

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JAMES S. POLESE,  
CORNELIUS PETERSON,

Defendants.

Civil Action No. \_\_\_\_\_

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendants James S. Polese (“Polese”) and Cornelius Peterson (“Peterson”) (collectively, “Defendants”), alleges as follows:

**PRELIMINARY STATEMENT**

1. From August 2014 through May 2017, Defendants, who were employed as investment advisers at a large well-known Financial Institution, engaged in various schemes to defraud their clients. These schemes included: (1) investing client funds into an investment in which defendants held a financial interest, without disclosing their conflict of interest; (2) secretly using client funds to secure loan financing for defendants’ own investments; and (3) falsely representing that client funds were being invested in a real estate fund, when the money was actually diverted into investments in the defendants’ names and into Polese’s personal expenditures. In addition, Polese defrauded two clients through violations of his fiduciary duties to those clients including (1) obtaining a loan from a client on unfavorable terms to the client; and (2) charging a client advisory fees 50% higher than the rate quoted.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction pursuant to Sections 21(d)(3), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d)(3), 78u(e), and 78aa] and Sections 209(d), 209(e), and 214 of the Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-9(d), 80b-9(e) and 80b-14].

3. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14] because a substantial portion of the conduct alleged in this complaint occurred within the District of Massachusetts.

4. In connection with the conduct alleged in this Complaint, Defendants, directly or indirectly, have made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, transactions, practices, and courses of business alleged in this complaint.

**DEFENDANTS**

5. Polese, age 51, is a Wenham, Massachusetts resident who was employed by the Financial Institution as an investment adviser representative and broker-dealer registered representative in Boston, Massachusetts from May 2010 until he was terminated in June 2017. During the Commission’s investigation that preceded this action, Polese invoked his Fifth Amendment privilege against self-incrimination, refusing to produce documents or answer questions during sworn testimony.

6. Peterson, age 28, is a Boston, Massachusetts resident who was employed by the Financial Institution as an investment adviser representative and broker-dealer registered representative in Boston, Massachusetts from August 2011 until he was terminated in June 2017. During the Commission’s investigation that preceded this action, Peterson invoked his Fifth Amendment privilege against self-incrimination, refusing to produce documents or answer questions during sworn testimony.

### **FACTUAL ALLEGATIONS**

7. Beginning in 2014, Polese and Peterson engaged in at least three separate schemes to misappropriate and misuse assets of two of their clients (“Client A” and “Client B”) in order to support their outside business interests and to pay their own personal expenses. In each instance, Polese and Peterson exploited their fiduciary relationship with an advisory client, and engaged in deceptive conduct in order to obscure their conduct.

8. Peterson began serving as an investment advisor to Client A in 2012 when Client A moved his assets to the Financial Institution’s Boston office, giving Peterson full discretionary authority over his account. When opening a new account at the Financial Institution, Client A informed Peterson that he had a moderate risk tolerance for investments and was not interested in speculative investments.

9. Client B is in his mid-80s, has been a client with the Financial Institution since the 1980s, and was a client of Polese’s for the last 8 years. Client B is a retired businessman who had informed Polese and Peterson of his desire to give away substantially all of his assets to charity. Client B relied on Defendants to recommend investments and update him on the status of his portfolio.

#### **Peterson Violates His Fiduciary Duty to Client A with an Unauthorized Investment**

10. In 2014, while working at the Financial Institution, Peterson became a director of a non-Financial Institution private fund (“Fund A”). Fund A was an investment vehicle through which an acquaintance of Peterson was raising money for a wind-farm investment. The Financial Institution’s policies required employees like Peterson to disclose outside business activities to the Financial Institution and to obtain approval from the Financial Institution before engaging in such activities. Peterson disclosed his position as a director of Fund A to the Financial Institution in December 2014. As a condition of obtaining the Financial Institution’s approval to participate in this outside business activity, Peterson falsely represented to the Financial Institution that he would not actively solicit the Financial Institution’s clients to invest in Fund A. In actuality, four months earlier – in August 2014 – Peterson had caused Client A to

invest \$100,000 in the wind farm investment. Peterson made further false statements to the Financial Institution when he signed a form stating that Client A had verbally authorized the \$100,000 investment.

11. The wind farm was an alternative investment that was not authorized by the Financial Institution and Peterson was therefore prohibited from recommending it to clients. Moreover, placing Client A in the wind farm investment was contrary to the stated investment objectives and risk tolerance of the client, and therefore represented a breach of Peterson's fiduciary duty to Client A.

12. The wind-farm investment ultimately failed and Client A's entire investment was lost.

**Peterson and Polese Risk \$400,000 of Client B's Money and Cause Him to Incur \$12,000 in Fees in the Wind Farm Investment**

13. In order to obtain financing for the wind-farm investment, Fund A obtained a loan commitment from a third party. As security for the loan, several of the investors in the wind-farm investment provided letters of credit in their personal capacity, which could be drawn upon on in the event that the loan was not repaid in full.

