

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

Department of Market Regulation,

Complainant,

v.

George Alexander Kardaras (CRD 3184384),

and

Brian Matt Borakowski (CRD 4093679)

Respondents.

Disciplinary Proceeding
No. 20110295247-01

Hearing Officer:

COMPLAINT

The Department of Market Regulation alleges:

Summary

1. Beginning in 2007 and continuing through March 2011, George Alexander Kardaras (“Kardaras”) and Brian Matt Borakowski (“Borakowski”) (collectively “Respondents”), while registered with FINRA member firms, engaged in a Ponzi scheme whereby they solicited approximately \$665,000 in funds from customers of their respective employer member firms and converted approximately \$634,000, representing 95 percent of investors’ funds, for expenses related to their branch office businesses and for their personal expenses. Respondents solicited these customers to purchase promissory notes in Echo Canyon LLC, a limited liability company in Arizona organized by Borakowski. In furtherance of their Ponzi scheme, Respondents falsely represented to customers that by purchasing promissory notes

in Echo Canyon LLC their investment would be used to purchase vehicles at US auto auctions and to export those vehicles to Russia for re-sale.

2. Instead of investing the funds in Echo Canyon LLC as they represented to customers, Respondents, through fraud and deceit, used investors' funds to pay for business expenses related to their respective branch office businesses and to pay personal expenses. By engaging in the foregoing conduct, Respondents willfully violated Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and violated NASD Rules 2110 and 2120 (for conduct prior to December 15, 2008) and FINRA Rules 2010 and 2020 (for conduct on or after December 15, 2008).

3. To further their Ponzi scheme, Respondents used investors' funds to make payments to earlier investors. By engaging in the foregoing conduct, Respondents violated NASD Rule 2330 (for conduct prior to December 14, 2009) and FINRA Rule 2150 (for conduct on or after December 14, 2009).

4. Respondents, acting outside the course and scope of their employment with their respective employer member firms, participated in private securities transactions for which they were compensated. Respondents, however, failed to provide written notice to their employer member firms describing in detail the proposed transactions and their roles therein in violation of NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008) and NASD Rule 3040.

5. In or around October 2010, Borakowski borrowed \$11,500 from a non-family member customer of his employer member firm without obtaining pre-approval from his employer member firm in violation of FINRA Rules 2010 and 3240. Borakowski also falsely

denied that he had received this loan to his employer member firm in violation of FINRA Rule 2010.

6. On December 23, 2011 and January 18, 2012, staff requested documents from Borakowski pursuant to FINRA Rule 8210. The FINRA Rule 8210 request letters were sent to Borakowski's CRD address via FedEx, first class and certified mail. Borakowski signed the FedEx delivery confirmation for the December 23, 2011 FINRA Rule 8210 request letter. Borakowski failed to respond to the FINRA Rule 8210 request letters in violation of FINRA Rules 2010 and 8210.

7. On October 20, 2011 and November 10, 2011, staff requested documents from Kardaras pursuant to FINRA Rule 8210. The FINRA Rule 8210 request letters were sent to Kardaras' CRD address via FedEx, first class and certified mail. Kardaras signed certified mail receipts for both FINRA Rule 8210 letters. Kardaras failed to respond to the FINRA Rule 8210 request letters in violation of FINRA Rules 2010 and 8210.

The Respondents

8. Kardaras was registered with FINRA member firms from January 1999 until September 2011. Kardaras was registered with his most recent employer from February 2005 through September 28, 2011, when the firm filed a Form U5 terminating his registration. On September 30, 2011, Kardaras' member firm filed an amended Form U5 disclosing certain conduct described herein. Kardaras is not currently associated with a FINRA member firm but remains subject to FINRA's jurisdiction 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 Kardaras' registration with a FINRA member, namely, September 28, 2011; (2) the Complaint was filed within two years after the date upon which his employer member firm filed an

amended Form U5, namely April 16, 2012; (3) the Complaint charges him with misconduct committed while he was associated with a FINRA member; and (4) the Complaint charges him with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered with a FINRA member.

9. Borakowski was registered with FINRA member firms from June 2000 until March 2011. Borakowski was registered with his most recent employer from August 4, 2009 until the firm filed a Form U5 terminating his registration on March 8, 2011. Borakowski remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of FINRA's By-Laws because (1) the Complaint was filed within two years after the date upon which his employer member firm filed an amended Form U5 namely, May 9, 2012; (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member; and (3) the Complaint charges him with failing to respond to requests for information during the two-year period after the date upon which he ceased to be registered with a FINRA member.

