

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81959 / October 26, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4801 / October 26, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18269

In the Matter of

CANTERBURY
CONSULTING, INC.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b)(4) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to, Section 15(b)(4) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Canterbury Consulting, Inc. (“Canterbury” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b)(4) of the Exchange Act and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves Canterbury's failure to supervise Kenneth Krueger ("Krueger"), a former managing director and minority owner associated with Canterbury, who engaged in fraudulent trade allocations – "cherry-picking." From at least January 2013 through November 2014 ("Relevant Period"), Krueger favored his personal accounts over discretionary brokerage customer and advisory client accounts when he executed day trades or delayed allocation of trades until after he saw whether the securities had appreciated in value. During this time, Canterbury failed to supervise Krueger because the firm failed to assign anyone to supervise Krueger or his trading activities. Canterbury also did not adopt and implement policies and procedures reasonably designed to prevent preferential trade allocations, and did not meet record keeping requirements relating to distributing the firm's Form ADV Part 2 to clients.

Respondent

2. Canterbury Consulting, Inc. is a California corporation based in Newport Beach, California. It has been registered with the Commission as an investment adviser since September 1989 and has almost \$16.45 billion in regulatory assets under management. Canterbury also was registered with the Commission as a broker-dealer from October 1988 until December 2013, when it withdrew its broker-dealer registration. In 1999, Canterbury entered into a consent order with the state of Alabama for filing an application containing a false statement that the firm had not done business in Alabama, when it had, and paid \$1,500 in administrative assessments and investigative costs. In 2001, Canterbury entered into a Letter of Acceptance, Waiver and Consent ("AWC") with then-NASD, Inc. and paid \$5,000 to settle allegations that a broker (Krueger) failed to maintain the required net capital for June and July of 2000. In 2010, Canterbury paid the state of Illinois \$500 in fines and costs for failing to designate a principal with the secretary of state by the required deadline.

Other Relevant Person

3. Kenneth P. Krueger, 74, resides in Newport Beach, California. Krueger was associated with Canterbury from 1988 to November 2016, when Canterbury terminated him. He was a founding member of Canterbury and during the Relevant Period, he was a managing director and owned about 2-5% of Canterbury's outstanding shares, until the first quarter of 2014, when he divested his remaining shares pursuant to a retirement agreement with the firm. In 1973, when Krueger worked for Dean Witter, he jointly settled a customer complaint and paid \$2,000 for allegations of breach of fiduciary duty, unsuitable transactions, churning and violation of Blue Sky

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

laws for the state of Oregon. In 1986, when Krueger worked for Kidder Peabody & Co., he jointly settled a customer complaint and paid \$7,165 for allegations of unsuitable investments, churning, and unauthorized opening and maintenance of a margin account. In 2001, Krueger entered into an AWC with then-NASD, Inc. and paid \$5,000 to settle allegations that he failed to maintain the required net capital for June and July of 2000.

Facts

Krueger's Cherry-Picking Scheme

4. During the Relevant Period, Krueger engaged in fraudulent cherry-picking by disproportionately allocating profitable trades to his personal accounts and unprofitable or less profitable trades to 42 brokerage customer and advisory client accounts (the “discretionary accounts”).

5. Krueger traded securities using Canterbury's omnibus trading account at Canterbury's prime broker. As a general matter, Krueger executed a “block” trade in a security in the omnibus account, and then allocated portions of the trade to various accounts, including his personal accounts and discretionary accounts. Krueger executed and allocated shares in various securities each day. Krueger was the only person at Canterbury who the firm authorized to use the omnibus trading account.

6. Before executing the trades, Krueger documented each block trade on an order ticket, indicating the ticker symbol and number of shares of stock purchased. During the Relevant Period, Krueger allocated the majority of the trades – about 95% – after the close of trading on the New York Stock Exchange and other U.S. trading platforms.

7. Krueger knowingly cherry picked profitable trades for his personal accounts to the detriment of the discretionary accounts. When a security appreciated in value on the day of purchase, Krueger often sold the security the same day and improperly allocated a disproportionate number of the profitable day trades to his personal accounts. In contrast, for securities that did not appreciate on the day of purchase, Krueger improperly allocated a disproportionate number of purchases to one or more discretionary accounts. Indeed, during the Relevant Period, Krueger allocated 87% of the profitable day trades to his own accounts and 13% to the discretionary accounts, and allocated over 99% of the trades experiencing first-day losses to discretionary accounts.

