

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET
REGULATION,

Complainant,

v.

VLADIMIR FELDMAN
(CRD No. 4238992),

and

ROBERT MEYER
(CRD No. 1912267),

Respondents.

Disciplinary Proceeding
No. CMS040049

Hearing Officer – SNB

DEFAULT DECISION

July 6, 2005

For violating Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Rules 2110 and 2120, Respondent Feldman is barred from associating with any NASD member in any capacity. For violating these Rules and Rules 2310, 2330(e) and IM-2310-2, Feldman is ordered to pay restitution. In light of the bar for violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Rules 2110, 2120, no other sanctions are imposed for Respondent's violation of Rules 2310, 2330(e) and IM-2310-2.

For violating Rules 2110, 1021(a), 1031(a), IM-1000-1 and IM-1000-3, Respondent Meyer is barred from associating with any NASD member in any capacity.

Appearances

Matthew Campbell, Esq., Senior Attorney, and Jeffrey K. Stith, Associate Vice President and Chief Litigation Counsel, Washington, DC, for the Department of Market Regulation.

No appearance by or for Respondents.

DECISION

I. Background

On April 22, 2004, the Department of Market Regulation ("Market Regulation") filed a two-cause Complaint in this proceeding. On December 8, 2004, Market Regulation filed an Amended Complaint ("Complaint"), attached to this Decision as Exhibit A. The Complaint alleges that Respondent Vladimir Feldman ("Respondent" or "Feldman") engaged in fraudulent sales practices and made unsuitable recommendations to his customers in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Rules 2110, 2120, 2310, 2330(d) and IM-2310-2. On July 7, 2004, Feldman filed an Answer.

The Complaint also alleges that Respondent Meyer ("Respondent" or "Meyer") violated Rules 2110, 1021(a), 1031(a), IM-1000-1 and IM-1000-3 by failing to register as an associated person and principal of Back Bay Capital, Inc. ("Back Bay"), an NASD member firm. On July 23, 2004, Meyer filed an Answer.

II. Respondents' Defaults

A. Feldman

Feldman was represented by counsel until the eve of the hearing on February 4, 2005, when counsel filed a Notice of Withdrawal of Counsel. The Hearing Officer cancelled the Hearing, and set a Pre-Hearing Conference for February 8, 2005, in which Feldman's former counsel participated, but Feldman did not. For this reason, and based on the statement of Feldman's former counsel that Feldman did not intend to attend the Hearing, on February 9, 2005, the Hearing Officer issued an order requiring Feldman to show cause why he should not be held in default. Feldman failed to respond. Accordingly, on February 18, 2005, the Hearing Officer issued an Order of Default against Feldman. On March 24, 2005, Market Regulation

filed a Motion for Entry of Default Decision. For the reasons set forth below, the Motion is granted.¹

B. Meyer

Meyer was represented by counsel until September 10, 2004, when counsel filed a Notice of Withdrawal.² On February 4, 2005, four days before the scheduled start of the Hearing in this matter, the Department of Market Regulation informed the Case Administrator that it received a call from Meyer regarding the upcoming Hearing. The Hearing Officer cancelled the Hearing as noted above, and a Pre-Hearing Conference was held on February 8, 2005. Meyer participated in this conference, and stated his desire to set aside the Order holding him in default. Accordingly, the Hearing Officer issued an Order setting a February 16, 2005, deadline for Meyer to file a motion to set aside the default. Meyer failed to file such motion, and on February 18, 2005, the Hearing Officer issued an Order holding him in Default, pursuant to Rule 9241(b). On March 24, 2005, Market Regulation filed a Motion for Entry of Default Decision. For the reasons set forth below, the Motion is granted.

III. Jurisdiction

A. Feldman

Feldman first registered with the NASD in May 2000. Between August 2000 and July 2004, Feldman was registered as a General Securities Representative and General Securities Principal with Back Bay. Feldman has not been registered with NASD since that time.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Market Regulation with its motion.

² After Meyer failed to appear at a pre-hearing conference held on December 1, 2004, the Hearing Officer directed Meyer to show cause why he should not be held in default. Meyer failed to respond, and by Order dated December 23, 2004, the Hearing Officer held Meyer in default.

Although Feldman is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding because the Complaint charges Feldman with misconduct while he was registered and the Complaint was filed within two years of Feldman's last registration.

B. Meyer

Meyer first registered with NASD in December of 1988, and was registered with eight firms between 1988 and 1994. He is not currently registered with a member firm. However, as set forth below, during the period alleged in the Complaint, by virtue of his activities, he was a "person associated with" Back Bay, and therefore subject to NASD jurisdiction. Accordingly, NASD has jurisdiction to bring this proceeding because the Complaint charges Meyer with acting as an associated person subject to NASD registration, and the Complaint was filed within two years of his acting as such.

IV. Violations

A. Feldman

1. Fraudulent Sales Practices

The Complaint alleges that Feldman engaged in fraudulent sales practices in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder and NASD Rules 2110 and 2120, in connection with the sale of Intercontinental Services, Inc. ("ICSV"), a pink sheet issuer.