14. On or about May 21, 2015, Peterson and Polese – who was also an investor in the wind-farm investment – obtained a letter of credit from the Financial Institution, payable to the third party, to guarantee a portion of the loan commitment. In order to induce the Financial Institution to issue the letter of credit, Peterson and Polese pledged Client B's account as collateral, thus putting \$400,000 of Client B's assets at risk.

15. Client B had no knowledge of the letter of credit. The letter of credit was issued by the Financial Institution pursuant to an authorization form submitted by Peterson, listing Polese as the point of contact, and falsely stating that Client B had requested the Financial Institution to provide the letter of credit to the third party lender. Under the arrangement with the Financial Institution, if the third party lender drew on the letter of credit, the amounts paid by the Financial Institution would be drawn against Client B's collateralized loan account ("Loan

Account”). The Loan Account functioned in a manner similar to a margin account (where an investor borrows money and uses securities as collateral). Client B originally established the Loan Account in order to pay certain large expenses without having to sell the securities in his portfolio. Peterson completed the form for Client B’s letter of credit and submitted it to the Financial Institution for approval. Neither Polese nor Peterson ever sought Client B’s authorization for the letter of credit, nor did either at any point inform Client B of its existence. Nor did Client B in any way benefit from the issuance of the letter of credit. Rather, though the letter of credit was never drawn upon, meaning the lender never requested that Client B pay the \$400,000, his account did incur \$12,000 in fees for the issuance and subsequent renewal of the letter of credit.

16. The loan to the third party was eventually paid off and the letter of credit was never drawn upon. Client B never knew at the time that Polese and Peterson had put \$400,000 of his money at risk.

**Polese Continues to Abuse His Fiduciary Relationship with Client B**

17. In July 2015, Polese breached his fiduciary duty as an Investment Adviser by taking advantage of his position of trust and confidence with Client B by asking Client B for a \$50,000 loan to help pay for his children’s college expenses. Polese knew that a loan from a client to an investment adviser representative was prohibited by the Financial Institution because it created an actual or potential conflict of interest between the client and the investment adviser. Despite Polese’s obligation to act in Client B’s best interests, the loan was disadvantageous to the client in numerous ways. Specifically, the loan was not documented, there was no set payoff date, Polese did not provide Client B with any collateral, and did not agree to pay any interest on the loan. Polese also attempted to obscure the origins of the money by having Client B write a check to “cash,” then using that check to obtain a treasurer’s check, in the name of a bank. Polese then deposited the treasurer’s check into his personal account at the Financial Institution, thus avoiding any record of Client B providing the funds. Polese failed to disclose the loan from Client B in connection with the Financial Institution’s annual compliance questionnaires in 2016

and 2017. By concealing the existence of the loan, Polese prevented Client B from obtaining the benefit of Financial Institution's policies or controls relating to such loans. To date, Polese has not repaid the loan.

**Polese and Peterson Misappropriate \$350,000 of Client B's Money**

18. In March 2016, Peterson and Polese fraudulently used \$100,000 of Client B's money to make \$50,000 investments for each of their own benefit in a private real-estate fund ("Fund B"). On March 24, 2016, Peterson caused \$350,000 to be transferred by wire to Fund B from Client B's Loan Account, as payment for Polese and Peterson's \$50,000 interests. The wire was initiated pursuant to a Loan Account disbursement sheet filled out in part by Polese and in part by Peterson, which falsely stated that Peterson had verified the transaction in a telephone conversation with Client B that morning. No such call took place.

19. In addition, the disbursement sheet contains Client B's purported signature, which was forged by Polese and Peterson.

20. In connection with their purported purchase of interests in Fund B, both Polese and Peterson provided signed subscription agreements in which they falsely certified that the money they were using for their investments was not "derived from, or related to, any activity that is deemed criminal under applicable law." The subscription documents explicitly stated that this condition had to be met in order for the company to accept the subscription.

21. Polese and Peterson's scheme also included using the purported investment in Fund B as a means of routing \$250,000 to Polese's personal account. After receiving the \$350,000 wire to fund what he believed would be two separate \$50,000 investments, a representative of Fund B spoke with Polese about the \$250,000 in excess funds that had been wired. Polese told the representative of Fund B that the payment was intended to cover both Polese's and Peterson's investment. Polese further stated that the overpayment of \$250,000 was the result of a clerical error, and that the money had in fact been intended to pay certain of Polese's tuition expenses for his children in college. Polese then instructed the Fund B

representative to wire the money to Polese's personal bank account, which the Fund B representative did.

22. After misappropriating Client B's \$350,000, Polese and Peterson took steps to conceal their theft of the money. A week after wiring the money out of Client B's Loan Account, Defendants made separate false statements to Client B's bookkeeper and to the Financial Institution claiming that the entire wired amount was in a real estate investment for the benefit of Client B. Defendants' statements were designed to prevent the bookkeeper and the Financial Institution from uncovering the fact that the Defendants had used the purported investment in Fund B to steal approximately \$350,000 from Client B.

