

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHARLES V. KOUBEK, JR.,
(CRD No. 2068434),

[REDACTED]

[REDACTED]

Respondent.

Disciplinary Proceeding
No. C10040072

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

February 9, 2005

The Respondent is barred from associating with any member firm in any capacity for failing to respond to NASD requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, and for making baseless price predictions, in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and NASD Conduct Rules 2110 and 2120. He is also ordered to pay \$80,000 in restitution, plus interest. In light of the bars, the Respondent is not further sanctioned for engaging in private securities transactions, in violation of NASD Conduct Rules 2110 and 3040.

Appearances

Vaishali S. Shetty, Senior Regional Attorney, Jericho, NY, (Rory C. Flynn, Chief Litigation Counsel, Of Counsel, Washington, DC) for the Department of Enforcement.

No appearance by or for Charles V. Koubek, Jr.

DECISION

I. INTRODUCTION

On July 2, 2004, the Department of Enforcement (“Department”) filed the Complaint in this matter, alleging that Charles V. Koubek, Jr. (“Koubek” or the “Respondent”) (1) engaged in private securities transactions, in violation of NASD Conduct Rules 3040 and 2110; (2) made baseless price and performance predictions, in violation of Section 17(a) of the Securities Act of 1933 (“1933 Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Exchange Act Rule 10b-5, and NASD Conduct Rules 2110 and 2120; and (3) failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

The Department properly served¹ the Respondent with copies of the Complaint, Notice of Complaint, and Second Notice of Complaint by mailing them to him by certified mail, return receipt requested, at his most current address recorded in the Central Registration Depository (the “CRD address”).² Koubek nevertheless failed to answer the Complaint within the time required by the NASD Code of Procedure. Consequently, on October 7, 2004, the Department filed a Motion for Entry of Default and Imposition of Sanctions (“Motion”), which is supported by the Declaration of Vaishali S. Shetty, Esq. (“Shetty Decl.”) and 12 exhibits.

On November 24, 2004, the Hearing Officer denied the Department’s Motion with leave to supplement the Motion. On December 21, 2004, the Department filed a

¹ See NASD Code of Procedure 9134(b)(1).

² Exs 1, 3, and 8. The Department also served Koubek at an alternate address, which the Department believed might have been more current than his CRD address. See Shetty Decl. ¶¶ 8, 12.

Supplemental Declaration (“Shetty Supp. Decl.”) and four additional exhibits in support of the Motion.

Koubek defaulted by failing to answer the Complaint; he also failed to file an opposition to the Department’s Motion. Thus, pursuant to NASD Code of Procedure Rules 9215 and 9269, the Hearing Officer deems the factual allegations in the Complaint admitted and grants the Department’s Motion.³

II. FINDINGS OF FACT

A. The Respondent’s Background in the Securities Industry

The Complaint alleges, and the Respondent’s CRD record shows, that Koubek began his career in the securities industry in an unregistered capacity in June 1990.⁴ He then worked in various registered and unregistered capacities before he joined Thomas Fletcher & Company, Inc. (“Fletcher”).⁵ Koubek was registered as a General Securities Representative through Fletcher from February 2002 until April 2004.⁶ Koubek’s CRD record also reflects that he was registered as a General Securities Representative through National Securities Corporation from December 2002 until March 2003.⁷ Koubek’s NASD registration was terminated effective April 14, 2004; he has not been registered with NASD since that date.⁸

³ See also NASD Notice to Members 99-17, 1999 NASD LEXIS 49 (Sept. 1999). The facts alleged in the Complaint are incorporated into the following Findings of Fact. A copy of the Complaint is attached as Exhibit A.

⁴ Ex. 1, at 5.

⁵ *Id.* at 3–4.

⁶ *Id.* at 8. In January 2003, Fletcher was suspended for failure to pay an arbitration award. On April 14, 2004, NASD canceled the firm’s membership. (Shetty Decl. ¶ 6.)

⁷ *Id.* at 7.

⁸ *Id.* at 8.

B. Jurisdiction

NASD has jurisdiction of this proceeding under NASD By-Laws, Article V, Section 4. The Department filed the Complaint within two years after the date Koubek's NASD registration terminated. In addition, the Complaint alleges misconduct that commenced while Koubek was registered and failure to respond to requests for information that were issued within two years after his registration terminated.

