

IN THE DISTRICT COURT OF PONTOTOC COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities, *ex*)
rel. Irving L. Faught, Administrator,)

Plaintiff,)

-against-)

Yankee Financial Group, Inc., Vasiliy)
Kouznnetsov *aka* David Anderson, Gary J.)
Giordano, and Richard Francis Kresge,)

Defendants.)

Case No.: No. C 03-586

FILED
Book _____ Page _____
DEC 8 2003
JANIS HOWSEY, Court Clerk
Pontotoc County, Oklahoma
By _____ Deputy

**ANSWER OF DEFENDANTS YANKEE FINANCIAL GROUP, INC.,
VASILIY KOUZNETSOV *aka* DAVID ANDERSON and RICHARD FRANCIS KRESGE**

Defendants Yankee Financial Group, Inc. ("Yankee"), Vasiliy Kouznnetsov *aka* David Anderson ("Anderson") and Richard Francis Kresge ("Kresge") (collectively "Answering Defendants") by their undersigned attorney, respectfully submit their Answer to the Petition, as follows:

1. The allegations set forth in paragraph 1 of the Petition purport to assert the statutory basis of the claims asserted, to which no response is required, except Answering Defendants deny they violated the laws of Oklahoma.
2. Deny the allegations set forth in paragraph 2 of the Petition, except admit that Yankee employed Anderson and that a resident of the State of Oklahoma elected to do business with Anderson.
3. Deny the allegations set forth in paragraph 3 of the Petition, and affirmatively aver that the customer at issue was not only provided with proper penny stock

documentation, but that said customer signed and returned such penny stock disclosures as required.

4. Deny the allegations set forth in paragraph 5 of the Petition, and affirmatively aver that the customer at issue was not only provided with proper penny stock documentation, but that said customer signed and returned such penny stock disclosures as required. Answering Defendants further aver that the federal courts have exclusive jurisdiction over alleged violations of the Securities Exchange Act of 1934.
5. The allegations set forth in paragraph 5 of the Petition purport to assert the statutory basis of jurisdiction, to which no response is required.
6. The allegations set forth in paragraph 6 of the Petition purport to assert the statutory basis of jurisdiction, to which no response is required.
7. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 7 of the Petition, except aver, upon information and belief that NASDR did not exist in 1986, and admit that Yankee was a duly registered broker-dealer.
8. Admit the allegations set forth in paragraph 8 of the Petition, except as to the allegations set forth in the last two clauses of the last sentence of paragraph 8, which clauses render the allegations vague and confusing.
9. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 9 of the Petition, except admit that Giordano was employed by Yankee and admit the allegations set forth in

the last sentence of paragraph 9 that "Giordano was responsible for supervising the activities of Anderson".

10. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 10 of the Petition, except admit that Kresge is the president of Yankee, and has been registered with the appropriate entities in the capacities alleged.
11. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 11 of the Petition, except admit that Anderson was the agent for an Oklahoma resident named Bates, first at LH Ross and then at Yankee.
12. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 12 of the Petition.
13. The allegations set forth in paragraph 13 of the Petition purport to summarize account records, which records accurately reflect the information summarized and speak for themselves.
14. Deny the allegations set forth in paragraph 14 of the Petition.
15. Deny the allegations set forth in paragraph 15 of the Petition, except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves.
16. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 16 of the Petition, except deny the allegations as they relate to "stop loss" orders on Nasdaq securities such as EMAC.

17. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 17 of the Petition except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
18. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 18 of the Petition except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
19. Deny the allegations set forth in paragraph 19 of the Petition except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
20. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 20 of the Petition except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.

21. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 21 of the Petition, except deny the allegations as they relate to "stop loss" orders on Nasdaq securities such as SSTF, and except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
22. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 22 of the Petition, except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
23. Deny the allegations set forth in paragraph 23 of the Petition except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
24. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 24 of the Petition, except deny the allegations as they relate to "stop loss" orders on Nasdaq securities such as WMGC, and except as to the details of any transactions, which

transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.

25. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 25 of the Petition, except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves.
26. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 26 of the Petition, except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
27. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 27 of the Petition, except deny the allegations as they relate to "stop loss" orders on Nasdaq securities such as GCHR, and except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.

28. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 28 of the Petition, except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
29. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 29 of the Petition, except deny the allegations as they relate to "stop loss" orders on Nasdaq securities such as USHM, and except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
30. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 30 of the Petition, except as to the details of any transactions, which transactions are accurately reflected in account documents, which documents speak for themselves. Answering Defendants further affirmatively aver that any and all transactions were the customer's and that Anderson entered orders as customer's agent.
31. The allegations of a single, generalized "stop loss" order set forth in paragraph 31 of the Petition contradict the allegations of multiple specific "stop loss" orders alleged in paragraphs 21, 24, 27 and 29 of the Petition, and

as a matter of securities industry practice and regulation, reflects an impossibility.