For example, Feldman told investor LRE that ICSV was "well-funded, with a good product" and predicted that it would be trading at "\$5 or \$10 within a couple of months." Feldman also guaranteed that LRE would not lose money. Feldman told investor TH that "by February 2003, ICSV would be, conservatively, at \$3." Feldman also told investor JR that there were no risks associated with an investment in ICSV, that his company, Back Bay, was involved with ICSV in a deal that "was going to make the stock soar," and investing in ICSV would cause

him to recoup the losses he had experienced with a previous investment. Finally, Feldman told investor GC that his company was doing a deal with ICSV and it was “poised to explode.” Despite these statements, Feldman never reviewed publicly filed financial information about the company or took measures to familiarize himself with the company’s financial condition. Therefore, Feldman had no reasonable basis for making these statements or recommending ICSV to his customers, or for making guarantees against loss or price predictions. As a result, Feldman prevented investors from making fully informed investment decisions and, instead, induced them to purchase securities based on misinformation.

The Complaint charges that the omissions violated Section 10b-5 of the Exchange Act, SEC Exchange Rule 10b-5, and NASD Rules 2120 and 2110. A violation of Section 10(b) of the Exchange Act and Rule 10b-5 requires a showing that Feldman made material misrepresentations or omissions in connection with the purchase or sale of a security, and that he acted with scienter.³ NASD Conduct Rule 2120, NASD’s anti-fraud provision, parallels Rule 10b-5.⁴ Both are designed to “ensure that sales representatives fulfill their obligation to their customers to be accurate when making statements about securities.”⁵ A violation of NASD Conduct Rule 2120 is also a violation of Conduct Rule 2110.⁶

Feldman’s statements and omissions were material. 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

³ SEC v. First Jersey Sec., Inc., 101 F.3d 1450 (2d Cir. 1996).

⁴ Dep’t of Enforcement v. Justin E. Apgar, 2004 NASD Discip. LEXIS 9, at *11 (NAC May 18, 2004).

⁵ DBCC v. Euripides, 1997 NASD Discip. LEXIS 45, at *16-17 (July 28, 1997).

⁶ Id. at 19.

information made available.”⁷ 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.⁸ 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.⁹

Here, Feldman made unsubstantiated price predictions and guaranteed customers against loss and never reviewed publicly filed financial information about the company or took measures to familiarize himself with the company’s financial condition. Reasonable investors would find this information relevant to their decisions to invest in ICSV.

Feldman acted with scienter. Scienter is “a mental state embracing intent to deceive, manipulate, or defraud.”¹⁰ To prove scienter there must be a showing that the respondent acted intentionally or recklessly.¹¹ It can be inferred from Feldman’s conduct that he intentionally deceived his customer to invest in ICSV. As a registered representative, Feldman had a duty to investigate the securities, to disclose material facts about the securities before recommending them to customers, and to have a reasonable basis for predicting any substantial increase in the price of those securities. Feldman either recklessly failed to conduct such due diligence, or he

⁷ 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).

⁸ See SEC v. Hasho, 784 F. Supp. 1059, 1108 (S.D.N.Y. 1992).

⁹ Hanly v. SEC, 415 F.2d 589, 597 (2d Cir. 1969); Steven D. Goodman, Exchange Act. Release No. 43,889, 2001 SEC LEXIS 144, at *12 (Jan. 26, 2001).

¹⁰ Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976).

¹¹ 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).

conducted the due diligence and disregarded the findings. Regardless, Feldman must have been fully aware that he was providing his customer with material misinformation about ICSV, and that his predictions for its future performance had no basis in fact.

Baseless, false and misleading predictions are fraudulent.¹² 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."¹³ The evidence demonstrates, and Feldman admits by default, that he made baseless statements, including price predictions, in connection with sales of ICSV, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

2. Suitability

The Complaint also alleges that Feldman made unsuitable recommendations to his customers to purchase ICSV, in violation of Rules 2310, 2330(d) and IM-2310-2. As noted above, Feldman recommended investments in ICSV without reasonable grounds for believing that the investment in this thinly traded pink sheet stock was suitable for his customers, a number of whom were elderly. Feldman sold his customers approximately 400,000 shares of ICSV at a total cost of approximately \$200,000.

Rule 2310 provides that in recommending to a customer the purchase of a security, a member or associated person must have reasonable grounds for believing that the recommendation is suitable for the customer based on the facts, if any, disclosed by the customer

¹² See Padgett, Exchange Act Release No. 38423, 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. 8303, 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).

¹³ Roche, Exchange Act Release No. 38742, 1997 SEC LEXIS 1283, at *5 (June 17, 1997).

as to her other security holdings and as to her financial situation and needs. "A broker's recommendations must be consistent with his customer's best interests. The test for whether [the broker's] recommended investments were suitable is not whether [the customer] acquiesced in them, but whether [the broker's] recommendations ... were consistent with [the customer's] financial situation and needs."¹⁴

The evidence demonstrates, and Feldman admits by default, that he made unsuitable recommendations to his customers to purchase ICSV, in violation of Rules 2310, 2330(d) and IM-2310-2.