C. Private Securities Transactions and Baseless Price Predictions

In the first cause of action, the Complaint alleges that, between June 2002 and March 2003, the Respondent participated in two private securities transactions for SM, a Fletcher customer,⁹ without providing Fletcher with written notice of his participation in these transactions.¹⁰ In the second cause of action, the Complaint alleges that in connection with the private securities transaction involving World Ventures, Inc. the Respondent made baseless price and performance predictions.

1. World Ventures, Inc. Investment

In June 2002, the Respondent solicited SM to invest in a company called World Ventures, Inc. The Respondent told SM that World Ventures, a small company in Texas about to go public, was a great opportunity. The Respondent represented that if SM invested \$30,000, he would triple his money by the end of the year.¹¹ The Respondent lacked a reasonable basis for his prediction.¹² Indeed, NASD staff was unable to uncover any information about World Ventures.¹³

⁹ SM opened the account at Fletcher in May 2002. (Ex. CX13, SM Aff., ¶ 3.)

¹⁰ Compl. ¶ 7.

¹¹ Compl. ¶¶ 6, 10; Ex. CX13, SM Aff., ¶ 4.

¹² Compl. ¶¶ 10–11.

¹³ Shetty Supp. Decl. ¶ 11.

In reliance on the Respondent's representations, on June 22, 2002, SM wired \$30,000 to a Citibank account to be invested in World Ventures, as the Respondent directed.¹⁴ Although SM requested documentation to evidence his investment, the Respondent did not provide any. The Respondent claimed that he would file all of the documents at his office for safekeeping.

On or about December 10, 2002, the Respondent told SM that his investment in World Ventures was then worth \$90,000 and that soon he would receive a check in that amount.¹⁵ Through March 2003, the Respondent continued to insist the investment in World Ventures was profitable, although he never provided any support for his claim.¹⁶ And despite repeated promises by the Respondent, SM never received any return on his World Ventures investment.¹⁷ Eventually, the Respondent refused to return SM's telephone calls.

2. Nitro Gas Services Corp. Investment

In October 2002, the Respondent contacted SM about a second investment opportunity that would generate "extraordinary" returns.¹⁸ The Respondent met SM at the Four Seasons Hotel in Manhattan at which time he gave SM a prospectus for Nitro Gas Services Group ("Nitro Gas"). The Respondent told SM that the company was about to conduct an initial public offering.¹⁹ The Respondent recommended that SM purchase 2.5

¹⁴ Ex. CX13, SM Aff., ¶ 5.

¹⁵ Shetty Supp. Decl. ¶ 9; Ex. CX13, SM Aff., ¶ 10.

¹⁶ *Id.* at ¶¶ 10–17.

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 8.

¹⁹ NASD staff was unable to locate any information about Nitro Gas. (Shetty Supp. Decl. ¶ 11.)

contracts at \$20,000 per contract.²⁰ Each contract represented 15,000 shares.²¹ Once again, SM relied on the Respondent's recommendation and, on November 14, 2002, SM wired \$50,000 to a Bank of New York account for the investment.²² The Respondent did not provide SM with any further documentation evidencing his investment in Nitro Gas.

SM never received any of his original \$80,000 investment or any other payout from the investments in World Ventures and Nitro Gas.²³ Consequently, in March 2003, SM sent a complaint letter to NASD's New York office.²⁴

D. NASD Requests for Information

In connection with its investigation of SM's complaint letter, on April 10 and May 22, 2003, NASD Staff sent requests for information to Koubek, pursuant to NASD Procedural Rule 8210.²⁵ NASD Staff sent **each** request by first class and certified mail to the Respondent's CRD address and an additional address the staff obtained from Equifax. Koubek did not respond to either request.

III. CONCLUSIONS OF LAW

A. Private Securities Transactions

Koubek effected private securities transactions away from Fletcher by facilitating

²⁰ Compl. ¶ 6; Shetty Supp. Decl. ¶ 7; Ex. CX13, SM Aff., ¶ 8.

²¹ Ex. CX13, SM Aff., ¶ 8.

²² Ex. CX13, SM Aff., ¶ 8.

²³ Shetty Supp. Decl. ¶ 10.

²⁴ Ex. CX14.