8. The difference between the allocations of profitable trades to Krueger's own accounts as compared to profitable trades allocated to discretionary accounts is statistically significant; the probability of observing such an uneven allocation of profitable trades by chance is less than one-in-one million.

9. There is no evidence there were differing investment strategies between Krueger and the discretionary accounts at issue that would justify the disparate performance. For example, over the Relevant Period, 87 securities overlapped between Krueger's accounts and the discretionary accounts. Krueger's first-day gains were positive in 77 of the securities, while the

discretionary accounts' first-day gains were positive in only 20 of the securities. Even when Krueger traded the same securities on the same day for both himself and the discretionary accounts, Krueger's return on investment was positive, while the discretionary accounts' collective return was negative.

10. Canterbury received \$66,071 in commissions and advisory fees from the injured discretionary accounts during the Relevant Period.

Canterbury's Compliance Failures

11. As a registered investment adviser, Canterbury is required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

12. Canterbury's compliance manual did not include policies and procedures to address trading in an omnibus trading account or supervision of persons trading in such an account. The manual also lacked provisions reasonably designed to prevent violations of the Advisers Act arising from associated persons like Krueger trading in the same securities for himself and his clients.

Canterbury Failed to Supervise Krueger

13. Canterbury failed reasonably to supervise Krueger because Canterbury allowed Krueger to use the omnibus account without oversight and engage in a scheme of preferential allocations to benefit his own accounts. Canterbury also did not assign anyone to supervise Krueger or his trading process, and as a result, no one detected any fraudulent allocations or improper trading. Krueger's cherry-picking did not stop until Canterbury's prime broker terminated his use of the block trading account.

Canterbury Failed to Maintain Records of Form ADV Delivery

14. Canterbury did not maintain any record of the clients or prospective clients to whom it offered or delivered the Form ADV Part 2 filed with the Commission March 28, 2013.

Violations

15. As a result of the conduct described above, Canterbury failed reasonably to supervise Krueger, within the meaning of Section 15(b)(4)(E) of the Exchange Act and Section 203(e)(6) of the Advisers Act.

16. As a result of the conduct described above, Canterbury willfully² violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting

advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

17. As a result of the conduct described above, Canterbury willfully violated Section 204(a) of the Advisers Act, and Rule 204-2(a)(14) promulgated thereunder, which requires that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(14) requires that registered investment advisers keep “[a] copy of each brochure and brochure supplement ... and a record of the dates that each brochure and brochure supplement ... was given to any client or to any prospective client who subsequently becomes a client.”

Canterbury’s Remedial Efforts and Cooperation

18. In determining to accept Canterbury’s Offer, the Commission considered remedial acts undertaken by Canterbury and cooperation afforded the Commission staff. Canterbury’s remedial acts included, among other things, hiring an outside consultant to conduct an internal review, promptly addressing Krueger’s misconduct upon conclusion of the internal review, and informing the Commission of Canterbury’s intention to remediate the harm suffered by injured account holders due to Krueger’s cherry-picking activities described above.

Undertakings

19. Notice: Within 30 days of entry of this Order, Canterbury shall provide a copy of this Order to the injured account holders via mail, e-mail, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. Canterbury shall provide a certification that it completed this undertaking in a manner consistent with paragraph 23.

20. Canterbury shall make a payment of \$207,102 to remediate the harm suffered by injured account holders (the “Remediation”). An injured account is an account that earned a first-day return on purchases during the Relevant Period less than 0.25%, which is the blended return earned by Krueger’s personal accounts and the discretionary accounts together during the Relevant Period. Each such injured account shall be paid a Distribution Amount that is composed of (a) the injured account’s first-day losses in excess of the portfolio-wide first-day losses; (b) the fees and commissions paid by the injured account during the Relevant Period; and (c) reasonable interest paid on the amounts in (a) and (b) calculated at the federal short-term rate, from the end of the Relevant Period to the date of payment. Within 45 days of the entry of this Order, Canterbury will deposit the Remediation into the escrow account referenced in paragraph IV.B.3 below for a distribution to injured account holders and provide evidence of such deposit in a form acceptable to the Commission staff. Canterbury will distribute the Remediation to injured accounts on a *pro rata*

Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

basis, where each injured account's *pro rata* share is the account's Distribution Amount divided by the sum of the Distribution Amounts of all injured accounts.

