

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

CHRISTIAN PETER KURETSKI
(CRD No. 2487902)

Respondent.

Disciplinary Proceeding
No. C9B040108

Hearing Officer – AWH

Default Decision

August 16, 2005

Formerly registered representative misused customer funds, in violation of Conduct Rule 2110, and failed to respond to NASD requests for information and testimony, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred for each violation.

Appearances

Jonathan M. Prytherch, Esq., for the Department of Enforcement.

No appearance by or for Christian Peter Kuretski.

DECISION

Introduction

On December 23, 2004, the Department of Enforcement ("Enforcement") issued the two-cause Complaint in this proceeding, alleging that Christian Peter Kuretski ("Kuretski" or "Respondent") and Ray Anthony Allen ("Allen") misused customers' funds, in violation of NASD Conduct Rule 2110; and that Kuretski failed to respond to NASD staff requests for information and testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Respondent failed to answer the Complaint or the Second Notice of Complaint, mailed to him on January 21, 2005. Allen, however, filed

an answer to the Complaint on February 4, 2004. He also requested a hearing, and, eventually, submitted an Offer of Settlement that was accepted on July 1, 2005¹.

On March 15, 2005, Enforcement filed a Motion for Entry of Default Decision against Kuretski. He failed to respond to the Motion.² Accordingly, pursuant to NASD Procedural Rules 9215(f) and 9269, Enforcement's Motion is granted, and the allegations in the Complaint, which is attached to this Default Decision, are deemed admitted.

Findings of Fact³

The Respondent

Kuretski entered the securities industry in 1994 when he became employed with former member firm A.S. Goldmen & Co., Inc. ("AS Goldmen"). From March 2001, and at all times relevant to this Complaint, Kuretski was associated in an unregistered capacity with, and ran, with at least one other individual, former member firm Grady and Hatch & Company ("G&H"). Most recently, Kuretski was associated with former member firm Phillip Louis Trading, Inc. ("Phillip Louis"), until he was terminated from that firm on or about January 22, 2003. Kuretski is not currently registered with an NASD member.

Misuse of Customer Funds

In or about March 2001, Kuretski, Allen, and others formed a New York Corporation called "Allen, Turner, Fardella, Kuretski, Inc." ("ATFK"), a holding company. ATFK was formed to receive and disburse funds that were to be used to

¹ By the terms of Allen's Offer of Settlement, he was barred from association with any member firm in any capacity.

² Issuance of this Default Decision was delayed until after the earlier of either the hearing in the case against Allen, or the resolution of that matter by settlement.

³ All findings of fact are based on the admitted allegations in the Complaint, the Declaration Supporting Motion for Entry of Default Decision, and the five exhibits attached to the Declaration.

purchase, operate, and contribute capital to G&H. On or about March 15, 2001, a bank account in ATFK's name was opened, over which Kuretski and Allen had control, including the authority to write checks against its funds. In 2001, ATFK issued several promissory notes to the investing public, representing that ATFK needed to raise \$500,000 "for business operations." All funds received from a sale of these notes were deposited into the ATFK bank account. Despite the representations that the funds were to be used for business operations, from about March 2001 to about August 2001, Kuretski and Allen used portions of the funds in the ATFK bank account to "loan" themselves money, without any mention of repayment or interest, for their personal living expenses such as food, rent, and transportation. Kuretski loaned himself at least \$6,300 of the ATFK note proceeds, and was the co-signer on "loan" checks to others, totaling at least \$32,500.

Failure to Respond to Requests for Information

On February 5, 2003, NASD sent a letter by first-class mail to Kuretski at his most current residential address, as listed in the Central Registration Depository ("CRD")⁴ and to his office address (the "Covington address")⁵. The letter requested that, pursuant to Rule 8210, he provide a written statement and documents to NASD Staff by February 19, 2003, concerning a complaint submitted by a customer who had invested in ATFK notes. Kuretski failed to respond to this request.