²⁵ Compl. ¶¶ 14–19.

sales of securities²⁶ issued by World Ventures and Nitro Gas to customer SM, without first providing written notice to Fletcher. NASD Conduct Rule 3040 provides that “[n]o person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements” of the Rule. Under Rule 3040(b), an associated person who participates in a private securities transaction must provide prior written notice to the member firm with which he is associated, describing the proposed transaction and the person’s proposed role in it, and stating whether the person has, or may, receive compensation for it.

The purpose of Conduct Rule 3040 is to ensure that member firms adequately supervise the suitability and due diligence responsibilities of their associated persons.²⁷ The Rule also serves to “protect employers against investor claims arising from an associated person’s private transactions and to prevent customers from being misled as to the employing firms’ sponsorship of the transactions.”²⁸

Koubek participated in the private securities transactions by soliciting SM and receiving his funds to invest in World Ventures and Nitro Gas. Koubek gave no written

²⁶ The allegations in the Complaint regarding the nature of the interests Koubek sold are vague. Nonetheless, the Hearing Officer finds they constituted securities under the Exchange Act. If the customers were not purchasing stock in the two companies, the interests constituted “investment contracts” under Section 3(a)(10) of the Exchange Act. See *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) (interpreting an “investment contract” as an investment of money in a common enterprise with the expectation of profits to be derived solely from the efforts of others). Although *Howey* dealt with the definition of “security” under § 2(1) (now § 2(a)(1)) of the 1933 Act, the 1933 Act and the Exchange Act are to be construed together. The definition of “security” under both Acts has been deemed identical, and the cases dealing with the definition are used interchangeably. See *Tcherepnin v. Knight*, 389 U.S. 332, 335-36 (1967); *Ballard & Cordell Corp. v. Zoller & Danneberg Exploration, Ltd.*, 544 F.2d 1059, 1065-66 (10th Cir. 1976). Moreover, even if the investments were fictional, they nevertheless were securities. (See *SEC v. Lauer*, 864 F. Supp. 789, 794 (N.D. Ill. 1994), *aff’d*, 52 F.3d 667 (7th Cir. 1995).)

²⁷ See *Department of Enforcement v. Carcaterra*, No. C10000165, 2001 NASD Discip. LEXIS 39, at *8 (N.A.C. Dec. 13, 2001).

²⁸ *Id.* at *8-9.

notice to Fletcher of his participation in these transactions. Accordingly, Koubek violated Conduct Rules 3040 and 2110.

B. Baseless and Improper Price Predictions

To establish that Respondent violated the antifraud provisions of the federal securities laws²⁹ and NASD rules³⁰ as charged, the Department must prove by a preponderance of the evidence that Koubek made material misrepresentations, or failed to disclose material information to insure that statements were not misleading, in connection with the purchase, sale or offer of securities, and acted with scienter.³¹

1. Misrepresentations and Omissions

Koubek made unsubstantiated predictions about substantial short-term price increases for World Ventures. As a result, he prevented SM from making fully informed investment decisions and induced him to purchase securities, via wire transfer, on the basis of misinformation. Koubek also led SM to believe that the investment had tripled,

²⁹ Section 17(a) of the Securities Act makes it unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly: (1) to employ any device, scheme, or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (3) to engage in any transportation, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Section 10(b) of the Exchange Act provides:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest for the protection of investors."

³⁰ Conduct Rule 2120, the NASD's antifraud rule, parallels SEC Rule 10b-5. Rule 2120 provides that "[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

³¹ *District. Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at *18 (N.B.C.C. July 28, 1997).

as he had predicted. Koubek never provided SM with any documentation to support his assertions.

2. Materiality

The standard for materiality requires consideration of “whether the reasonable investor would consider a fact important” in making an investment decision, or whether disclosure would “significantly alter...the ‘total mix’ of information made available.”³² Material facts include not only earnings of a company, but also those facts that affect the probable future of a company and that may affect the desires of investors to buy, sell, or hold the securities.³³ The duty of fair dealing requires that brokers have an adequate basis for their recommendations, and that those recommendations are based on a reasonable investigation.³⁴

Here, Koubek predicted World Ventures would triple in price in six months, without any basis. Reasonable investors would find such a misrepresentation involving a security’s price relevant to their decisions to invest in a company.

3. Scienter

Scienter is “a mental state embracing intent to deceive, manipulate, or defraud.”³⁵

³² *Martin R. Kaiden*, Exchange Act Release No. 41,629, 1999 SEC LEXIS 1396, at *18 n.25 (July 20, 1999); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

³³ See *SEC v. Hasho*, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992).

