

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL KOGAN and
ERIC J. LAUCIUS,

Defendants.

Civil Action No.
05-cv-4805-CRW

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows:

SUMMARY

1. This matter involves a fraudulent scheme perpetrated by defendant Michael Kogan to misappropriate funds from customers of a now defunct broker-dealer, Penn Financial Group, Inc. (“Penn Financial”), and an unregistered entity, Kogan & Company, Inc., both formerly located in Jenkintown, Pennsylvania.

2. From as early as 1999 and continuing until March 2003, Kogan, while not licensed to sell securities, falsely held himself out as being associated with Penn Financial to deceive investors into investing funds with him. Defendant Eric J. Laucius, the president and chief executive officer of Penn Financial, aided and abetted Kogan’s fraudulent scheme by providing Kogan with access to Penn Financial’s facilities as well as its customer accounts. In particular, Laucius improperly provided Kogan with access that Penn Financial had, as an

introducing broker, to its clearing broker's computer system, which gave Kogan the means to conduct his scheme.

3. Using this access, Kogan misappropriated more than \$5.6 million from more than 80 investors, engaging in unauthorized transactions while conveying the perception to customers of both Penn Financial and Kogan & Company that their investments were secure. Kogan used the funds he stole to trade in the market, to repay earlier investors, and to pay his own personal expenses.

4. In order to conceal his conduct, Kogan gave investors false monthly account statements purporting to show that their funds had been invested as agreed and were making profits. In addition, Kogan gave Penn Financial's clearing broker false customer addresses so that accurate monthly account statements generated by the clearing broker would not reach customers.

5. By knowingly or recklessly engaging in the conduct described in this Complaint, defendant Kogan violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

6. By knowingly or recklessly engaging in the conduct described in this Complaint, defendant Laucius aided and abetted violations of, and unless restrained and enjoined will continue to aid and abet violations of, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] to enjoin such acts, transactions, practices, and courses of business, obtain disgorgement and civil penalties, and for other appropriate relief.

8. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

9. Certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the Eastern District of Pennsylvania and elsewhere, and were effected, directly or indirectly, by making use of the means and instruments of transportation or communication in interstate commerce, or the means and instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANTS

10. Michael Kogan, age 33, is incarcerated in a federal prison in Waymart, Pennsylvania. On September 18, 2003, he pled guilty to mail fraud and wire fraud stemming from his misappropriation of funds from Penn Financial customers. Kogan is currently serving an 87-month prison sentence and was ordered to pay restitution in the amount of \$5.6 million. Kogan was the founder and president of Kogan & Company, an unregistered entity that purportedly engaged in day trading. In January 2000, his securities license was suspended by the NASD.

11. Eric J. Laucius, age 31, resides in Fort Myers, Florida. He was the founder, president, and chief executive officer of Penn Financial.

FACTS

Background

12. Defendants Kogan and Laucius are longtime business associates. They worked together as registered representatives for two different broker-dealers from 1997 through June 1998. Laucius then opened a branch office of another broker-dealer, before he formed Penn Financial, in Jenkintown, Pennsylvania and shared office space with Kogan & Company. Kogan regularly referred dozens of customers to Laucius.

13. In November 1999, Laucius registered Penn Financial with the Commission as a broker-dealer. As an introducing broker, Penn Financial cleared its securities transactions through a clearing broker located in Philadelphia, Pennsylvania. Laucius continued to operate Penn Financial out of the Jenkintown office, and Kogan moved Kogan & Company's offices into a separate office suite.

14. When Laucius opened Penn Financial, he transferred to the firm most of the accounts that Kogan had previously referred to him. Kogan also continued to regularly refer customers to Laucius, ultimately referring 85 to 95 percent of Penn Financial's customers.

Kogan's Access to Penn Financial's Customers

15. Although he was not employed by or associated with Penn Financial, Kogan treated Penn Financial's office as his own. At all times, Kogan had access to Penn Financial's offices and freely used its facilities, including the copier, facsimile machine and Penn Financial's Federal Express account. In addition, Kogan & Company's mail usually was delivered to Penn Financial's offices, and Penn Financial and Kogan & Company used the same telephone system and shared the same office manager.

16. Laucius gave Kogan the security code to enter the Penn Financial office and granted him complete access to customer files, including monthly account statements, new account documents, change of address requests, and correspondence. Kogan also had access to all information given to new customers, including business cards, clearing broker account opening and transfer documents, and Securities Investor Protection Corporation (“SIPC”) brochures.

17. Most importantly, Laucius provided Kogan with Penn Financial’s password for the clearing broker’s computer system, which enabled Kogan to access Penn Financial’s accounts held at the clearing broker. Thus, Kogan could open new customer accounts, trade in those accounts, change account addresses and request the transfer or wire of funds into and out of accounts.