Facts Common to All Causes of Action

10. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

11. Respondents have known each other since approximately 2001, when they worked together at the same FINRA member firm. On or about October 12, 2006, Borakowski organized Echo Canyon LLC as a limited liability company in Arizona.

12. In order to purchase used vehicles in the US and to ship them to Russia for re-sale, Respondents needed capital. From October 2007 through March 2011, Respondents solicited investments in Echo Canyon LLC from customers of their employer FINRA member firms.

13. Respondents told customers that their funds would be used to purchase cars at US auto auctions and to ship those cars to Russia for re-sale. Respondents told customers that once the cars arrived in Russia, Russian buyers would pay for the cars and customers would receive payments from the proceeds of the car sales.

14. Respondents purchased two cars for Echo Canyon LLC in or around late-2007 or early-2008 and spent approximately \$30,885 to buy the cars and ship them to Russia. Echo Canyon LLC made approximately \$300 in profit from the sale of the two cars.

15. In 2008, however, the Russian economy declined and Respondents did not purchase any more cars for Echo Canyon LLC after late-2007 or early-2008.

16. Despite not purchasing any more cars for Echo Canyon LLC, Respondents continued to solicit customers of their respective employer FINRA member firms to purchase promissory notes in Echo Canyon LLC under the false pretense that the investments would be used to purchase used cars in the US for re-sale in Russia. Together, they raised a total of approximately \$665,900. Respondents, however, did not tell customers that they were not purchasing cars in the US for re-sale in Russia with their funds. Respondents, instead, used customers' funds to pay personal expenses, to pay expenses related to their respective employer FINRA member firms' branch office businesses and to make payments to earlier investors in furtherance of their Ponzi scheme. Respondents did not pay for expenses related to Echo Canyon LLC with investors' funds as they represented to customers.

Customer RB

17. In furtherance of their Ponzi scheme, Respondents solicited customer RB, age 67, a customer of Kardaras' employer member firm, to invest in Echo Canyon LLC. Respondents falsely told RB that his investment would be used to purchase cars at auto auctions in the US and

to ship the cars to Russia for re-sale. Kardaras told RB not to worry about his investment in Echo Canyon LLC and that Kardaras would not let RB “get hurt.”

18. From on or around October 3, 2007 through June 20, 2010, RB, on the advice of Kardaras, withdrew funds invested with Kardaras’ employer member firm and invested those funds in Echo Canyon LLC. Borakowski, on behalf of Echo Canyon LLC, executed a promissory note with RB. The promissory note bore a 14 percent annual interest rate.

19. RB invested a total of \$130,000 in Echo Canyon LLC from October 2007 through June 2010. RB received payments from his investment in Echo Canyon LLC from late-2007 until mid-2010, but did not receive any further payments after mid-2010.

20. RB met with Kardaras in or about September 2010 at the offices of Kardaras’ employer member firm to discuss RB’s investment in Echo Canyon LLC. During the meeting, Kardaras told RB that Borakowski’s father had agreed to purchase all of the outstanding promissory notes in Echo Canyon LLC at the end of the first quarter 2011. Kardaras said that Borakowski’s father would pay all of the interest and principal owed to Echo Canyon LLC’s investors.

21. On or about March 31, 2011, RB met with Borakowski to again discuss RB’s investment in Echo Canyon LLC. At that time, Borakowski told RB that his father had changed his mind and would not purchase the outstanding promissory notes in Echo Canyon LLC and would not pay the outstanding interest and principal owed to investors.

22. Respondents did not use all of RB’s funds to purchase used cars in the US for re-sale in Russia. Instead, Respondents converted funds that RB placed into their custody for their own use, including paying for their personal expenses, paying expenses related to their

respective employer FINRA member firms' branch office businesses and making payments to other investors. Respondents did not tell RB that they were using his funds in this manner.

23. Respondents repaid \$55,000 of RB's \$130,000 investment in Echo Canyon LLC.

24. RB did not authorize Respondents to convert any of his funds, or use his funds to pay for expenses related to their respective employer FINRA member firms' branch offices or to pay for their personal expenses or to make payments to other investors.

Customers SF and TF

25. In furtherance of their Ponzi scheme, Borakowski solicited SF and TF, customers of his employer FINRA member firm, to invest in Echo Canyon LLC in or around December 2010. Borakowski falsely told SF and TF that he would use their funds to purchase cars at auto auctions in the US for re-sale in Russia.