B. Meyer

The Complaint alleges that Meyer violated Rules 2110, 1021(a), 1031(a), IM-1000-1 and IM-1000-3 by failing to register as a registered representative and principal of Back Bay.

Rule 1031(a) requires all representatives to be registered. Rule 1031(b) defines representatives as persons "associated with a member, including assistant officers other than principals, who are actively engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities." This registration requirement is designed to protect public investors.¹⁵ Moreover, ownership of 10% or more of a firm requires registration as a principal.¹⁶ Being an "associated person," and the concomitant requirement to register, are not dependent upon being an employee of a firm.¹⁷

¹⁴ Wendell D. Belden, Exch. Act Rel. No. 47859, 2003 SEC LEXIS 1154 (May 14, 2003).

¹⁵ Michael F. Flannigan, Exchange Act Rel. No. 47142, 2003 SEC LEXIS 40, *13-14 (Jan. 8, 2003).

¹⁶ Don D. Anderson & Co., Inc., Exchange Act Rel. No. 10022, 1973 SEC LEXIS 3168, *6, 45 S.E.C. 219 (Mar. 2, 1973).

¹⁷ John M. W. Crute, Exchange Act Rel. No. 40474, 1998 SEC LEXIS 2035, *12, 53 S.E.C. 870 (Sept. 24, 1998).

Payment of firm expenses, such as rent and phone bills, is a factor to consider when determining whether a person was engaged in the firm's securities business.¹⁸

Based upon the facts alleged in the Complaint, Meyer was required to register. Among other things, Meyer paid the expenses of Back Bay's San Francisco branch office, including salaries, phone bills and rent; purchased a 13.4% interest in Back Bay and agreed to purchase, in stages, a majority interest in the firm; made introductions in order to facilitate an agreement by Back Bay to conduct a private offering of ICSV; rented and used an office in Back Bay's central location in San Diego, answered phones and spoke to brokers (including Feldman) about ICSV; served as a source of a large portion of the ICSV shares purchased by Feldman's and Back Bay's customers; and profited from Feldman's efforts to sell ICSV.

The evidence demonstrates, and Meyer admits by default, that he engaged in activities requiring registration, and by failing to register, he violated Rules 2110, 1021(a), 1031(a), IM-1000-1 and IM-1000-3.

V. Sanctions

A. Feldman

For intentional or reckless misconduct involving misrepresentations or material omissions of fact, the NASD Sanction Guidelines ("Guidelines") recommend a fine of \$2,500 to \$50,000, and consideration of a 10-day to two-year suspension, or in egregious cases, a bar.¹⁹ Similarly, the Guidelines recommend consideration of a suspension of up to two years or a bar for egregious conduct relating to unsuitable recommendations, or guaranteeing customers against

¹⁸ Vladislav Steven Zubkis, Exchange Act Rel. No. 40409, 1998 SEC LEXIS 1904, 53 S.E.C. 794 (Sept. 8, 1998).

¹⁹ NASD Sanction Guidelines at p. 93 (2005 ed.).

loss.²⁰ The Hearing Officer finds that Feldman's conduct was egregious, and a bar is justified. In reaching this determination, the Hearing Officer considered that Feldman made material misrepresentations and omissions with respect to ICSV securities, including price predictions and guarantees against loss, to his customers. There is no evidence of any mitigating circumstances that would justify a lesser sanction for the violation. Therefore, Feldman is barred.

The Guidelines' General Principles recommend "[w]here appropriate to remediate misconduct, Adjudicators should order restitution ..." Adjudicators may order restitution where an identifiable person has suffered a quantifiable loss as a result of respondent's misconduct.²¹ Accordingly, Feldman is ordered to pay restitution to investors LE, CC, JB, VL, and GM in the amounts of their losses (\$38,967.69, \$34,896.00, \$19,895.80, \$1,094.20, and \$12,847.84, respectively), plus interest calculated pursuant to 26 U.S.C. §6621(a)(2) from the date of the investment giving rise to each customer's loss. The Hearing Officer does not award restitution with respect to Feldman's other customers because no information was provided as to the amount of their loss.

In light of the bar for violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder and NASD Rules 2110 and 2120, no other sanctions will be imposed for Respondent's violations of Rules 2310, 2330(d) and IM-2310-2.²²

²⁰ Id. at p. 91.

²¹ Id. at p. 4.

²² See Dep't of Enforcement v. Hodde, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

B. Meyer

For violation of the registration rules, the Guidelines recommend consideration of a fine of \$2,500 to \$50,000 and a suspension for up to six months, or, in egregious cases, a bar.²³ The Hearing Officer finds that Meyer's conduct was egregious, and a bar is justified. In reaching this determination, the Hearing Officer considered Meyer's disciplinary history, which included a prior failure to register with the State of Montana in connection with a sale of unregistered securities. Accordingly, Meyer is a recidivist. Moreover, his actions in this case facilitated the fraudulent sale of securities and thus, harm to investors. Accordingly, Meyer is barred.