21. Canterbury agrees to be responsible for all of Canterbury's tax compliance responsibilities associated with the Remediation and will retain any professional services necessary. The costs and expenses of any such professional services will be borne by Canterbury, and the payment of taxes applicable to the Remediation, if any, will not be paid out of Remediation funds.

22. The Commission staff may extend any of the Remediation procedural dates set forth above for good cause shown. Deadlines for dates relating to the Remediation shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

23. Canterbury shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Canterbury agrees to provide such evidence. The certification and supporting material shall be submitted to C. Dabney O'Riordan, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Ste. 900, Los Angeles, CA 90071, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.

24. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Canterbury's Offer.

Accordingly, pursuant to Section 15(b)(4) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Canterbury shall cease and desist from committing or causing any violations and any future violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(14)(a) and 206(4)-7 promulgated thereunder.

B. Canterbury is censured.

C. Canterbury shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling \$172,986 as follows:

1. Canterbury shall pay disgorgement of \$66,071 and prejudgment interest of \$6,915, consistent with the provisions of this Subsection C.

2. Canterbury shall pay a civil monetary penalty in the amount of \$100,000, consistent with the provisions of this Subsection C.

3. Within 45 days of the entry of this Order, Canterbury shall deposit the disgorgement, prejudgment interest, and civil penalty totaling \$172,986 into an escrow account acceptable to the Commission staff and Canterbury shall provide evidence of such deposit in a form acceptable to the Commission staff. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. §201.600] or 31 U.S.C. § 3717.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a fair fund (“Fair Fund”) for distribution to injured account holders is created for the \$172,986 in disgorgement, prejudgment interest and penalties paid by Canterbury as well as any monies paid by Kruger within 45 days of the entry of the order in the parallel proceeding, *In the Matter of Kenneth P. Krueger*, Admin. Proceeding No. 3-18266, plus the Remediation paid by Canterbury as a voluntary undertaking. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Canterbury agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Canterbury’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Canterbury agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Canterbury by or on behalf of one or more account holders based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Canterbury shall be responsible for administering the distribution of the Fair Fund and may hire a professional to assist it in the administration of the distribution. Canterbury shall distribute the Fair Fund as follows:

1. Within 120 days, Canterbury shall distribute to each injured account holder a payment equal to the remaining portion of the account holder’s Distribution Amount after considering the partial payment set forth in Paragraph 20, above.³

2. The distributions shall be made pursuant to a payment file prepared by the Commission staff and accepted by Canterbury. No portion of the Fair Fund shall be paid to any

³ Canterbury’s distribution of both the Remediation and Fair Fund will fully compensate each injured account holder, subject to a de minimis threshold, as described herein, but in no event will exceed the total amount by which the account holder was injured.

injured account holder in which Canterbury, or any of its officers or directors, has a financial interest. Canterbury may hire a professional to assist it in the administration of the distribution.

3. The payment file shall identify, at a minimum, (i) the name of each injured account holder, (ii) the exact amount of the payment to be made from the Fair Fund to each injured account holder, and (iii) the amount of any *de minimus* threshold to be applied. Canterbury also shall provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its preparation and/or review of the payment file.

4. If Canterbury is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an injured account holder or a beneficial owner in an injured account or any factors beyond Canterbury's control, Canterbury shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 after the final accounting provided for in Paragraph six of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

- (1) Canterbury may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Canterbury may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Canterbury may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Canterbury as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to C. Dabney O'Riordan, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

5. Canterbury shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Canterbury and shall not be paid out of the Fair Fund.

6. Within 150 days after Canterbury completes the disbursement of all amounts payable to injured account holders, Canterbury shall submit to the Commission staff for Commission approval a final accounting and certification of the disposition of the Fair Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, including the percentage of the payment attributable to the Remediation; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Canterbury has made payments from the Fair Fund to injured account holders in accordance with the payment file prepared by the Commission staff and accepted by Canterbury. Canterbury shall submit proof and supporting documentation of such payment (whether in the form of electronic payments or cancelled checks) in a form acceptable to the Commission staff under a cover letter that identifies Canterbury as Respondent and the file number of these proceedings to C. Dabney O’Riordan, Co-chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071. Canterbury shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

7. The Commission staff may extend any of the procedural dates set forth in these Subsections C. and E. for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

F. Respondent Canterbury shall comply with the undertaking enumerated in Section III.19 above.

By the Commission.

Brent J. Fields
Secretary