18. Kogan’s unfettered access to Penn Financial customers, combined with the sharing of office equipment and office personnel, and the close proximity of Kogan & Company and Penn Financial, rendered the two businesses virtually indistinguishable to employees and customers. Kogan exploited this access to Penn Financial and was able to convince investors to invest their money with him by portraying himself as a licensed stockbroker associated with Penn Financial.

Kogan’s Fraudulent Scheme

19. Beginning in 1999 and continuing until March 2003, through both Penn Financial and Kogan & Company, Kogan deceived more than 80 investors into entrusting more than \$5.6 million in securities and funds to him for supposed investment in accounts at these entities and at the clearing broker. In soliciting investments, Kogan falsely held himself out to investors as an authorized representative of Penn Financial and led people to

believe that their investments would be held in their own names or the names of their businesses at Penn Financial.

20. Many of the investors referred by Kogan to Penn Financial, and subsequently defrauded by Kogan, were Russian-speaking. Kogan, who is Russian by birth and speaks Russian, dealt directly with these customers, speaking with them by telephone and meeting with them in Penn Financial's office. Laucius had difficulty communicating with these customers and rarely spoke to them after opening their accounts.

21. In order to induce people to invest, Kogan falsely told them that he could provide better returns than their current investment strategies offered at a time when the stock market was not performing well. Sometimes, he promised investors a specific annual return, as much as 15 to 25 percent. Kogan falsely told investors that he was able to achieve above-market returns by day trading, and selling the securities to obtain cash at the end of each day.

22. Kogan misappropriated customer funds either by opening accounts at Penn Financial and diverting funds from these accounts into accounts under his control at the clearing broker and other financial institutions, or by directly taking funds from customers and misrepresenting that these funds had been deposited in accounts at Penn Financial when, in fact, no accounts had been opened.

23. Kogan concealed his fraud by creating and providing customers with false monthly account statements on Penn Financial letterhead that showed substantial returns on their investments. As a result, customers believed that their investments were safe and profitable when, in fact, Kogan had not invested the funds as represented, and had misappropriated them for his own use.

24. Kogan often used Penn Financial's Federal Express account to enable investors to mail their investment checks to him at the firm. He also gave some investors a brochure and account application from the clearing broker, thus creating the impression that their investments were held in accounts at the clearing broker. In addition, Kogan often met with investors and potential investors at Penn Financial's offices, thus creating the impression that their investments were being made through a licensed stockbroker.

25. Kogan directly deposited many investors' checks into accounts under his control at the clearing broker and elsewhere, all of which were intended for deposit in investors' purported investment accounts at Penn Financial. He then used these funds to trade stocks, to pay his own expenses or to repay earlier investors.

26. For accounts that were actually opened for investors at the clearing broker through Penn Financial, Kogan diverted investor funds out of those accounts into accounts which he controlled at the clearing broker and elsewhere. In order to do this, Kogan used Laucius' password to access the clearing broker's computer system and then wired the clearing broker requesting the transfer of funds to another account. In furtherance of his scheme, for funds transferred to another financial institution, Kogan faxed letters of authorization, which he had forged to make it appear that the customer requested the transfer of funds. Kogan never used his name on any of these transactions, often sending the wires on behalf of Laucius or a Penn Financial registered representative.

27. In addition to diverting funds from customer accounts, Kogan used his access to the clearing broker's system to change the addresses on customer accounts to prevent customers from receiving their actual monthly statements, which would have otherwise

revealed the depletion of assets. Kogan also used his access to the clearing broker's system to purchase and sell securities in accounts without authorization.

28. Kogan sent false monthly account statements, concealing the diversion of investors' funds and reporting substantial profits, to investors' correct addresses. Although he falsely reported substantial profits to his victims on these account statements, Kogan actually was incurring large trading losses. Thus, Kogan's victims' funds were lost through poor trading performance, and through his conversion of their assets to his own use for the repayment of earlier investors and the payment of Kogan's own expenses.

29. In addition to misappropriating money from Penn Financial customers, Kogan used his apparent affiliation with Penn Financial to induce customers to invest with Kogan & Company. While Kogan's misrepresentations varied, he consistently falsely assured customers that he would invest their money in safe investments.

30. Similar to the representations made to Penn Financial customers, Kogan falsely told Kogan & Company investors that he would day trade their accounts and convert the securities to cash each evening or that he would invest their money in a vehicle similar to a money market fund. In addition, Kogan told some investors that the return on their investments would vary depending on market conditions, and others that they would receive a specified monthly return.

31. Kogan also falsely told some investors that Kogan & Company was affiliated with Penn Financial, that it managed accounts through Penn Financial, and that he was a registered representative with Penn Financial. He further claimed that Penn Financial's SIPC coverage extended to Kogan & Company accounts. Kogan also gave Kogan & Company

investors documents from Penn Financial, including business cards and SIPC brochures and had customers complete clearing broker account opening and transfer documents.