VI. Conclusion

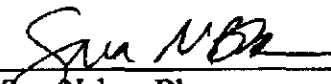
For violating Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Rules 2110 and 2120, Respondent Feldman is barred from associating with any NASD member in any capacity. This bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

For violating these Rules and Rules 2310, 2330(e) and IM-2310-2, Feldman is ordered to pay restitution to investors LE, CC, JB, VL, and GM in the amounts of their losses (\$38,967.69, \$34,896.00, \$19,895.80, \$1,094.20, and \$12,847.84, respectively), plus interest calculated pursuant to 26 U.S.C. §6621(a)(2) from the date of the investment giving rise to each customer's loss. In light of the bar for violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Rules 2110, 2120, no other sanctions are imposed for Respondent's violation of Rules 2310, 2330(e) and IM-2310-2.

²³ *Id.* at p. 48.

For violating Rules 2110, 1021(a), 1031(a), IM-1000-1 and IM-1000-3,
Respondent Meyer is barred from associating with any NASD member in any capacity.
This bar shall become effective immediately if this Decision becomes the final disciplinary
action of NASD.

SO ORDERED.



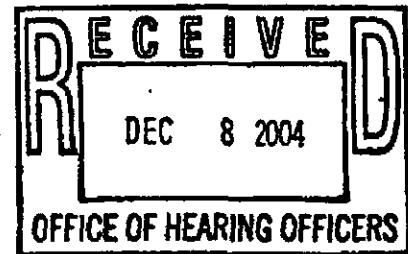
Sara Nelson Bloom
Hearing Officer

Dated: July 6, 2005

Copies to:

Vladimir Feldman (via overnight and first class mail)
Robert Meyer (via overnight and first class mail)
Matthew Campbell, Esq. (via electronic and first class mail)
Jeffrey K. Stith, Esq. (via electronic and first class mail)

NASD
OFFICE OF HEARING OFFICERS



Department of Market Regulation

Complainant,

v.

Back Bay Capital, Inc.
(CRD No. 22824)
2801 Camino del Rio South
Suite 310
San Diego, California 92108;

Albert Carazolez
(CRD No. 2204105)

[REDACTED]

Vladimir Feldman
(CRD No. 4238992)

[REDACTED]

Robert Meyer
(CRD No. 1912267)

[REDACTED]

Respondents.

Disciplinary Proceeding
No. CMS040049

Hearing Officer: SNB

AMENDED COMPLAINT

Upon information and belief, Complainant, the Department of Market Regulation,
alleges as follows:

MRD200237575

Summary

1. In approximately May 2002, Albert Carazolez ("Carazolez"), the President and owner of Back Bay Capital, Inc. ("Back Bay" or "the firm") began negotiations with an unregistered person, Robert Meyer ("Meyer"), for Meyer to purchase an interest in Back Bay. At about the same time, Meyer introduced Carazolez to James LaVoie ("LaVoie"), Meyer's brother-in-law and the President and CEO of InterContinental Services Corp. ("ICSV"). ICSV was a thinly traded Pink Sheet security with virtually no assets or revenues. Meyer had long been involved with ICSV: he was its previous CEO and owned approximately 1.5 million shares of ICSV.

2. Carazolez and LaVoie signed an agreement, dated June 28, 2002, by which Back Bay was to conduct a private offering of one million shares of ICSV.

3. In August 2002, Carazolez, Meyer and Thomas Smith ("Smith") signed an agreement by which Meyer purchased a 13.4% interest in Back Bay for Smith and himself. The agreement called for additional payments that would give Meyer and Smith ownership of a majority share of Back Bay in the ensuing months.

4. In addition, Meyer paid the expenses of a San Francisco branch office of Back Bay managed by Smith. He also paid the costs of registering six brokers with Back Bay.

5. Prompted by Carazolez and Meyer, one of these brokers, Vladimir William Feldman ("Feldman") began on September 2, 2002, to tout ICSV to his customers using fraudulent sales practices and baseless price projections.

6. From September 2 through November 8, 2002, with no proper supervision from Back Bay and Carazolez, Feldman sold 21 customers 398,819 shares of ICSV at a total cost to them of \$202,886.

7. Feldman's recommendations of ICSV were without a reasonable basis and were unsuitable for his customers, a number of whom were elderly.

8. Feldman, by knowingly or recklessly making misrepresentations, omitting material facts, employing baseless price predictions and guaranteeing customers against loss in making unsuitable recommendations to his customers to purchase ICSV, violated Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110, 2120, 2310, IM-2310-2 and 2330(e).

9. From September 2 through November 8, 2002, Back Bay, acting vicariously through Feldman, its employee and agent, and Back Bay and Carazolez as "controlling persons" under Section 20(a) of the Exchange Act, violated Section 10(b) of the Exchange Act and SEC Rule 10b-5, NASD Conduct Rules 2110, 2120, 2310 and IM-2310-2.

