

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
25 CAPITOL STREET
CONCORD, NH 03301

CONSENT ORDER

IN THE MATTER OF:

Charles C. Kulch (CRD # 2371584)

C-202000015

- I. For the purposes of settling the above-referenced matter, and in lieu of administrative proceedings, Charles C. Kulch ("Kulch") has submitted an offer of settlement which the State of New Hampshire, Department of State, Bureau of Securities Regulation (the "Bureau") has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein, Kulch consents to the entry of this Consent Order (the "Consent Order") and to the following undertakings and sanctions:

STATEMENTS OF FACTS

i. Background and Regulatory History

1. Kulch is a resident of Hudson, New Hampshire. From October 19, 2006 to June 24, 2020, Kulch was a registered representative with the State of New Hampshire and an investment adviser representative of a firm (the "Firm"). The Firm is a licensed broker-dealer in the State of New Hampshire as well as a federal covered investment adviser with a principal place of business in Houston, TX. During that time, Kulch was also a registered principal of and offered securities and investment advisory services through the Firm.
2. In January of 1999, following an investigation by the Bureau (case No. COM99-006), the Bureau found that Kulch was operating an unqualified branch office because he was not qualified as a principal of such office. Kulch entered into a Consent Order with the Bureau, agreeing to a suspension of his broker-dealer agent license until he became a qualified principal and agreed to pay a \$2,500 administrative fine in the matter.
3. In 2014, following a separate investigation (case No. I-2011000023/I-2014000010), the Bureau found that Kulch, through his company Kulch Financial Services, Inc. ("Kulch Financial"), mailed seminar invitations ("mailers") to New Hampshire residents which contained inaccurate information. The Bureau, the Firm, and Kulch entered into a consent order in early May of 2014 which required Kulch and the Firm to cease and desist from further violations of N.H. RSA 421-B, establish procedures or modify existing procedures to ensure information in advertising material submitted for approval is

properly vetted prior to approval, and pay an administrative fine and cost of Bureau's investigation in the amount of \$140,000, among other undertakings.

4. In 2019, after conducting a thorough investigation (case No. I-2017000030), the Bureau alleged that, between 2009 and 2016, the Firm failed to reasonably supervise the sale of certain alternative investments to a number of clients. Specifically, the Bureau alleged that the sales were unsuitable because they exceeded the Firm's concentration guidelines of non-traded REITs, did not comply with income thresholds as defined in the prospectus, contained errors on purchase-related documents, and constituted sales to clients over the age of 80 in contradiction to the Firm's written policies. On December 31, 2019, the Bureau entered into a consent order with the Firm which ordered the Firm to cease and desist from further violations of N.H. RSA 421-B, to make remediation offers to clients, place Kulch on heightened supervision.

ii. The Bureau's Investigation in the Above-Captioned Matter

5. In 2020, the Bureau commenced an investigation into the Firm and Kulch regarding certain "consulting services" fees that Kulch and the Firm charged many clients over several years via Consulting Services Agreements ("CSAs"), as depicted, in part, in the image below. During the course of the Bureau's investigation, the Bureau alleged that Kulch engaged in several violations of the New Hampshire securities law, including misrepresenting the nature of CSA fees he charged to those clients. Additionally, the Bureau alleged that from January 2014 to May 2020, Kulch engaged in a practice which caused a number of clients to pay both advisory fees and separate, quarterly CSA fees, sometimes on multiple accounts, for services nearly indistinguishable from what clients were supposed to be receiving from the advisory relationship.
6. Every CSA document had the Firm's logo in the top left corner of the first page and stated that the agreement was "entered into between [the Firm] in its capacity as a registered investment adviser, a [Firm] Investment Adviser Representative ("IAR"), and the client(s) ("Client")."
7. The first section of the CSA was titled "IAR Services." In this section, the client was instructed to pick one or more of the listed services in the section by checking one or more boxes. The services available included investment portfolio monitoring, financial consulting, business or estate planning, financial planning, complex planning services, and other (to be disclosed in detail directly below and in the same section). Each option included a short, written description of what that service entails. Directly below the listed service options, the agreement stated "[t]he IAR agrees to perform the following non-discretionary Consulting Services for Client" and included lines for said services to be specifically written in.