On February 24, 2003, NASD sent a second letter by certified and first-class mail to Kuretski's CRD and Covington addresses, requesting the same information. NASD

⁴ That address is listed as [REDACTED]

⁵ That address is listed as 134 Covington Circle, Staten Island, NY 10312.

asked that Kuretski respond to the send letter by March 5, 2003; however, Kuretski never responded to the second request.

On May 6, 2003, NASD sent Kuretski a letter requesting that he appear for an on-the-record interview ("OTR") on May 21, 2003. The letter was sent via first class and certified mail to his CRD address, and, citing Procedural Rule 8210, warned him of potential disciplinary action for failing to appear for the OTR. On or about May 20, 2003, NASD Staff spoke with Kuretski and reiterated that failing to appear at the OTR the next day could be deemed a violation of Rule 8210. Nevertheless, Kuretski failed to appear for the OTR on May 21, 2003. Accordingly, the Staff sent a second request, via overnight courier, first class, and certified mail to Kuretski, requesting that he appear for an OTR to be held on May 28, 2003. Kuretski also failed to appear for the May 28, 2003, OTR.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective termination of the individual's registration. During this period of retained jurisdiction, NASD may file a Complaint based upon conduct that occurred while the individual was registered through a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Enforcement filed the Complaint on December 24, 2004, within two years of the January 22, 2003, termination of Respondent's registration. The Complaint alleges

misconduct while he was registered through Phillip Louis, as well as his failures to provide information and testimony requested during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

On December 23, 2004, Enforcement served Respondent with the Complaint and Notice of Complaint by both certified and first-class mail sent to his CRD Address and the Covington address.⁶ With respect to the CRD address, the Postal Service returned the certified mailing receipt bearing an illegible signature. In the case of the Covington address, the Complaint was returned to Staff as "Return to Sender – Unclaimed." Neither of the first-class mailings was returned to Staff.

On January 21, 2005, Enforcement sent the Second Notice of Complaint to Respondent at his CRD address and the Covington address, again using both certified and first-class mail. The Postal Service returned the certified mailing from the CRD address as "Unclaimed." The certified return receipt for the mailing sent to the Covington address, however, was returned to Staff bearing Kuretski's signature.⁷ Neither of the first-class mailings was returned to Staff.

Pursuant to NASD Procedural Rule 9134, the mailings sent to Respondent's CRD address constitute valid constructive notice of the Complaint. Because he failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

⁶ The Covington address was obtained from an October 28, 2004 complaint filed by the SEC against Kuretski.

⁷ The likeness of the signature was deemed to be that of Kuretski based on other evidence in the Staff's file in this matter.

Misuse of Funds

A person misuses funds by failing to use or apply them as directed by the customer. *See Alderman v. SEC*, 104 F.3d 285 (9th Cir. 1997). Misuse of funds is “patently antithetical to high standards of commercial honor and just and equitable principles of trade,” and thus a violation of NASD Conduct Rule 2110. *In re Wheaton D. Blanchard*, Exch. Act Rel. No. 12484, 1976 SEC LEXIS 1571 at *2 (May 27, 1976); *In re Joel Eugene Shaw*, Exch. Act Rel. No. 34509, 1994 SEC LEXIS 2493 at *6 (Aug. 10, 1994). NASD’s “disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.” *In re Ernest A. Cipriani, Jr.*, Exch. Act Rel. No. 33675, 1994 SEC LEXIS 506 at *4 (Feb. 24, 1994).

Kuretski misused customer funds by failing to use those funds in a manner consistent with the representations set forth in promissory notes he issued to the investing public. Accordingly, Kuretski violated Conduct Rule 2110.

Failure to Respond to NASD Requests for Testimony

Rule 8210 permits NASD to require persons subject to its jurisdiction to provide information or testimony related to any matter under investigation. The rule is a “key element” in NASD’s ability to fulfill its regulatory function. *See Richard J. Rouse*, Exchange Act Rel. No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993). A violation of Rule 8210 is also a violation of Conduct Rule 2110. *Dep’t of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3 (NAC April 19, 2000).