32. In order to conceal the fraud, Kogan sent investors false monthly account statements on Kogan & Company letterhead, containing Penn Financial's address and telephone number, showing substantial returns on their investments.

Laucius' Participation in Kogan's Scheme

33. Laucius assisted Kogan in his fraudulent scheme by providing him with complete access to Penn Financial's office and customers despite knowing that Kogan had been suspended by the NASD and had never worked at Penn Financial. As a result, customers were given the false impression that Kogan was legitimately affiliated with Penn Financial.

34. Laucius had essentially no interaction with customers Kogan referred to Penn Financial. He permitted Kogan to handle these accounts and did not even speak with the customers before their accounts were opened.

35. After opening an account, Kogan usually provided Laucius with a completed account application, or instructed Laucius as to what additional information should be included. Laucius, as president of Penn Financial, approved the account by signing the application. Laucius usually did not see checks that customers sent to Kogan because Kogan sent them directly to the clearing broker through the office manager. However, Laucius reviewed the cash receipts blotter listing the checks received as well as customer monthly account statements.

36. Laucius sometimes saw the forged letters of authorization Kogan used to request the wiring of funds from a customer's account. Even though his name appeared on

some of the letters of authorization, Laucius knew that he had never spoken to the customers about their accounts. Rather, if Laucius received a request to wire funds from a customer who Kogan had referred to Penn Financial, Laucius would ask Kogan for instructions.

37. Most importantly, Laucius improperly provided Kogan access to the clearing broker's computer system, which gave Kogan the direct means to conduct his scheme. There was no innocent reason for Laucius to give Kogan access to the system, and this is direct evidence of Laucius' knowing assistance and participation in Kogan's fraud.

The FBI Raid

38. On May 20, 2002, the FBI raided the offices of Penn Financial and Kogan & Company and seized a large quantity of documents from Penn Financial. The raid was prompted by evidence that Kogan was involved in creating and disseminating fraudulent documents relating to a possible foreign bank fraud. At the time of the raid, FBI agents told Laucius of the possible allegations against Kogan and that Penn Financial's and Laucius' names had appeared on some of the fraudulent documents.

39. Laucius knew of Kogan's possible involvement in wrongdoing even before the raid. Several months before, Laucius saw a document faxed to Penn Financial's office containing Penn Financial's logo along with a bank logo. In addition, Laucius knew that Penn Financial's website contained a link to the bank. The document and website link falsely implied that Penn Financial and the bank were affiliated.

40. After May 2002, despite evidence of Kogan's involvement, Laucius continued to allow Kogan access to Penn Financial's office and customer accounts, and continued to permit Kogan to refer customers.

Kogan's Scheme Unravels

41. In December 2002, Kogan's scheme began to unravel when he was out of the country and customers of Kogan, a husband and wife, called Penn Financial to determine their account balances. The customers were given an account statement which reflected that one of their accounts had been liquidated. When they questioned Laucius about the status of their investments, he told the customers that they would have to speak with Kogan.

42. When the customers subsequently confronted Kogan and demanded the return of the funds, Kogan repeatedly acknowledged in writing his debt and made a partial repayment in December 2002. A subsequent partial repayment check bounced.

43. On February 12, 2003, Kogan was arrested on a complaint and warrant relating to his defrauding of Penn Financial customers. Following his release on bail, Kogan, in violation of his bail conditions, continued to solicit investments from customers. Rather than using these funds for investment as these individuals had intended, and been promised by Kogan, he used the funds to repay earlier investors and to pay his own expenses.

44. On March 11, 2003, Penn Financial filed an application to withdraw its registration as a broker-dealer.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

45. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 44, inclusive, as if the same were fully set forth herein.

46. From at least 1999 and continuing through March 2003, as a result of the conduct alleged herein, defendant Kogan, knowingly or recklessly, in connection with the

offer, purchase, or sale of securities, directly or indirectly, by the use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- (a) employed devices, schemes or artifices to defraud;
- (b) obtained money or property by means of, or made, untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

47. By engaging in the foregoing conduct, Kogan violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

SECOND CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

48. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 47, inclusive, as if the same were fully set forth herein.

49. From at least 1999 and continuing through March 2003, as a result of the conduct alleged herein, defendant Laucius, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

(a) employed devices, schemes or artifices to defraud;

(b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, or courses of business that operated as a fraud or deceit upon purchasers, and prospective purchasers of securities.

50. By engaging in the foregoing conduct, Laucius aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently restrain and enjoin defendant Kogan from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

II.

Permanently restrain and enjoin defendant Laucius from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder.

III.

Order defendant Laucius to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint, in accordance with a plan of disgorgement acceptable to the Court and to the Commission.

IV.

Order defendant Laucius to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], as a result of the violations set forth herein.

V.

Grant such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

s/

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