Client hereby engages the IAR to provide the Consulting Services specified below for fee-based compensation as set forth in this Agreement.

Client must select the desired services by checking one or more boxes below:

- Investment Portfolio Monitoring:** The IAR agrees to monitor Client's portfolio(s) and provide investment advice on a non-discretionary basis to Client. Investment advice may be provided regarding asset allocation, investment portfolio construction, investment selection, or any other services as agreed upon by the parties.
- Financial Counseling:** The IAR agrees to review financial topics chosen by Client. For example, the IAR may assist Client in designing personal financial goals and objectives and recommendations as to the allocation of present financial resources among different types of assets.
- Business or Estate Planning:** The IAR agrees to provide Client with a one-time financial plan that will include a review of Client's business or estate circumstances, financial goals, and a written report of recommendations.
- Financial Planning:** The IAR agrees to provide Client with a one-time financial plan that will include a review of Client's financial circumstances, financial goals, and a written report of recommendations.
- Complex Planning Services:** The IAR agrees to provide services to Client that will either be complex in nature and/or will require a significant amount of time to complete. A plan proposal outlining the services to be provided is attached to and made a part of this Agreement. Any fees for services in excess of \$10,000 is considered complex and requires a plan proposal.
- Other:** Services are agreed to and outlined below (Must be disclosed in detail below):

The IAR agrees to perform the following non-discretionary Consulting Services for Client:

Quarterly meetings with clients.
Clients will be given Performance Reports on Non-Discretion Assets.
Meetings will consist of review of assets, any recommendations made at this time. World events and market discussion and any questions or concerns of the client.
Meetings are kept in the calendar and we have a procedure to contact clients for their review or the meeting is scheduled at the time of the last review.

Client acknowledges that the services covered by this Agreement are consultative in nature and neither NEXT nor the IAR are granted investment authority ("discretion") or responsibility over any Client assets regardless of how and where such assets are held. Throughout the term of this Agreement, Client retains full responsibility to direct transactions, to supervise, and to manage investments.

8. The Bureau focused on clients who had a CSA with the first two boxes, "Investment Portfolio Monitoring" and "Financial Counseling," checked; the same description of "non-discretionary Consulting Services" in their CSA, (stating "[q]uarterly meetings with clients. Clients will be given Performance Reports and Non-Discretion Assets. Meetings will consist of review of assets, any recommendations made at this time. World events and market discussion and any questions or concerns of the client. Meetings are kept in the calendar and we have a procedure to contact clients of their review or the meeting is scheduled at the time of last review"); and who also paid a separate advisory fee in addition to the CSA fee.
9. In the course of the Bureau's investigation, the Bureau learned that the Firm introduced the CSA program to Kulch in the first instance. The Bureau also learned that the Firm audited Kulch's office on multiple occasions, including a review of the CSA program specifically on September 15, 2016, and failed to detect clear signs of violative conduct. Specifically, the Firm failed to note that nearly all CSAs had the exact same non-discretionary consulting services despite vastly different client backgrounds. Further, the Firm failed to notice that the calculation and assessment of consulting fees violated its own procedures. Additionally, the Firm failed to notice that nearly all of Kulch's clients (regardless of objectives, risk tolerance, age, etc.) were paying CSA fees, which were paid directly from clients to the Firm and processed through the Firm. Finally, in

receiving payment from clients, the Firm would check to make sure they had executed their annual agreement prior to processing the check.