Kuretski failed to provide a written statement and documents, as twice requested by NASD Staff. In addition, he refused to appear for two scheduled OTRs. By those

failures to provided information, requested in connection with an NASD investigation, Kuretski violated Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Misuse of Funds

The NASD Sanction Guideline for misuse of funds recommends consideration of a bar. NASD SANCTION GUIDELINES (2004), at 40. Where the misuse occurred as a result of the respondent's misunderstanding of the customer's intended use of the funds, or where other mitigating factors exist, a suspension of six months to two years may be considered. Here there are no mitigating factors. The misuse was intentional and flagrant. Accordingly, a bar is the appropriate sanction.

Failure to Provide Information

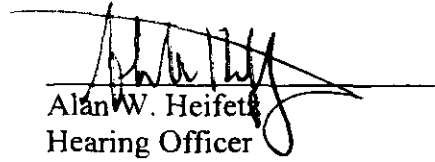
The NASD Sanction Guidelines *recommend a bar when a person fails to respond* in any manner to a request made pursuant to Rule 8210. NASD SANCTION GUIDELINES (2004), at 37. Kuretski failed completely to comply with NASD requests for documents and testimony. There are no mitigating factors that would warrant a sanction less than a bar. Therefore, Kuretski will be barred from association with any member firm in any capacity.

Conclusion

Christian Peter Kuretski is barred from associating with any member firm in any capacity for misuse of customers' funds, in violation of NASD Conduct Rule 2110, and for failing to respond to NASD requests for information and testimony, in violation of

Procedural Rule 8210 and Conduct Rule 2110. The bars shall be effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Alan W. Heifetz
Hearing Officer

Copies to:
Via First-Class Mail & Overnight Courier
Christian Peter Kuretski

Via First-Class & Electronic Mail
Jonathan M. Prytherch, Esq.
Rory C. Flynn, Esq.

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,
Complainant,

v.

CHRISTIAN PETER KURETSKI
(CRD NO. 2487902); and

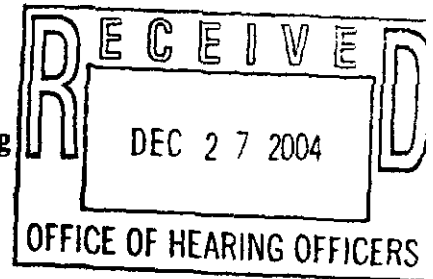
RAY ANTHONY ALLEN,
(CRD NO. 2925054)

Respondents.

Disciplinary Proceeding
No. C9B040108

Hearing Officer -

COMPLAINT



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

JURISDICTION

1. Respondent Christian Peter Kuretski ("Kuretski") first became registered with NASD as a General Securities Representative on October 26, 1994 through former member firm A.S. Goldmen & Co., Inc. (BD No. 23180).
2. In or about March 2001, Kuretski became associated with former member firm Grady and Hatch & Company, Inc. (BD No. 14262) ("G&H") in an unregistered capacity.
3. At all times relevant to this Complaint, Kuretski and at least one other individual ran G&H.
4. Kuretski remained associated with G&H until in or about December of 2001, when G&H filed a Form BDW.
5. Most recently, Kuretski was associated with former member firm Phillip Louis Trading, Inc. (BD No. 19378) ("Phillip Louis") from on or about October 22, 2002 through on or about January 22, 2003.

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6. On or about January 22, 2003, Kuretski was terminated from Phillip Louis.
7. Kuretski is not presently registered with any member firm.
8. Accordingly, pursuant to Article V, Section 4 of NASD's By-Laws, NASD has jurisdiction over Kuretski until at least January 21, 2005.
9. Ray Anthony Allen ("Allen") first became registered with NASD as a General Securities Representative on August 27, 1997 through former NASD member firm VTR Capital, Inc. (BD No. 21404).
10. From April 26, 2001 through December 18, 2001, Allen was registered with G&H as a General Securities Representative and General Securities Principal.
11. Most recently, Allen was registered with member firm Brookstreet Securities Corporation ("Brookstreet") as a General Securities Representative and General Securities Principal from September 4, 2003 through December 31, 2003.
12. On January 2, 2004, Brookstreet filed a Form U-5 on Allen's behalf disclosing a voluntary termination date of December 31, 2003.
13. Allen is not presently registered with any member firm.
14. Accordingly, pursuant to Article V, Section 4 of NASD's By-Laws, NASD has jurisdiction over Allen until at least December 30, 2005.

