuant to FINRA Rule 8210.

100. As a result of the foregoing conduct, McKee violated FINRA Rules 8210 and 2010.

SEVENTH CAUSE OF ACTION
Lying on the Record
(FINRA Rule 8210)

101. The Department realleges and incorporates by reference paragraphs 1–100 above.

102. As detailed above, McKee lied to FINRA staff during his sworn on-the-record testimony, falsely stating that he did not solicit investments in Uptown, Sam's and Bedrocks, when in fact he had solicited customers to invest in these ventures.

103. As a result of the foregoing conduct, McKee violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

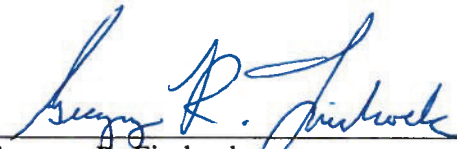
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that McKee committed each of the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that McKee be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that McKee bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and

- D. make specific findings that McKee willfully violated Section 10b of the Securities Exchange Act of 1934.

FINRA DEPARTMENT OF ENFORCEMENT

Date: February 14, 2012



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Schedule A

Request Subject	Item(s) Requested	First 8210 Request	First Request Due Date	First Follow up Request	Second Follow up Request	Third Follow up Request	Fourth Follow up Request	Fifth Follow up Request	Sixth Follow up Request	Seventh Follow up Request	Eighth Follow up Request	8210 Request Status (as of Complaint date)
Quality Financial Planning, Inc.* Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****9089 for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****9089 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****5971 for the period <u>September 1, 2008 through August 31, 2011.</u>	04.25.11	05.20.11	07.14.11								Statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****5971 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****1350 for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11								Statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****1350 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****3711 for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
Quality Financial Planning, Inc. Bank Records	Bank statements for Quality Financial Planning, Inc. Home Federal/Liberty Bank account number *****3711 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Quality Financial Group, Inc.** Bank Records	Bank statements for Quality Financial Group, Inc. Wells Fargo Bank account number *****7772 for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced for the period 11.09.10 through 05.31.11.
Quality Financial Group, Inc. Bank Records	Bank statements for Quality Financial Group, Inc. Wells Fargo Bank account number *****7772 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced

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Ventis Investments, Inc. Bank Records	Bank statements for Ventis Investments, Inc. Home Federal/Liberty Bank account number *****2242 for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11								Statements produced
Ventis Investments, Inc. Bank Records	Bank statements for Ventis Investments, Inc. Home Federal/Liberty Bank account number *****2242 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Uptown Development No. 1, LLC Bank Records	Bank statements for Uptown Development No. 1 LLC Home Federal/Liberty Bank account number *****6094 for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11								Statements produced
Uptown Development No. 1, LLC Bank Records	Bank statements for Uptown Development No. 1 LLC Home Federal/Liberty Bank account number *****6094 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
Uptown Development No. 1, LLC Bank Records	Bank statements for Uptown Development No. 1 LLC Home Federal/Liberty Bank account number *****5981 for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11								Statements produced
Uptown Development No. 1, LLC Bank Records	Bank statements for Uptown Development No. 1 LLC Home Federal/Liberty Bank account number *****5981 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
McKee's Personal Bank Records	Oregon Community Credit Union Account Number *****9101 for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
McKee's Personal Bank Records	Oregon Community Credit Union Account Number *****9101 for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
McKee's Personal Bank Records	Wells Fargo Bank for the period <u>September 1, 2008 through April 25, 2011.</u>	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
McKee's Personal Bank Records	Wells Fargo Bank for the period <u>January 1, 2008 through August 31, 2008.</u>	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced

Request Subject	Item(s) Requested	First 8210 Request	First Request Due Date	First Follow up Request	Second Follow up Request	Third Follow up Request	Fourth Follow up Request	Fifth Follow up Request	Sixth Follow up Request	Seventh Follow up Request	Eighth Follow up Request	8210 Request Status (as of Complaint date)
McKee's Personal Bank Records	Home Federal/Liberty Bank for the period <u>September 1, 2008 through April 25, 2011</u>	04.25.11	05.20.11	07.14.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11	No statements produced
McKee's Personal Bank Records	Home Federal/Liberty Bank for the period <u>January 1, 2008 through August 31, 2008</u> .	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
McKee's Personal Bank Records	U.S. Bank Account Number *****2660 for the period <u>September 1, 2008 through April 25, 2011</u> .	04.25.11	05.20.11	07.14.11								Statements produced
McKee's Personal Bank Records	U.S. Bank Account Number *****2660 for the period <u>January 1, 2008 through August 31, 2008</u> .	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No statements produced
All Bank Records	Staff requested via 8210 that McKee provide a detailed written description of the steps he took to obtain the requested bank statements and the name and telephone numbers of the person(s) contacted.	07.14.11	07.22.11	08.05.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11		Response incomplete
Loan Related Documents	8210 Request for loan related documents for the period <u>January 1, 2007 to August 5, 2011</u> for Coburg Station, Uptown Plaza, and Valley River Station land, building and construction loans.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced
Loan Related Documents	8210 Request for loan related documents for the period <u>January 1, 2007 to August 5, 2011</u> for Mr. McKee's "NoteWorld" loan.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced
Specific Transaction Related Documents / Explanations	Bank statements for Home Federal/Liberty Bank account number *****6094 for Uptown Development No. 1, LLC reflect transfers from certain "loan accounts" numbered *****4272 and *****4298. Identify the owner of each of these loan accounts and the purpose of the transfers.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced
Specific Transaction Related Documents / Explanations	Bank statements for the Wells Fargo bank account number *****2093 for Uptown Development No. 1, LLC reflect transfers from accounts numbered "xxxxx1276," "xxxxx1854," and "xxxxx1839." Identify the owner of these accounts and the purpose for the transfers.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced

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Specific Transaction Related Documents / Explanations	Bank records for the Wells Fargo account number *****7772 for Quality Financial Planning, Inc. contain two cashier's checks dated June 28, 2010 in the amounts of \$26,143 and \$32,478 payable to "First American Title." Provide a detailed written description of the purpose of these cashier's checks.	08.05.11	08.19.11	08.25.11	09.15.11	09.22.11	10.07.11	10.14.11	10.18.11			No documents produced
L K Related Documents / Explanation	1. For the period January 31, 2011 through the present (Sept 22, 2011) produce a copy of all documents concerning L K. 2. For the same period, produce a copy of all documents concerning "Ventis Investments." 3. Provide a detailed written description of the facts and circumstances surrounding the cashier's check dated April 4, 2011 for \$100,000 made out to "Ventis Investments" and endorsed by McKee including but not limited to the origin and purpose of the \$100,000 investment and a detailed accounting of the disposition of the investment. 4. For the period March 1, 2011 through August 31, 2011, produce all bank records for the Home Federal bank account listed on the reverse side of Ms. K's April 4, 2011 cashier's check including all bank statements and all documents evidencing deposits, withdrawals, check disbursements, or wire transfers.	09.22.11	10.06.11	10.07.11	10.14.11	10.18.11						No documents produced

* Quality Financial Planning, Inc. was a company that McKee owned and through which he conducted his securities business.

** Quality Financial Group, Inc. was another company owned by McKee.