10. As part of the Bureau's investigation, the Bureau reached out to clients which had the first two boxes checked in section 1 of their CSA. The Bureau also sent a survey to all clients whose CSAs the Bureau was investigating. Each survey contained ample room under the questions and even an additional lined sheet to encourage former clients to explain their answers or provide any extra information they deemed relevant. When asked if the IAR stated that payment of the CSA fees were required, 72 of the 104 clients surveyed said yes, despite the fact that payment of CSA fees were not required to have an advisory relationship with the Firm. Additionally, when asked if the client believed that it was mandatory to sign the CSA in order to continue to work with Kulch, 92 of the 104 clients indicated yes, that they believed they needed a CSA in order to continue to have Kulch as their advisor. One client wrote that "Mr. Kulch told me [that] if I wanted him to manage my portfolio that quarterly fees were required." A different customer stated that "[w]e never requested additional services nor understood that we were paying for additional services." Another customer noted, in reference to whether payment of CSAs were required, that "[n]o other options were presented." In fact, one customer noted that "[i]f they didn't sign the agreement, [they] were under the impression [that they] would not be advised . . . it was presented to [them] as there was no other option and all brokers within the industry had to do this."
11. Further, when asked if the services they received from Kulch changed after they signed the CSA, 92 of the 104 clients answered no, indicating that the services they received before signing the CSA did not change and were no different than what they were receiving before. One client noted that they "didn't meet [with Kulch] more often & the meetings were the same before and after [they] started paying \$170 a quarter."
12. In surveys and in interviews, nearly a dozen former clients noted that Kulch told them that "regulations" or "laws" had changed that required financial advisors to collect CSA fees in addition to advisory fees. Furthermore, some former clients stated that Kulch told them "Obama changed the rules" about fees, resulting in Kulch needing to use the CSA-fee approach. Another former client, as noted above, wrote that they were "under the impression . . . [that] all brokers within the industry had to do this."
13. The Bureau also spoke with former employees of Kulch and Kulch Financial who worked with him from 2016 to 2020. One former employee, a licensed financial professional, stated that she didn't see Kulch provide any additional services to clients after they entered into CSAs with the Firm and Kulch. Further, this former employee noted that after a client would be removed from the CSA program that the services provided by Kulch would not change.
14. After thoroughly reviewing all survey responses, interviewing former clients, interviewing former employees, and reviewing all the Firm's policies and procedures, the Bureau alleged that most of the CSA fees investigated were unlawfully charged.

STATEMENTS OF LAW

- II. The staff of the Bureau make the following statements of law under N.H. RSA 421-B, and regulations thereunder:
1. Kulch is a "person" pursuant to N.H. RSA 421-B:1-102(39).
 2. Kulch was an "investment adviser representative" pursuant to N.H. RSA 421-B:1-102(27) and an "agent" of the Firm pursuant to N.H. RSA 421-B:1-102(3).
 3. Pursuant to N.H. RSA 421-B:5-502(a)(2), "[i]t is unlawful for any person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities: (2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person." The Bureau alleges that Kulch was in violation of this provision by engaging in a practice which caused a number of clients to pay both advisory fees and separate, quarterly CSA fees, sometimes on multiple accounts, for services nearly indistinguishable from what clients were supposed to be receiving from the advisory relationship.
 4. Pursuant to N.H. RSA 421-B:4-412(c), "[i]f the secretary of state finds that the order is in the public interest and subsection (d) other than subsection (d)(7), (d)(11) or (d)(14) authorizes the action, an order issued under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of \$2,500 for each violation on a registrant and if the registrant is (i) a broker dealer or investment advisor, (ii) any partner, officer, or director, any person having similar functions, or (iii) any person directly or indirectly controlling the broker-dealer or investment advisor." Kulch is subject to this provision.
 5. Pursuant to N.H. RSA 421-B:6-604(a), if the secretary of state determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter, he shall have the power to issue and cause to be served an order directing the person to cease and desist from engaging in the act, practice, or course of business. Kulch is subject to this provision.
 6. Pursuant to N.H. RSA 421-B:6-604(d), the secretary of state may impose a civil penalty up to a maximum of \$2,500 for a single violation. Each of the acts shall constitute a separate violation. Kulch is subject to this provision, and each annual execution of a CSA described above with each client constitutes a single violation.
 7. Also pursuant to N.H. RSA 421-B:6-604(d), in addition to a civil penalty, "every such person who is subject to such civil penalty, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, or be barred from registration or licensure . . ." Kulch is subject to this provision.

8. Pursuant to N.H. RSA 421-B:6-604(e), the secretary of state may recover restitution of losses incurred. Kulch is subject to this provision.
9. Pursuant to N.H. RSA 421-B:6-604(g), the secretary of state may recover investigative costs. Kulch is subject to this provision.