FIRST CAUSE OF COMPLAINT

(Misuse of Funds)

Violations of NASD Conduct Rule 2110-Kuretski and Allen

15. Paragraphs 1 through 14 of this Complaint are re-alleged and incorporated herein by reference.
16. In or about March 2001, Kuretski, Allen and others formed a New York Corporation called "Allen, Turner, Fardella, Kuretsky, Inc." ("ATFK"). The purpose of ATFK was to act as a

holding company for funds that would be used to purchase, operate, and contribute capital to G&H, which was an active member firm at that time. Allen was the president of ATFK and Kuretski and others were vice-presidents.

17. On or about March 15, 2001, a bank account was opened in ATFK's name, care of Allen.
18. Kuretski and Allen had control over the ATFK bank account, including authority to write checks on that account.
19. At various times during 2001, ATFK issued promissory notes ("ATFK notes") to the investing public. The notes stated that ATFK was a newly formed corporation, created for the purpose of purchasing and operating G&H and that ATFK was in the process of raising \$500,000 "for business operations."
20. The investors who purchased the notes were told that the monies would be used for business matters consistent with the representations set forth in the ATFK notes.
21. At various times during 2001, ATFK received funds from investors in connection with the sales of the ATFK notes, some of whom are listed on Schedule A, attached hereto. Those funds were deposited in the ATFK bank account.
22. However, despite the representations set forth above, the funds, once placed in the ATFK bank account, were not used in accordance with the terms of the ATFK notes. Instead, during the time period from in or about March 2001 through in or about August 2001, Kuretski and Allen issued "loan" checks to themselves and others with the proceeds of the ATFK notes. These loans were made without interest or any specific terms of repayment. Furthermore, these loans were used for personal living expenses such as food, rent, and transportation.

23. Kuretski loaned himself at least \$6,300 of the ATFK note proceeds and was the co-signatory on "loan" checks to others totaling at least \$32,500.
24. Allen loaned himself at least \$8,100 of the ATFK note proceeds and was the co-signatory on "loan" checks to others totaling at least \$30,300.
25. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Kuretski and Allen.

SECOND CAUSE OF COMPLAINT

(Failure to Respond)

Violations of NASD Procedural Rule 8210 and Conduct Rule 2110-Kuretski

26. Paragraphs 1 through 25 of this Complaint are re-alleged and incorporated herein by reference.
27. By letter dated February 5, 2003, NASD Staff ("Staff") sent Kuretski a request for a written statement and documents regarding a complaint from a customer who invested in the ATFK note ("February 5, 2003 request"). The letter was sent via first class mail to Kuretski's residential address as reflected in the records of CRD [REDACTED] [REDACTED] (the "CRD address") and to his business address at Phillip Louis. The request cited Procedural Rule 8210 and required that Kuretski respond by February 19, 2003.
28. The mailings of the February 5, 2003 request were not returned to the Staff.
29. Kuretski failed to respond to the February 5, 2003 request.
30. Accordingly, by letter dated February 24, 2003, the Staff sent Kuretski another request for a response to the February 5, 2003 request, which was enclosed ("February 24, 2003 request"). The letter was sent via first class and certified mail to Kuretski at his CRD address, cited Procedural Rule 8210, warned him of potential disciplinary action for failing to respond, and required a response by March 5, 2003.