10. NASD investigated Back Bay's sales of ICSV and requested Carazolez to provide on-the record testimony pursuant to NASD Procedural Rule 8210. When he testified under oath, Carazolez lied repeatedly about when he first learned of and became involved with ICSV. His untruthful answers to questions under oath were designed to obstruct NASD's investigation and to conceal from investigators Carazolez's knowledge of and responsibility for the fraudulent sales practices Feldman employed in soliciting customers to purchase ICSV. By this conduct, Carazolez violated NASD Conduct Rule 2110 and Procedural Rule 8210.

11. From September 2, 2002, through November 8, 2002, Back Bay and Carazolez egregiously failed to supervise Feldman properly. They failed to provide written supervisory procedures to Feldman and other newly registered Back Bay representatives and failed to establish and implement a supervisory compliance structure reasonably designed to prevent the sort of fraudulent sales practices employed by Feldman. Carazolez failed to visit and inspect

Back Bay's widely scattered brokers. Carazolez and Back Bay failed to supervise properly to prevent violations of securities regulations arising from the engagement of Meyer, an unregistered person in Back Bay's securities business. As a result, Back Bay and Carazolez violated NASD Conduct Rules 2110 and 3010.

12. Back Bay and Carazolez also violated NASD Conduct Rule 2110, Membership and Registration Rules 1021(a) and 1031(a) and IM-1000-3 because they failed to register Meyer as a representative and principal of the firm.

13. Meyer, a person associated with Back Bay, failed to register as a principal and as a representative while engaging in Back Bay's securities business, acting as a principal and as a registered representative, in violation of NASD Conduct Rule 2110 and Membership and Registration Rules 1021(a) and 1031(a).

Respondents

14. Back Bay has been a registered broker-dealer and NASD member firm since 1989. Its principal office is located in San Diego, California. Carazolez purchased the firm in December 1999. When Meyer purchased an interest in the firm in August 2002, Carazolez owned a majority share of Back Bay through a holding company called Capital Access Partners, LLC ("Capital Access"). During the period from August 2002 through December 2002, Back Bay had a branch office in San Francisco and 19 registered representatives located in California and nine other states.

15. Carazolez, age 56, resides in Chula Vista, California. He has been employed in the securities business since approximately February 1993. Carazolez is currently and was at all times relevant to this Complaint the firm's President and majority shareholder of Capital Access and, through it, Back Bay.

16. Feldman, age 34, resides in Brooklyn, New York. He was first employed in the securities business in approximately May 2000. Prior to registering with Back Bay, Feldman was a registered representative at Capital Suisse Securities, Inc. ("Capital Suisse"). At all times relevant to this Complaint, Feldman was a registered representative and principal of Back Bay and worked from an office he rented in Brooklyn, New York. After leaving Back Bay in February 2003, Feldman was registered with member firm Federal Street Investments, Inc., for three months. He then became registered with member firm Dupont Securities Group, Inc. until July 2004. He is currently not registered.

17. Robert Meyer, age 40, resides in Carlsbad, California. He was registered with eight different firms between 1988 and 1994. He is not currently registered with a member firm. In August 2002, he purchased a minority interest in Back Bay for himself and Smith. During the relevant period, he was an associated person of Back Bay but not registered with NASD in any capacity.

Other Relevant Persons and Entities

18. Market Surveys International, Inc. ("Market Surveys") is a stock promotion company based in Pittsford, New York. It is owned and controlled by Bernard Schmitt and Eric Monchecourt.

19. Capital Access Partners LLC, located in San Diego, California, is a holding company owned by Carazolez which in turn owns Back Bay.

20. Smith, age 58, first became registered with NASD in 1979 and subsequently worked for 12 member firms. In May 2002, Meyer hired him to be President and CEO of Capital Suisse. Smith filed a Form BDW for that firm on August 26, 2002. Also in August 2002, Smith was a signatory to a purchase agreement by which he and Meyer acquired an interest in Back

Bay from Carazolez. Smith was registered with Back Bay as a General Securities Representative and Principal, Municipal Securities Principal and Options Principal from September 9, 2002, until he resigned on December 6, 2002. On February 11, 2004, an AWC became final by the terms of which Smith was suspended in all capacities for two months, was suspended from supervisory capacities for six months, was required to requalify as a General Securities Principal prior to associating with a member firm in a supervisory capacity and was required to agree to an undertaking not to supervise brokers who trade in equities. The AWC alleged that Smith had failed to implement a supervisory compliance system reasonably designed so as to have prevented Feldman's fraudulent sales activities, in violation of NASD Conduct Rules 2110 and 3010. Smith is not currently registered.

21. Jeffrey Richardson ("Richardson"), age 43, is a resident of Columbus, Ohio. At all times relevant to this Complaint, he was head trader and President of Sierra Brokerage Services, Inc. ("Sierra"), an NASD member firm since 1994. During the period of time relevant to this Complaint, Meyer deposited 533,333 shares of ICSV in his personal account at Sierra. During this same time period, Meyer purchased an interest in Sierra from Richardson. Sierra subsequently ceased operating. Richardson has been permanently barred.