32. Deny the allegations set forth in paragraph 32 of the Petition, except Defendant Anderson acknowledges receiving funds for such an investment, and Answering Defendants further aver that Anderson was not at Yankee when the investment was made by customer.
33. Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 33 of the Petition.
34. Deny the allegations set forth in paragraph 33 of the Petition, except as to those allegations that purport to summarize a statute, which statute speaks for itself. Answering Defendants affirmatively aver that they complied with Rule 15g-9, and further aver that customer signed and returned specific risk acknowledgment forms for the investments at issue.
35. Answering Defendants repeat and reallege their responses to the allegations set forth in paragraphs 1-34 of the Petition as if fully set forth in this paragraph.
36. Deny the allegations set forth in paragraph 36 of the Petition, except as to those allegations that purport to summarize a statute, or the effect of a statute, which statute speaks for itself, and which effects are legal conclusions.
37. Deny the allegations set forth in paragraph 37 of the Petition, except as to those allegations that purport to summarize a statute, or the effect of a statute, which statute speaks for itself and which effects are legal conclusions

38. Answering Defendants repeat and reallege their responses to the allegations set forth in paragraphs 1-37 of the Petition as if fully set forth in this paragraph.
39. Deny the allegations set forth in paragraph 39 of the Petition.
40. Deny the allegations set forth in paragraph 40 of the Petition.
41. Deny the allegations set forth in paragraph 41 of the Petition.
42. Deny the allegations set forth in paragraph 42 of the Petition.
43. Answering Defendants repeat and reallege their responses to the allegations set forth in paragraphs 1-42 of the Petition as if fully set forth in this paragraph.
44. Deny the allegations set forth in paragraph 44 of the Petition.
45. Deny the allegations set forth in paragraph 45 of the Petition.
46. Answering Defendants repeat and reallege their responses to the allegations set forth in paragraphs 1-45 of the Petition as if fully set forth in this paragraph.
47. The allegations set forth in paragraph 47 of the Petition states a legal conclusion. Upon information and belief, the Answering Defendants believe such conclusion is correct, and affirmatively aver that for such reason, the customer was provided with penny stock risk disclosure forms, which customer signed and returned.
48. Deny the allegations set forth in paragraph 48 of the Petition, and affirmatively aver that this allegation is made in bad faith, inasmuch as Plaintiff was provided with such documents prior to the filing of the Petition.

49. Deny the allegations set forth in paragraph 49 of the Petition, and affirmatively aver that this allegation is made in bad faith, inasmuch as Plaintiff was provided with such documents prior to the filing of the Petition.
50. Deny the allegations set forth in paragraph 50 of the Petition.
51. Deny the allegations set forth in paragraph 51 of the Petition, and affirmatively aver that Kresge was not responsible for supervisory functions with respect to Anderson. (See *e.g.*, paragraph 9 of the Petition).
52. Deny the allegations set forth in paragraph 52 of the Petition.
53. Answering Defendants repeat and reallege their responses to the allegations set forth in paragraphs 1-52 of the Petition as if fully set forth in this paragraph.
54. Deny the allegations set forth in paragraph 54 of the Petition.
55. Deny the allegations set forth in paragraph 55 of the Petition.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Petition fails to state a claim upon which relief can be granted as to Kresge.

SECOND AFFIRMATIVE DEFENSE

2. The customer failed to mitigate his alleged damages.

THIRD AFFIRMATIVE DEFENSE

3. The claims of fraud are not pleaded with sufficient particularity.

FOURTH AFFIRMATIVE DEFENSE

4. The claims are barred by the doctrines of ratification, waiver and estoppel.

FIFTH AFFIRMATIVE DEFENSE

5. Answering Defendants did not cause, proximately or otherwise, any damages to customer.

SIXTH AFFIRMATIVE DEFENSE

6. The customer's alleged losses were due solely to market forces and to no other cause.

SEVENTH AFFIRMATIVE DEFENSE

7. Claimant assumed the risk of his investments.

EIGHTH AFFIRMATIVE DEFENSE

8. Customer was exclusively, comparatively or contributorily negligent.

NINTH AFFIRMATIVE DEFENSE

9. This Court lacks jurisdiction over the Answering Defendants.

WHEREFORE, the claims should be denied in their entirety as to each Answering Defendant, and this Honorable court should award to Answering Defendants such other and further relief as it deems just and equitable.

Dated: Brooklyn, New York
December 1, 2003

Respectfully submitted,

BY: 

Lawrence R. Gelber
Attorney *pro hac vice* for Defendants
Yankee Financial Group, Inc., Vasiliy
Kouznetsov *aka* David Anderson and
Richard Francis Kresge
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CERTIFICATE OF SERVICE

Lawrence R. Gelber, an attorney admitted to practice in the State of New York,
and admitted *pro hac vice* to this Court, certifies as follows:

I HEREBY CERTIFY that I have caused a true and correct copy of the foregoing
Answer to be served by US Priority Mail upon counsel for Plaintiff on Monday,
December 01, 2003, as follows:

Rebecca A. Cryer, Esq.
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Oklahoma City, Oklahoma 73102
(405 280-7734
Fax: (405) 280-7742

Dated: Brooklyn, New York
December 1, 2003



Lawrence R. Gelber