UNDERTAKINGS

- III. In view of the foregoing, Kulch agrees to the following undertakings and sanctions:
1. Kulch agrees that he voluntarily consented to the entry of this Consent Order and represents and avers that no employee or representative of the Bureau has made any promise, representation, or threat to induce their execution.
 2. Kulch agrees to waive his right to an administrative hearing and any appeal thereof under N.H. RSA 421-B.
 3. Kulch agrees that this Consent Order is entered into for purpose of resolving only the matter as described herein. This Consent Order shall have no collateral estoppel, res judicata or evidentiary effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Kulch which the Bureau has no knowledge at the time of the date or final entry of this Consent Order.
 4. Kulch may not take any action or make or permit to be made any public statement including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects Kulch's testimonial obligations or right to take legal positions in an investigation or litigation in which the Bureau is not a party.
 5. Kulch agrees to permanently cease and desist from further violations of N.H. RSA 421-B:5-502(a)(1) by engaged in a practice which caused a number of clients to pay both advisory fees and separate, quarterly CSA fees, sometimes on multiple accounts, for services nearly indistinguishable from what clients were supposed to be receiving from the advisory relationship.
 6. Kulch agrees to be permanently barred from securities licensure in the state of New Hampshire pursuant to N.H. RSA 421-B:6-604(d).
 7. Kulch agrees to be held jointly and severally liable with the Firm for payment of restitution, penalties, and costs of investigation as described in this Consent order. The Firm also agrees to be held jointly and severally liable with Kulch under cover of a separate Consent Order, incorporated herein by reference, executed between the Firm and the Bureau.

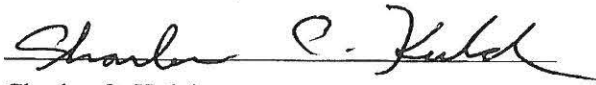
8. Upon execution of this Consent Order, Kulch agrees, jointly and severally with the Firm, to pay restitution to afflicted clients in the amount of six hundred sixty-three thousand three hundred and fifty-eight dollars and twenty-two cents (\$663,358.22).
9. Upon execution of this Consent Order, Kulch agrees, jointly and severally with the Firm, to pay the State of New Hampshire an administrative fine of three hundred twenty-five thousand dollars (\$325,000) and the Bureau's cost of investigation in the amount of one hundred thousand dollars (\$100,000). Payments must be made by 1) certified check; 2) payable to the State of New Hampshire; and 3) mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire.
10. Kulch agrees that all fines, penalties, and/or monies paid pursuant to remediation offers by Kulch pursuant to this Consent Order are intended by Kulch and the Bureau to be a contemporaneous exchange for new value given to Kulch pursuant to 11 U.S.C. §547(c)(1)(A) and are, in fact, a substantially contemporaneous exchange pursuant to 11 U.S.C. §547(c)(1)(B).
11. This Consent Order is not intended to subject the Firm to disqualification under federal securities laws, rules, or regulations thereunder, or the rules or regulations of any self-regulatory agency, nor the laws, rules, or regulations of the various states and U.S. Territories, including without limitation, any disqualification from relying upon the registration exemption or safe harbor provisions. In addition, this Consent Order is not intended to be the basis for any such disqualification.

IV. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Kulch pay restitution, jointly and severally with the Firm, to afflicted clients in the amount of six hundred sixty-three thousand three hundred fifty-eight dollars and twenty-two cents (\$663,358.22).
2. Kulch pay, jointly and severally with the Firm, an administrative fine of three hundred twenty-five thousand dollars (\$325,000) and the Bureau's cost of investigation of one hundred thousand dollars (\$100,000).
3. Kulch cease and desist from further violations of N.H. RSA 421-B:5-502(a)(2).
4. Kulch be permanently barred from any securities licensure in New Hampshire.
5. Kulch comply with all above-referenced undertakings.

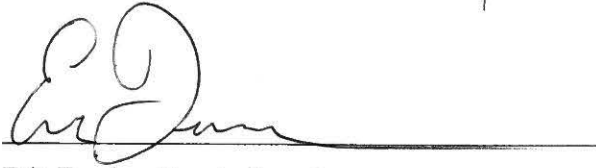
SO ORDERED.

Executed this ~~14th~~ day of FEB., 2024.



Charles C. Kulch

Executed this 21st day of February, 2024.



Eric Forcier, Deputy Secretary