The Company Back Bay Recommended to Customers

InterContinental Services Corp.

22. At all times relevant to this Complaint, ICSV, a Pink Sheet Issuer, purported to be developing a technology-smart child's toy called "Interactive Friends Network" that would program interactive toys. The company's Form 10-Q for the quarter ending September 30, 1999, the most current public filing when Feldman solicited customers to purchase its stock, disclosed that it was operating at a loss. Revenues for the first three quarters of 1999 were reported to be

\$81,257 and expenses were reported to be \$274,898. It had a "going concern" clause in which accountants questioned whether the company, without raising additional substantial revenues, could remain in business. The filing also reported an accumulated deficit of over \$3 million. The Form 10-Q described the company as engaging primarily in the service of credit card recovery and cardholder contact and described the company's property, plant and equipment as having no value.

Sources of the Stock

23. Virtually all of the shares of ICSV purchased by Back Bay's and Feldman's customers came from Meyer and Market Surveys.

24. Meyer deposited 533,333 shares of ICSV into his personal account at Sierra on August 22, 2002. Between September 2 and November 8, 2002, Meyer sold 146,255 shares of ICSV from the account for \$68,753.

25. On March 12, 2002, Meyer sent Bernard Schmitt 431,630 ICSV shares as compensation for anticipated efforts by Market Surveys to promote ICSV. These shares were deposited into Market Survey's account at Bishop Rosen & Company, Inc., an NASD member firm. Between September 2 and November 8, 2002, the Market Surveys account sold 164,853 shares of ICSV for \$57,350.

Background

26. In approximately May 2002, Back Bay and Carazolez began to negotiate the sale of an interest in Back Bay to Meyer. Meyer introduced Carazolez to LaVoie, CEO of ICSV and Meyer's brother-in-law. Carazolez negotiated a "Broker Dealer" agreement with LaVoie by which Back Bay was to undertake a private offering of a million shares of ICSV stock. The

document was signed by LaVoie and Carazolez and is dated June 28, 2002. The private offering apparently never occurred.

27. On August 8, 2002, Carazolez signed an agreement with Meyer and Smith by which Meyer paid \$25,000 to Carazolez through Capital Access Partners LLC, and Meyer and Smith became joint owners of 13.4% of Back Bay.

28. In late August 2002, six former Capital Suisse brokers became registered at Back Bay; Feldman was one of these. Smith became a registered representative and principal of Back Bay on September 9, 2002.

29. In August and September 2002, Carazolez purchased approximately 95,000 shares of ICSV; from approximately September 23 through November 19, 2002, he sold approximately 65,000 shares for a net profit of about \$5,000.

CAUSE ONE

Feldman Engaged in Fraudulent Sales Practices, Guaranteed Customers Against Loss and Made Unsuitable Recommendations to His Customers

Back Bay and Carazolez Are Liable for the Fraudulent Sales Practices and Unsuitable Recommendations Made by Feldman, the Firm's Registered Representative, Employee and Agent

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5, and NASD Conduct Rules 2110, 2120, 2310, IM-2310-2 and 2330(e))

30. The allegations set forth above in paragraphs one through 29 are re-alleged and incorporated by reference.

31. From September 2 through November 8, 2002, Feldman, Back Bay's registered representative, employee and agent, in connection with the purchase or sale of securities, and by the use of means or instrumentalities of interstate commerce, or by the mails, directly or indirectly, knowingly or recklessly: (a) employed devices, schemes or artifices to defraud; (b)

made untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

32. Specifically, Feldman used high-pressure sales tactics, including fraudulent and deceptive misrepresentations, baseless price predictions and omissions of material facts in connection with the sale of ICSV, an obscure, low-priced and highly speculative security.

33. Feldman failed to investigate or simply ignored the poor financial condition of ICSV and recommended purchases of this speculative stock to customers for whom it was a plainly unsuitable investment in light of their financial condition, age, investment experience or objectives. (See Exhibit A, attached and incorporated, identifying the customers and their accounts and detailing the transactions that are alleged to have involved Feldman's fraudulent sales practices and unsuitable recommendations).

Examples of Feldman's Fraudulent Sales Practices and Baseless Price Projections

Customers LRE and TH

34. For example, Feldman told customer LRE that ICSV was "well-funded, with a good product" and baselessly predicted that ICSV would be trading at "\$5 or \$10 within a couple of months." Feldman guaranteed LRE that he would not lose money. Feldman told customer TH that "by February 2003, ICSV would be, conservatively, at \$3." Feldman had no reasonable basis for making these price predictions.

Customers JR and GC

35. Feldman told customer JR that there were no risks associated with the investment and that his company, Back Bay, was involved with ICSV in a deal that "was going to make the

stock soar." He also told JR that investing in ICSV would cause him to recoup the losses he had experienced with a previous investment. He told customer GC that his company was doing a deal with ICSV and it was "poised to explode."

36. Feldman did not tell any of his customers the risks involved with investing in ICSV. He did not tell any of his customers about the true financial condition of ICSV.

