

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

-----X	:	ADMINISTRATIVE PROCEEDING
In the Matter of	:	File No. 3-15015
	:	
MICHAEL BRESNER;	:	RESPONDENT JASON KONNER'S
RALPH CALABRO;	:	PETITION FOR REVIEW OF
JASON KONNER; and	:	INITIAL DECISION DATED
DIMITRIOS KOUTSOUBOS	:	NOV. 8, 2013
	:	
Respondents.	:	
	:	
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Pursuant to Section 201.401 of the Rules of Practice, respondent Jason Konner (“Konner”) hereby petitions for review of each and every aspect of the Initial Decision issued by Administrative Law Judge Cameron Elliot, dated November 8, 2013 (the “Initial Decision”), that relates to the ruling that Konner churned the J.P. Turner stock brokerage account of public customer James Carlson (“Carlson”). Further, and without limitation, respondent Konner takes exception to the appropriateness and severity of the sanctions imposed against him by the Initial Decision, and respectfully requests that the Commission set aside, vacate, reverse or modify those sanctions on the grounds that they are unwarranted, excessive and not in the public interest.

Specifically, Konner challenges the following findings and conclusions set forth in the Initial Decision:

- (1) The conclusion that Konner churned Mr. Carlson’s stock brokerage account, because a preponderance of the credible evidence establishes otherwise;
- (2) The conclusion that Konner exercised de facto control over Mr. Carlson’s stock brokerage account, because a preponderance of the credible evidence establishes otherwise;

- (3) The conclusion that the activity in Mr. Carlson's brokerage account constituted "excessive trading" in light of the stated account objectives that Mr. Carlson confirmed in writing before, during and after the period in which his account was purportedly churned;
- (4) The conclusion that Konner acted with scienter with respect to the trading activity in Mr. Carlson's stock brokerage account, because a preponderance of the credible evidence establishes otherwise;
- (5) The finding that Mr. Carlson was a credible witness despite the existence of substantial evidence suggesting the lack of credibility including, *inter alia*, having signed and submitted multiple documents to Konner and J.P. Turner which directly contradict his testimony, and his admissions that he made false representations to Konner and J.P. Turner;
- (6) The finding that J.P. Turner documents reflecting different totals of Mr. Carlson's net worth was indicative of any facts consistent with a finding of control by Konner, excessive trading or scienter;
- (7) The finding that John Williams was neither a credible nor a reliable witness based on the reasons set forth in the Initial Decision;
- (8) The finding that Konner's conduct resulted in a loss or a substantial loss for Mr. Carlson during the so-called churn period, a consideration in the assessment of the appropriate sanction;
- (9) The finding that, under the applicable legal standards, the conduct in question (a) reflected de facto control by Konner of the Carlson account, (b) constituted excessive trading, or (c) demonstrated that Konner acted with scienter; and
- (10) The finding that Konner has the ability to pay the civil penalty imposed by the Initial Decision.¹

Konner further challenges the appropriateness of the sanctions imposed in the Initial Decision, on the grounds that (a) a bar, and (b) disgorgement and a civil penalty totaling \$205,000, are unwarranted, unduly punitive and not in the public interest. The imposition of a bar and a substantial civil penalty are disproportionate given the totality of the evidence that bears upon the issues relating to the Carlson account, including but not limited to the fact that

¹ We do not in this Petition for Review specifically address the so-called "Findings of Fact" section of the Initial Decision (pp. 04-97) inasmuch as ALJ Elliott in that section purportedly did nothing more than summarize the testimony of each witness who testified at the hearing.

there was only one account in question, the activity was neither egregious nor recurrent, and the fact that Mr. Carlson to this day has not complained about the trading activity. Moreover, the financial penalty is also unwarranted, unduly punitive, and unjustifiable, inasmuch as it is beyond Konner's ability to pay.

Respectfully submitted this 26th day of November, 2013.

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