23. During the course of the fraud, Peterson and Polese both received distributions of \$7,299.47 from Fund B resulting from their \$50,000 investments using Client B's money. The \$100,000 principal remains with Fund B.

**Polese's Unauthorized Automated Clearing House Withdrawals from Client B's Account**

24. Between March 2 and May 2, 2017, Polese stole a total of just over \$93,000 from Client B by making unauthorized Automated Clearing House ("ACH") payments on five separate occasions from Client B's Loan Account. ACH is a computer-based clearing and settlement facility established to process the exchange of electronic transactions. For example, ACH is used for direct deposit payroll payments. Polese used these ACH payments to pay for his credit card bills and college tuition payments for his children.

25. In one instance, Polese used an unauthorized ACH payment from Client B's Loan Account to overpay a college tuition bill by \$20,000. Polese then directed the college to refund the overpayment to his own bank account.

26. To execute these unauthorized ACH transactions, Polese entered Client B's account and bank routing numbers on the payment pages of the payees' websites.

27. The Financial Institution discovered Polese's unauthorized ACH transactions in early May 2017. On Friday, May 5, 2017, the Financial Institution placed Polese on

administrative leave. A few days later, after further inquiry, the Financial Institution placed Peterson on administrative leave as well.

28. In an effort to cover-up his thefts, Polese went to Client B's house and attempted to cajole him into signing a false statement stating that "You Verbally Approved & Authorized Every Payment. I [Client B] Have No Kids & Wanted To Help A Friend[.]" Client B refused because he had not approved and authorized the ACH transactions. Polese and Peterson were terminated by the Financial Institution shortly thereafter.

**Another Breach of Fiduciary Duty by Polese for Falsely Misstating Advisory Fees**

29. Between October 2014 and May 2017, Polese defrauded one of his clients, a retired paralegal ("Client C") by falsely representing that the advisory fee for her account was 1%. In actuality, Polese arranged for fees totaling 1.5 % to be withdrawn from Client C's account on a periodic basis. By fraudulently inflating Client C's advisory fees by 50%, Polese caused Client C to pay excess advisory fees of approximately \$23,000.

**CLAIMS FOR RELIEF**

**FIRST CLAIM**

**(Violations of Section 10(b) of the Exchange Act  
and Rule 10b-5 Thereunder by Defendants)**

30. The Commission incorporates and realleges here paragraphs 1 through 16 and 18-23, above.

31. Defendants have, by engaging in the conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange, with scienter: (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 which operated or would operate as a fraud or deceit upon other persons, in connection with the purchase or sale of securities.

32. By reason of the foregoing, Defendants have directly or indirectly violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

**SECOND CLAIM**

**(Violations of Sections 206(1) and 206(2) of the Advisers Act by Defendants)**

33. The Commission incorporates and realleges here paragraphs 1 through 29, above.

34. By engaging in the conduct described above, Defendants, while acting as investment advisers, by use of the means of an instrumentalities of interstate commerce or the mails, directly or indirectly:

- a. Employed devices, schemes, or artifices to defraud clients; and,
- b. Engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon clients.

35. By reason of the foregoing, Defendants directly or indirectly, singly or in concert, has violated, and unless enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**THIRD CLAIM**

**(Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act by Defendants, alternatively)**

36. The Commission incorporates and realleges here paragraphs 1 through 29, above.

37. By engaging in the conduct described above, the Financial Institution, while acting as investment advisers, by use of the means of an instrumentalities of interstate commerce or the mails, directly or indirectly:

- a. Employed devices, schemes, or artifices to defraud clients; and,
- b. Engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon clients.

38. By engaging in the conduct described above, Defendants knowingly and substantially aided and abetted the Institution's violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

**FOURTH CLAIM**

**(Aiding and Abetting the Financial Institution's Violations of Advisers Act Section 204 and Rule 204-2 Thereunder by Defendants)**

39. The Commission incorporates and realleges here paragraphs 1 through 29, above.

40. As set forth more fully above in paragraphs 9 through 17 and paragraph 23, the Financial Institution violated Section 204 of the Advisers Act and Rule 204-2 thereunder, by failing keep true, accurate, and current financial records.

41. By engaging in the conduct described in paragraphs 9 through 17 and paragraph 22, Defendants knowingly and substantially aided and abetted the Institution's violations of Section 204 [15 U.S.C. § 80b-4] of the Advisers Act and Rule 204-2 thereunder [17 C.F.R. § 275.204].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court:

I.

Make findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants named herein committed the violations alleged herein.

II.

Enter an injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining each of the Defendants from violating, directly or indirectly, the laws and rules alleged in this Complaint to have been violated

III.

Order Defendants to disgorge their ill-gotten gains in an amount according to proof, plus prejudgment interest thereon.

IV.

Order Defendants to pay civil money penalties pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(e)].

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as this Court may deem just, equitable, and necessary.

**JURY DEMAND**

The Commission hereby demands a trial by jury on all claims so triable.

Dated: January 31, 2018  
Boston, Massachusetts

On behalf of the Commission,

//s// Martin F. Healey

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