37. Feldman admitted in testimony that he never reviewed any publicly filed financial information about the company or took measures to familiarize himself with the company's financial condition. Rather, he based his recommendations to customers to purchase ICSV on what Carazolez had told him about the company.

38. Feldman therefore did not have a reasonable basis for recommending ICSV to his customers or for making guarantees against loss and the price predictions he made about ICSV.

39. By reason of the foregoing, Feldman is liable as a primary violator for his fraudulent and deceptive misrepresentations, baseless price predictions, guarantees against loss, omissions of material facts and unsuitable recommendations to his customers to purchase ICSV, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder and NASD Conduct Rules 2110, 2120, 2310, IM-2310-2 and 2330(e).

Back Bay is Vicariously Liable for Feldman's Violations

40. All of the fraudulent and deceptive sales practices and unsuitable recommendations were perpetrated by Feldman acting within the scope of his employment, with express or apparent authority and, at least in part, for the benefit of Back Bay. Under these circumstances, Back Bay is vicariously liable for Feldman's violations under the legal principle of *respondeat superior*.

Back Bay and Carazolez Are Liable as Controlling Persons under Section 20(a) of the Exchange Act

41. At all times relevant to this Complaint, Back Bay and Carazolez possessed, directly or indirectly, the power to influence or direct the management, policies or actions of the firm, including Feldman's activities.

42. Indeed, Carazolez as President and majority owner of Back Bay encouraged and directed Feldman to tout ICSV to his customers.

43. During the period of time Feldman was doing so, Carazolez sold for a profit approximately two-thirds of the shares of ICSV he owned.

44. Back Bay and Carazolez thus were culpable participants in the fraudulent sales practices and unsuitable recommendations made by Feldman. They set Feldman's active solicitation of purchases of ICSV in motion and knew or clearly should have known of his fraudulent and deceptive sales practices and unsuitable recommendations and failed to prevent them.

45. Furthermore, Back Bay and Carazolez knew or should have known that ICSV was a highly speculative Pink Sheet issue, that Feldman's activity consisted almost exclusively of high-volume sales of ICSV in a physically distant satellite office, a situation calling for special safeguards. Back Bay and Carazolez knew, further, that Feldman was working without adequate supervision and without the benefit of written supervisory procedures.

46. Under the circumstances, Back Bay and Carazolez were "controlling persons" within the meaning of Section 20(a) of the Exchange Act, and, by virtue of that control, they are jointly and severally liable with, and to the same extent, as Feldman for his fraudulent sales practices and unsuitable recommendations.

47. For the foregoing reasons, Back Bay and Carazolez each violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and NASD Conduct Rules 2110, 2120, 2310, IM-2310-2 and 2330(e).

CAUSE TWO

Back Bay and Carazolez Failed to Supervise and Failed to Establish a Supervisory System and Written Supervisory Procedures

(Violations of NASD Conduct Rules 2110 and 3010)

48. The allegations set forth above in paragraphs one through 47 are re-alleged and incorporated by reference.

49. At all times relevant to this Complaint, Back Bay and Carazolez were required to establish, implement and maintain a supervisory system for the firm that was reasonably designed to achieve compliance with all applicable securities laws and rules. The firm's supervisory system was required to provide, at a minimum: written procedures specifically tailored to the types of business in which it was engaged; guidance as to what conduct was prohibited in each of these areas; the designation of an appropriately registered principal with authority to carry out supervisory responsibilities in each type of business; specific functions to be followed by those responsible for supervision and compliance; and reasonable efforts to determine that all supervisory personnel were qualified by virtue of experience or training to carry out their assigned responsibilities.

Back Bay and Carazolez Failed to Monitor, Review and Properly Supervise Feldman

50. Back Bay and Carazolez knew or should have known that Feldman's activity consisted almost exclusively of high-volume sales of ICSV, which they knew to be a Pink Sheet issue; nonetheless, Back Bay and Carazolez conducted little or no research or investigation into

the financial circumstances of the company, failed to review the suitability of purchases of ICSV for Back Bay's customers and failed to review or monitor for improper sales practices by Feldman even though he was new to Back Bay and was operating from a distant location.

Back Bay and Carazolez Failed to Establish a Supervisory System and Circulated No Written Supervisory Procedures to Feldman and Other Brokers

51. At all times relevant to this Complaint, Carazolez, as majority owner and president of Back Bay, was responsible for supervising Smith and was ultimately responsible for the supervision of Feldman and the five other brokers formerly registered with Capital Suisse who joined Back Bay and for ensuring their compliance with securities regulations and laws.

52. Carazolez, in addition, contacted Feldman directly and informed him that he should direct any questions about procedures directly to him.

53. Back Bay and Carazolez were well aware of the requirement to have written supervisory procedures and of the fact that at all times relevant to this Complaint, none were made available to Feldman and the other brokers newly registered with Back Bay.

54. Despite the fact that, as Back Bay and Carazolez knew, Feldman and other Back Bay brokers were scattered in locations across the country, at no time relevant to this Complaint did Carazolez or any other person with supervisory authority or compliance responsibility make on-site visits to ensure Feldman and other distantly located brokers were complying with the firm's procedures and with securities laws and regulations.