26. On or about December 20, 2010, SF and TF invested \$5,000 in Echo Canyon LLC. Borakowski, on behalf of Echo Canyon LLC, executed a promissory note with SF and TF. The promissory note bore a 14 percent quarterly interest rate.

27. From December 2010 until March 2011, SF and TF had telephone conversations with Borakowski about their investment in Echo Canyon LLC. In March 2011, before the note matured, Borakowski convinced SF and TF to reinvest the \$5,700 accrued value of the promissory note for the next six months. SF and TF consented and re-invested \$5,700 in Echo Canyon LLC with the principal and interest of approximately \$1,400 due in October 2011.

28. Respondents have not repaid SF and TF the interest of \$1,400 or the \$5,000 principal investment in Echo Canyon LLC.

29. Respondents did not use any of SF and TF's funds to purchase used cars in the US for re-sale in Russia. Instead, from December 2010 until March 2011, Respondents converted

the funds SF and TF placed in their custody to pay for their personal expenses, to pay for expenses related to their branch office businesses and to make payments to earlier investors. Respondents did not tell SF and TF that their funds would be used in this manner. SF and TF did not authorize Respondents to convert any of their funds, or use their funds for Respondents' personal expenses, to pay for expenses related to their respective employer FINRA member firms' branch office businesses or to make payments to earlier investors.

Customer DZ

30. In furtherance of their Ponzi scheme, Borakowski solicited customer DZ, a customer of his employer FINRA member firm, to invest in Echo Canyon LLC in or around July 2009. Borakowski told DZ that his funds would be used to purchase vehicles at US auto auctions for re-sale in Russia.

31. On or around July 24, 2009, DZ invested \$20,000 in Echo Canyon LLC. Borakowski, on behalf of Echo Canyon LLC, executed a promissory note with DZ. The promissory note bore an 18 percent annual interest rate.

32. Respondents repaid a portion of DZ's \$20,000 in Echo Canyon LLC.

33. Respondents did not use any of DZ's funds to purchase used cars in the US for re-sale in Russia. Instead, Respondents converted the funds DZ placed in their custody to pay for their personal expenses, to pay for expenses related to their branch office businesses and to make payments to earlier investors. Respondents did not tell DZ that his funds would be used in this manner.

34. DZ did not authorize Respondents to convert any of his funds, or use his funds to pay for expenses related to their branch office businesses or to pay for their personal expenses or to make payments to earlier investors.

Additional Customers

35. In furtherance of their Ponzi scheme, Respondents falsely told customers of their respective employer FINRA member firms, that is, customers, CG, LA, RH, MM, NW, TM, SS and KS, that their funds would be used to purchase vehicles at US auto auctions for re-sale in Russia.

- a. Customer CG invested \$20,000 in Echo Canyon LLC and was partially repaid.
- b. Customer LA invested \$10,000 in Echo Canyon LLC and was fully repaid.
- c. Customer RH invested \$25,000 in Echo Canyon LLC and was partially repaid.
- d. Customer MM invested \$15,500 in Echo Canyon LLC and was fully repaid.
- e. Customer NW invested \$20,000 in Echo Canyon LLC and was partially repaid.
- f. Customer TM invested \$45,000 in Echo Canyon LLC and was fully repaid.
- g. Customer SS invested \$100,000 in Echo Canyon LLC and was fully repaid.
- h. Customer KS invested \$28,000 in Echo Canyon LLC and was partially repaid.

36. Respondents did not use any of CG's, LA's, RH's, MM's, NW's, TM's, SS's and KS's funds to purchase used cars in the US for re-sale in Russia. Instead, Respondents used the funds investors placed in their custody to pay for their personal expenses and to pay for expenses related to their respective employer FINRA member firms' branch office businesses.

Respondents did not use investors' funds to pay for expenses related to Echo Canyon LLC as they represented to investors. Instead, Respondents also used investors' funds to make payments to earlier investors in furtherance of their Ponzi scheme. Respondents did not tell investors that their funds would be used in this manner.

37. Respondents also used income earned from their brokerage businesses to make payments to the investors. Respondents, however, did not tell investors that their payments were

being made from Respondents' earned income, not from the proceeds of the sales of cars in Russia.

CAUSE ONE

Fraud in the Sale of Securities (Violation of Rule 10b-5 of the Securities Exchange Act, NASD Rules 2110 and 2120 and FINRA Rules 2010 and 2020 as to Both Respondents)

38. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

39. The Echo Canyon LLC promissory notes were securities within the meaning of the Exchange Act of 1934 Section 3(a)(10).