³⁴ *Hanly v. SEC*, 415 F.2d 589, 597 (2d Cir. 1969); *Goodman*, Exchange Act. Release No. 43,889, 2001 SEC LEXIS 144, at *12 (Jan. 26, 2001).

³⁵ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976).

To prove scienter there must be a showing that the respondent acted intentionally or recklessly.³⁶

It can be inferred from Koubek's conduct that he intentionally deceived his customer to invest in World Ventures. As a registered representative, Koubek had a duty to investigate the securities, to disclose material facts about the securities before recommending them to SM, and to have a reasonable basis for predicting any substantial increase in the price of those securities. Koubek either recklessly failed to conduct such due diligence, or he conducted the due diligence and disregarded the findings. Regardless, Koubek must have been fully aware that he was providing his customer with materially insufficient information about the investment he recommended, and that his predictions for its future performance were fabricated and baseless.

Baseless, false and misleading predictions are fraudulent.³⁷ The SEC has repeatedly held that "predictions of specific and substantial increases in the price of a speculative security within a relatively short period of time are fraudulent."³⁸ The evidence demonstrates, and the Respondent admits by default, that he made baseless and improper price predictions, in connection with sales of Word Ventures and Nitro Gas

³⁶ See *M. Rimson & Co., Inc.*, Initial Decision Release No. 106, 1997 SEC LEXIS 486, at *95 (Feb. 25, 1997); *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994), 1994 U.S. App. LEXIS 3326 at *14 (1994). Recklessness is evident when the conduct "presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Hollinger, v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990), *cert. denied*, 499 U.S. 976 (1991).

³⁷ See *Padgett*, Exchange Act Release No. 38,423, 1997 SEC LEXIS 634, at **23-24 (Mar. 20, 1997) (finding that predictions of sizeable stock price increases that are made without any reasonable basis are fraudulent); *Richard Bruce & Co., Inc.*, Exchange Act Release No. 8,303, 1968 SEC LEXIS 220, at **12-13 (Apr. 30, 1968) (concluding that predictions of "a sharp increase in earnings with respect to a speculative stock without disclosure of the uncertainties as well as the known facts upon which a prediction rests [are] inherently misleading") (citation omitted).

³⁸ *Roche*, Exchange Act Release No. 38,742, 1997 SEC LEXIS 1283, at *5 (June 17, 1997).

securities, in violation of Section 17(a) of the 1933 Act, 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

C. Failure to Respond to Requests for Information

Under NASD Procedural Rule 8210, NASD has the authority to require any person subject to its jurisdiction to produce information relevant to an investigation. The obligation to respond is unqualified because NASD lacks subpoena power. As such, Rule 8210 is the means by which NASD carries out its regulatory functions. It is a “key element in NASD’s efforts to police its members.”³⁹ Failure to comply with such a request is a serious violation, in that it subverts NASD’s ability to perform its regulatory duties.⁴⁰ A violation of Rule 8210 is also a violation of Rule 2110.⁴¹

Under Rule 8210(d), a respondent is deemed to have received constructive notice of an information request when NASD staff mails notification to the respondent’s CRD address, as NASD staff did in this case. Accordingly, the Hearing Officer finds that Koubek received constructive notice of the information requests. Thus, the Hearing Officer finds that Koubek violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to the requests for information.

IV. SANCTIONS

A. Failure to Respond to Requests for Information

The NASD Sanction Guidelines (“Guidelines”) recommend the imposition of a bar where an individual failed to respond in any manner to a request for information issued pursuant to NASD Procedural Rule 8210, unless mitigating circumstances exist

³⁹ *Richard J. Rouse*, Exchange Act Release No. 32,658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993).

⁴⁰ See *Department of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000).

⁴¹ *Id.* at *21–22.

warranting a lesser sanction.⁴² Here, the record discloses no such mitigating factors. Accordingly, the Hearing Officer will bar Koubek from associating with any member firm in any capacity for his failure to respond to the requests for information.

B. Baseless and Improper Price Predictions

When an individual intentionally or recklessly makes misrepresentations or material omissions of fact, the NASD Sanction Guidelines recommend a fine of \$10,000 to \$100,000 and a suspension for a period of 10 business days to two years, or in egregious cases, a bar.⁴³ The Department contends, and the Hearing Officer finds, that Koubek's conduct was egregious. Under the circumstances, a bar is necessary to protect the investing public. Accordingly, the Hearing Officer also will bar Koubek from associating with any member firm in any capacity for this violation.