Back Bay and Carazolez Failed to Supervise Properly to Prevent Violations of Securities Regulations and Laws As a Result of the Engagement of Meyer, an Unregistered Person, in Back Bay's Securities Business

55. Back Bay and Carazolez knew or should have known that Meyer was unregistered yet was engaged in Back Bay's securities business, was promoting ICSV, was paying salaries and expenses associated with the San Francisco Back Bay office, was purchasing what was

expected to become a majority interest in Back Bay, was paying other Back Bay expenses at Carazolez's request, and was working out of an office in Back Bay's San Diego suite of offices, speaking with brokers and answering the phone and was profiting from Feldman's aggressive sales of ICSV. Nonetheless, Back Bay and Carazolez failed to take steps to prevent violations of securities laws and regulations arising from Meyer's improper engagement in Back Bay's securities business.

56. For the foregoing reasons, Back Bay, and its President, Carazolez, allowed Meyer to engage in Back Bay's securities business, in violation of NASD Conduct Rules 2110 and 3010.

CAUSE THREE

Back Bay and Carazolez Failed to Register Meyer

Meyer Failed to Register

(Violations of NASD Conduct Rule 2110, Membership and Registration Rules 1021(a), 1031(a), IM-1000-1 and IM-1000-3)

57. The allegations set forth above in paragraphs one through 56 are re-alleged and incorporated by reference.

58. Back Bay and Carazolez knew or should have known that in the relevant period of August through November 2002, Meyer was not registered with NASD in any capacity although he was intimately engaged in the operation of Back Bay's securities business, particularly in the efforts to promote and tout purchases of ICSV by Back Bay customers.

59. Back Bay and Carazolez failed to register Meyer even though he: paid the expenses of Back Bay's San Francisco branch office, including salaries, phone bills and rent; purchased a minority interest in Back Bay and agreed to purchase, in stages, a majority interest in the firm; introduced Carazolez to LaVoie in order to facilitate an agreement by Back Bay to

conduct a private offering of ICSV; rented and used an office in Back Bay's central location in San Diego where he worked, answered phones and spoke to brokers, including Feldman, about ICSV; paid Carazolez several thousand dollars for office expenses; served as the source of a large portion of the ICSV shares purchased by Feldman's and Back Bay's customers; and profited from Feldman's efforts to tout ICSV.

60. Despite the fact that Back Bay and Carazolez agreed in a written contract to allow Meyer to purchase initially a 13.4% interest in Back Bay in August, 2002, and even though Back Bay and Carazolez filed with NASD the information that Smith was a direct owner of Back Bay, Back Bay and Carazolez misled NASD by failing to file information accurately portraying Meyer's ownership interest and role as a principal in Back Bay.

61. For these reasons, Back Bay, Carazolez and Meyer violated NASD Conduct Rule 2110, Membership and Registration Rules 1021(a), 1031(a), IM-1000-1 and IM-1000-3.

CAUSE FOUR

Carazolez Lied in Writing and Under Oath to Deceive NASD Investigators by Concealing His Involvement in ICSV and His Knowledge of and Responsibility for Back Bay and Feldman's Fraudulent Sales Practices

(Violations of NASD Conduct Rule 2110 and Procedural Rule 8210)

62. The allegations set forth above in paragraphs one through 61 are re-alleged and incorporated by reference.

63. On February 28, 2003, staff issued a written request to Carazolez for information about Back Bay and ICSV under the authority of NASD Procedural Rule 8210. Carazolez responded to the request in a letter dated March 11, 2003. In that letter, Carazolez falsely wrote that he first learned of ICSV "on or about" September 16, 2002.

64. On May 22, 2003, Carazolez testified under oath pursuant to Procedural Rule 8210. He was represented by counsel.

65. At the outset of his testimony, Carazolez acknowledged his obligations under Procedural Rule 8210 to answer questions and to do so truthfully.

66. Nonetheless, Carazolez falsely and repeatedly, in response to questions posed by NASD staff, testified that he first learned of ICSV in August or September 2002, when he reviewed records of trading in ICSV by Back Bay brokers.

67. Carazolez then changed his testimony and inconsistently and falsely testified that he first learned of ICSV when he saw accounts that were being transferred from Capital Suisse to Back Bay at the end of August 2002.

68. In fact, Carazolez learned of ICSV in May or June 2002 when Meyer introduced him to Lavoie with whom Carazolez negotiated an agreement to conduct a private offering of ICSV; the agreement is dated June 28, 2002.

69. By testifying falsely, Carazolez violated NASD Conduct Rule 2110 and Procedural Rule 8210.

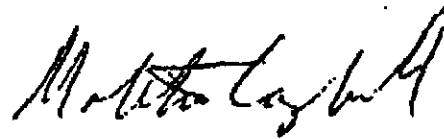
Request For Relief

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondents in accordance with NASD Rule 8310;
- C. An order requiring Respondents to disgorge fully any and all 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 in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Date: _____



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