40. By engaging in the foregoing conduct, Respondents, in connection with the purchase or sale of a security, directly or indirectly, by use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, knowingly or recklessly, employed a device, scheme or artifice to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person, in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and in violation of NASD Rules 2110 and 2120 (for conduct prior to December 15, 2008), and FINRA Rules 2010 and 2020 (for conduct on or after December 15, 2008).

CAUSE TWO

Conversion of Customers' Funds (Violation of NASD Rules 2110 and 2330 and FINRA Rules 2010 and 2150 as to Both Respondents)

41. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

42. Respondents misappropriated customers' funds by falsely representing that they would purchase used cars at US auto auctions with customers' funds and re-sell those cars in Russia for a profit. Instead, Respondents converted customers' funds for their own personal use.

43. In furtherance of their Ponzi scheme, Respondents used customers' funds to make payments to earlier investors. Customers did not know that Respondents used their funds in this manner and did not authorize Respondents to do so.

44. By making improper use of and converting customer funds, Respondents violated NASD Rule 2110 (for conduct prior to December 15, 2008) and NASD Rule 2330 (for conduct prior to December 14, 2009) and FINRA Rule 2010 (for conduct on or after December 15, 2008) and FINRA Rule 2150 (for conduct on or after December 14, 2009).

CAUSE THREE

Respondents Engaged in Private Securities Transactions without Informing Their Employer Member Firms (Violation of NASD Rules 2110 and 3040 and FINRA Rule 2010 as to Both Respondents)

45. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

46. Beginning in October 2007 and continuing through approximately March 2011, Respondents, while associated with a FINRA member firm, sold promissory notes issued by Echo Canyon LLC totaling \$665,900 to investors. Each investor was a customer of Respondents' employer member firms.

47. All investors, except TM, received a promissory note issued by Echo Canyon LLC. The promissory notes bore different interest rates ranging from 14 to 56 percent per annum with quarterly, semi-annual and annual maturity dates. The notes included a date on which all outstanding principal and interest was due. Investors' funds were then deposited into an account for Echo Canyon LLC that Borakowski controlled.

48. Respondents were compensated from the issuance of the promissory notes by virtue of their use of the proceeds generated from the sale of the notes, including use of the proceeds to pay the expenses of their respective employer FINRA member firms' branch office businesses and to pay personal expenses and to make payments to earlier investors.

49. The Echo Canyon LLC promissory note transactions in which Respondents participated occurred outside the regular course and scope of their associations with their respective employer member firms. Respondents' employer member firms did not participate in, and were not aware of, the promissory notes sold by Respondents for Echo Canyon LLC.

50. Respondents did not provide their respective employer member firms with prior written notification describing the proposed transactions and their proposed role therein. Respondents did not receive written permission from their respective employer FINRA member firms to participate in the sale of Echo Canyon LLC promissory notes.

51. By engaging in the foregoing conduct, Respondents violated NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008) and NASD Rule 3040.

CAUSE FOUR

Borakowski Borrowed from a Customer without Pre-Approval from his Employer Member Firm (Violation of FINRA Rules 2010 and 3240 as to Borakowski)

52. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

53. On or about October 22, 2010, Borakowski borrowed \$11,500 from TT, a non-family member and customer of Borakowski's employer member firm, but did not receive approval from his employer member firm.

54. In or around October 2010, Borakowski told TT about Echo Canyon LLC and that the purpose of Echo Canyon LLC was to purchase used vehicles in the US and transport those vehicles to Russia for re-sale. Borakowski told TT that he needed additional funds because he had borrowed funds from another customer of his employer member firm and that the customer wanted to be re-paid immediately and had threatened to contact Borakowski's employer member firm about the loan.

55. TT loaned Borakowski \$11,500 to repay the customer from whom Borakowski had borrowed money. On or about October 20, 2010, Borakowski and TT executed a promissory note in Echo Canyon LLC as evidence of the loan. The promissory note provided for Borakowski to repay TT \$11,500 plus \$1,000 on December 22, 2010 for a total amount of \$12,500.

56. On or about December 23, 2010, Borakowski sent TT a check drawn on the Echo Canyon LLC bank account in the amount of \$500. Borakowski, however, did not repay the outstanding balance of \$12,000 that was owed on the loan.

57. By borrowing money from his customer TT without obtaining pre-approval from his employer FINRA member firm Borakowski violated FINRA Rules 2010 and 3240.