31. The certified and regular mailings of the February 24, 2003 request were not returned to the Staff. No signed return receipt regarding the February 24, 2003 request was returned to the Staff.
32. Kuretski failed to respond to the February 24, 2003 request.
33. On May 6, 2003, the Staff sent Kuretski a letter requesting that he appear for an on-the-record interview ("OTR") on May 21, 2003 ("May 6, 2003 request"). The request was sent via first class and certified mail to Kuretski's CRD address, cited Procedural Rule 8210, and warned him of potential disciplinary action for failing to appear.
34. The certified mailing of the May 6, 2003 request was marked "unclaimed" by the Postal Service and returned to the Staff. The first class mailing was not returned.
35. On or about May 20, 2003, the Staff spoke with Kuretski and told him that failing to appear at the OTR the next day could be deemed a violation of Procedural Rule 8210.
36. On May 21, 2003, Kuretski failed to appear for the OTR.
37. Accordingly, on May 21, 2003, the Staff sent Kuretski another letter requesting that he appear for an OTR on May 28, 2003 ("May 21, 2003 request"). The May 21, 2003 request was sent via overnight courier, first class mail, and certified mail to Kuretski's CRD address. The May 21, 2003 request cited Procedural Rule 8210 and warned Kuretski of potential disciplinary action for failing to appear.
38. The overnight courier package, first-class mailing and certified mailing of the May 21, 2003 request were not returned to the Staff. No certified mail return receipt was returned to the Staff.
39. Kuretski failed to appear for the May 28, 2003 OTR.

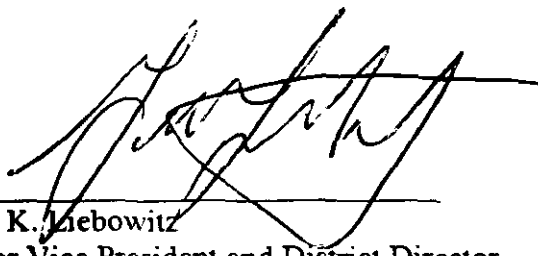
40. Such acts, practices and conduct constitute separate and distinct violations of NASD
Procedural Rule 8210 and Conduct Rule 2110 by Kuretski.

PRAYER FOR RELIEF

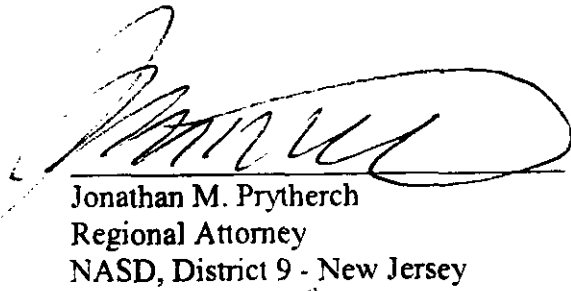
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Kuretski and Allen committed the violations
charged and alleged herein;
- B. An order imposing appropriate sanctions upon Kuretski and Allen in accordance with NASD
Rule 8310;
- C. An order requiring Kuretski and Allen to disgorge fully any and all ill-gotten gains and/or
make full restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the
circumstances in accordance with NASD Rule 8330; and
- E. An order granting all further relief that is warranted under the circumstances.

Dated: December 23, 2004



Gary K. Liebowitz
Senior Vice President and District Director
NASD, District 9 - New Jersey
581 Main Street, 7th Floor
Woodbridge, NJ 07095
Tel: (732) 596-2000
Fax: (732) 596-2002



Jonathan M. Prytherch
Regional Attorney
NASD, District 9 - New Jersey
581 Main Street, 7th Floor
Woodbridge, NJ 07095
Tel: (732) 596-2078
Fax: (732) 596-2001

Rory C. Flynn
Of Counsel
Department of Enforcement
NASD
1801 K Street, N. W., Suite 800
Washington, DC 20006
Tel: (202) 974-2874
Fax: (202) 974-8318

SCHEDULE A
Complaint No. C9B040108
Customers who Invested in the ATFK Note

<u>Customer Initials</u>	<u>Amount Invested</u>
CH	\$10,000
KH	\$5,000
AS	\$4,000
DB	\$20,000
BCS/TH	\$15,000
GA	\$4,200
DH	\$2,700*
EU	\$2,400*
SC	\$1,750*
JO	\$1,000

* = Approximate amount