The Department also requests that Koubek be ordered to pay restitution to SM. The Hearing Officer agrees that restitution is appropriate in this case: SM suffered a quantifiable loss as a result of the Respondent's misconduct for which he has not been compensated.⁴⁴ The evidence shows that SM never recovered any of his \$80,000 investment.

C. Private Securities Transactions

The Hearing Officer will not impose a sanction for Koubek's participation in private securities transactions in violation of NASD Conduct Rules 2110 and 3040.⁴⁵ In

⁴² NASD Sanction Guidelines 37 (2004 ed.).

⁴³ *Id.* at 94.

⁴⁴ The Guidelines generally recognize that, in cases where an identified individual has suffered a quantifiable loss because of a respondent's misconduct, it is fitting to order the respondent to pay restitution. *See* Guidelines 6.

⁴⁵ The Department requested that Koubek be suspended in all capacities for three months and ordered to make restitution to SM in the amount of \$80,000.

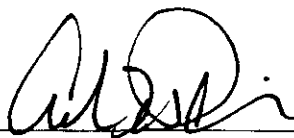
light of the fact that Koubek is barred for his failure to respond to the requests for information and for making baseless and improper price predictions, no remedial purpose would be served by the imposition of a suspension or fine for this violation.⁴⁶

V. ORDER

Charles V. Koubek is barred from associating with any member firm in any capacity for failing to respond to NASD requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, and for making baseless and improper price predictions, in violation of Section 17(a) of the 1933 Act, Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2110 and 2120.

Koubek is further ordered to pay \$80,000 in restitution to SM, plus interest thereon from November 14, 2002, at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2).

These sanctions shall become effective on a date set by the NASD, but not sooner than 30 days from the date this Default Decision becomes the final disciplinary action of NASD, except that if this Default Decision becomes the final disciplinary action of NASD, the bars shall become effective immediately.



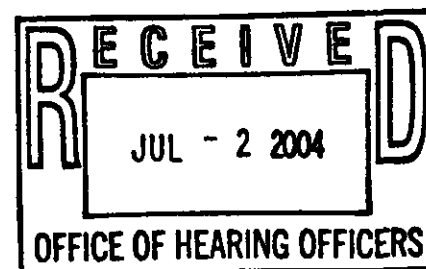
Andrew H. Perkins
Hearing Officer

Copies to:

Charles V. Koubek, Jr. (by overnight delivery and first-class mail)
Vaishali S. Shetty (by first-class and electronic mail)
Rory C. Flynn (by first-class and electronic mail)

⁴⁶ See *Department of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4 (N.A.C. Mar. 27, 2002).

NASD OFFICE OF HEARING OFFICERS



DEPARTMENT OF ENFORCEMENT,
Complainant,

v.

CHARLES V. KOUBEK, JR.
(CRD No. 2068434),

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Disciplinary Proceeding
No. C10040072

Hearing Officer _____

COMPLAINT

Upon information and belief, Complainant, the Department of Enforcement, alleges the following:

JURISDICTION

1. Charles V. Koubek, Jr. ("Respondent") first became registered with NASD as a General Securities Representative ("GSR") on or about September 17, 1991, through his association with a member firm.
2. From June 2002 through March 2003, Respondent was registered with NASD as a GSR through his association with NASD member firm Thomas Fletcher & Company, Inc. (BD No. 43675) ("Fletcher").
3. Respondent is not currently associated with any NASD member firm. However, he remains subject to NASD's jurisdiction through March 27, 2005, pursuant to Article V, Section 4 of the Association's By-Laws.

FIRST CAUSE OF COMPLAINT
(Private Securities Transactions)
NASD Conduct Rules 3040 and 2110

4. Paragraphs one through three are re-alleged and incorporated herein by reference.

5. From in or around June 2002 through March 2003, while he was associated with Fletcher, Respondent participated in private securities transactions for his Fletcher customer, SM, away from Fletcher.
6. From in or around June 2002 through March 2003, Respondent solicited and received \$80,000.00 from SM, consisting of \$30,000.00 for investment into World Ventures, Inc. ("World Ventures") and \$50,000.00 for investment into Nitro Gas Services Group ("Nitro Gas").
7. Prior to participating in the private securities transactions, Respondent failed to provide written notice to Fletcher.