CAUSE FIVE

Borakowski Provided False Information to his Employer Member Firm (Violation of FINRA Rule 2010)

58. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

59. At all relevant times to this Complaint, Borakowski's employer member firm prohibited its registered representatives from borrowing money from its customers. Section 2.14.7 of the firm's written supervisory procedures state:

RRs are generally not permitted to borrow from or lend to their own customers. Any proposed loan with the RR's customer (other than a loan with a family member or financial institution) requires the PRIOR review and approval by the Compliance Department. RRs requesting exceptions must provide a written statement explaining the reason and details of the request and submit it to the Compliance Department for approval prior to effecting the loan arrangement.

60. On March 28, 2010, Borakowski completed a branch audit questionnaire issued by his employer FINRA member firm.

61. In response to the question "Have you borrowed or loaned money or securities from or to any customer, excluding immediate family members" Borakowski falsely answered "no."

62. Borakowski did not submit a written statement explaining the reason and details of the loan from TT to his employer member firm for approval prior to effecting the loan arrangement with TT.

63. By borrowing money from his customer TT and falsely denying that he had borrowed money, Borakowski violated FINRA Rule 2010.

CAUSE SIX

Failure to Respond to FINRA Rule 8210 Requests (Violation of FINRA Rules 2010 and 8210 as to Borakowski)

64. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

65. On December 23, 2011, staff sent Borakowski a letter pursuant to FINRA Rule 8210 requesting information in this matter. Staff sent the FINRA Rule 8210 letter to his CRD address via certified mail, first class mail and FedEx. The response was due on January 6, 2012. Borakowski signed the FedEx delivery confirmation for the FINRA Rule 8210 letter on December 27, 2011. Borakowski did not respond to the FINRA Rule 8210 letter.

66. On January 18, 2012, staff sent Borakowski a follow-up letter pursuant to FINRA Rule 8210 requesting information for this matter. Staff sent the follow-up FINRA Rule 8210 letter to his CRD address via FedEx, first class and certified mail. The FINRA Rule 8210 letter sent via FedEx was delivered on January 19, 2012. Borakowski did not respond to the FINRA Rule 8210 letter.

67. As a result of Borakowski's repeated failure to respond to FINRA Rule 8210 requests, staff was prevented from pursuing certain material areas of its investigation into Borakowski's conduct in this matter.

68. By engaging in the foregoing conduct, Borakowski violated FINRA Rules 2010 and 8210.

CAUSE SEVEN

Failure to Respond to FINRA Rule 8210 Requests (Violation of FINRA Rules 2010 and 8210 as to Kardaras)

69. Market Regulation re-alleges and incorporates by reference preceding paragraphs 1 through 51.

70. On October 20, 2011, staff sent Kardaras a letter pursuant to FINRA Rule 8210 requesting information in this matter. Staff sent the FINRA Rule 8210 letter to his CRD address via certified mail, first class mail and FedEx. Kardaras signed the certified mail receipt and returned it to staff on October 31, 2011. His response was due on October 27, 2011. Kardaras did not respond to the FINRA Rule 8210 request.

71. On November 10, 2011, staff sent Kardaras a follow-up letter pursuant to FINRA Rule 8210 requesting information in this matter. Staff sent the FINRA Rule 8210 letter to his CRD address via certified mail, first class mail and FedEx. Kardaras signed the certified mail receipt and returned it to staff on November 21, 2011. Kardaras did not respond to the FINRA Rule 8210 request.

72. As a result of Kardaras' repeated failure to respond to FINRA Rule 8210 requests, staff was prevented from pursuing certain material areas of its investigation into Kardaras' conduct in this matter.

73. By engaging in the foregoing conduct, Kardaras violated FINRA Rules 2010 and 8210.

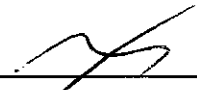
Prayer for Relief

WHEREFORE, Market Regulation respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents George Alexander Kardaras and Brian Matt Borakowski committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Procedural Rule 8310 be imposed, including that the Respondents be required to disgorge fully any and all ill-gotten gains and/or make full restitution, together with interest;
- C. make specific findings that Respondents willfully violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder;
- D. order that Respondents bear such costs of any proceeding as are deemed fair and appropriate under the circumstances, in accordance with FINRA Procedural Rule 8330; and
- E. grant all further relief, legal or equitable, that is warranted under the circumstances.

Dated: March 27, 2013

FINRA Department of Market Regulation



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