By reason of the foregoing, Respondent violated NASD Conduct Rules 3040 and 2110.

SECOND CAUSE OF COMPLAINT
(Baseless and Improper Price and Performance Predictions)
Section 17(a) of the Securities Act of 1933,
Section 10(b) of the Securities Exchange Act of 1934 and
Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120

8. Paragraphs one through seven are re-alleged and incorporated herein by reference.
9. In connection with the sale of securities issued in World Ventures, Respondent, directly or indirectly:
 - (a) by the use of any means or instrumentalities of interstate commerce or the mails, or of any facility of any national securities exchange, employed artifices, devices or schemes to defraud, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit;

- (b) effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent device or contrivance; and
- (c) failed to observe high standards of commercial honor and just and equitable principles of trade.

10. In June 2002, Respondent induced customer SM to purchase \$30,000.00 worth of shares in World Ventures by representing, among other things and either falsely or without a reasonable basis, that SM would triple his investment within six months. Respondent claimed that the investment in World Ventures would generate a profit of approximately \$90,000.00 within six months.

11. The price predictions described above were material. All such predictions were false, misleading and/or made without a reasonable basis.

12. In making the predictions described above, Respondent acted intentionally and/or recklessly.

By reason of the foregoing, in each and every instance, Respondent violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120.

THIRD CAUSE OF COMPLAINT

(Failure To Respond)

NASD Procedural Rule 8210 and Conduct Rule 2110

13. Paragraphs one through twelve are re-alleged and incorporated herein by reference.

14. On or around April 10, 2003, the staff of NASD ("the Staff") sent Respondent a letter requesting that he respond to the NASD by April 25, 2003, concerning an investigation with respect to the customer complaint filed by SM with NASD.

15. The Staff's request was made pursuant to, and in accordance with, NASD Procedural Rule 8210. The request was sent by First Class Mail and by Certified Mail, Return Receipt

Requested, to Respondent, at his address, as reflected in the Central Registration Depository ("CRD"), pursuant to, and in accordance with, the provisions of NASD Procedural Rule 8210 (the "CRD Address"). In addition, the request was sent by First Class Mail and by Certified Mail, Return Receipt Requested, to Respondent at his last-known address, obtained by the Staff from Equifax (the "Equifax Address"). The copies sent to the CRD Address were returned, marked "Forward Time Exp." and listed the Equifax Address as a forwarding address. The copies sent to the Equifax Address were returned, marked "Moved Left No Address."

16. Respondent did not respond to the request.

17. On May 22, 2003, the Staff sent Respondent a second letter, pursuant to NASD Procedural Rule 8210, requesting that he respond to the NASD by June 2, 2003, concerning an investigation with respect to the customer complaint filed by SM with NASD.

18. Again, the second request was sent via certified and first-class mail to the CRD Address and the Equifax Address. The certified copy, sent to the CRD Address, was returned, marked "Attempted, Not Known." The copy sent via first-class mail to the CRD Address was returned, marked "Forward Time Exp." and, again, listed the Equifax Address as a forwarding address. The certified copy sent to the Equifax Address was returned, marked "Moved Left No Address – Unable to Forward" and the Postal Service did not return the first-class mailing to the Equifax Address.

19. Respondent did not respond to the second request.

By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

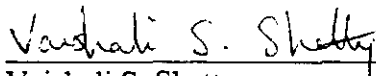
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent in accordance with NASD Procedural Rule 8310;
- C. An order, pursuant to NASD Procedural Rule 8310, requiring Respondent to fully disgorge any ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances and in accordance with NASD Rule 8330; and
- E. An order, pursuant to NASD Procedural Rule 8310, imposing any other fitting sanction.

Dated: July 1, 2004

DEPARTMENT OF ENFORCEMENT


Vaishali S. Shetty
Senior Regional Attorney /ds
NASD, District 10
Two Jericho Plaza, 2nd Floor
Jericho, NY 11753
(516) 949-4237

Of Counsel:

David E. Shellenberger
Chief Counsel
NASD, District 10
One Liberty Plaza
New York, NY 10006

Rory C. Flynn
Chief Litigation Counsel
Department of Enforcement
NASD
1801 K Street, N.W., Suite 800
Washington, D.C. 20006