



Ontario
Securities
Commission

Commission des
valeurs mobilière
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto, ON M5H 3S8

CP 55, 19^e étage
étage, 20 rue queen ouest
Toronto, ON M5H3S8

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
HELEN KUSZPER and PAUL KUSZPER**

**STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

I. OVERVIEW

1. This is a case of insider trading and tipping by a mother and her son. Between April 29 and May 7, 2008, Helen and Paul Kuszper traded with knowledge that Kingsway Financial Services Inc. (“Kingsway”) would report a material net loss for its Q1 2008 financial results before the information was publicly disclosed.
2. Helen acquired the information in her capacity as a Senior Accountant within Kingsway’s Investment Reporting Group and had tipped the information to her son.
3. Commencing on April 29 and until the material loss was publicly disclosed (May 7), the Kuszpers traded strategically and deceptively in Kingsway puts and calls with knowledge that Kingsway’s share price would decline. To profit during this period, the Kuszpers purchased hundreds of Kingsway put options and also sold Kingsway call options short. To avoid loss in respect of their existing Kingsway investments, the Kuszpers also divested their accounts of Kingsway call options and also covered open Kingsway put options which had been previously sold short.
4. The Kuszpers often discussed their illegal trading in code.
5. Helen and Paul Kuszper collectively realized over \$300,000 in profits after Kingsway publicly announced the material loss. Through their loss avoidance transactions, the Kuszpers had also managed to avert considerable loss.

II. BACKGROUND

(a) Kingsway Financial Services Inc.

6. Kingsway Financial Services Inc. (“Kingsway”) is a reporting issuer in Ontario with shares listed on the Toronto Stock Exchange and the New York Stock Exchange under the trading symbol “KFS”.
7. Kingsway is a property and casualty insurance company which specializes in providing non-standard automobile and trucking insurance throughout North America.

(b) The Respondents

8. Helen Kuszper (“Helen”) is a resident of Mississauga, Ontario. At the material time, Helen was employed as a Senior Accountant in the Investment Reporting Group of Kingsway.
9. Paul Kuszper (“Paul”) is also a resident of Mississauga, Ontario and is Helen’s son. During the material period, Paul was employed as an Accountant in St. John’s, Antigua.

III. THE UNDISCLOSED MATERIAL INFORMATION

10. The material information in this case relates to the negative financial results for Kingsway’s first quarter ended March 31, 2008 (“Q1 2008”).

(a) The Press Release (May 7, 2008)

11. On May 7, 2008 (after the close of trading), Kingsway reported a net loss of \$34.4 million for its Q1 2008 financial results. In Kingsway’s press release (the “Press Release”), the company stated that the results were “unacceptable” and were primarily attributable to a \$52.8 million reserve increase at its American subsidiary, Lincoln General (the “Lincoln Reserve Increase”).

(b) Draft Quarterly Financial Statements (April 29, 2008)

12. The material loss for Q1 2008 first came to be reflected in Kingsway’s draft quarterly financial statements on April 29, 2008. On this day, the draft financials were revised to

incorporate the Lincoln Reserve Increase which caused Kingsway's income to dramatically decline and reflect a net loss of \$26.4 million.¹

IV. THE INSIDER TRADING AND TIPPING

(a) The Insider Trading and Tipping

13. On April 29, 2008 (the same day Kingsway's draft Q1 2008 financial statements were revised to reflect the \$26.4 million loss), the Kuszpers began to trade with the benefit of Kingsway's undisclosed material loss.
14. Helen had become aware of the information in her capacity as a Senior Accountant in Kingsway's Investment Reporting Group. Among other things, her duties required her to review Kingsway's Q1 2008 financials prior to their public release and reconcile these against quarterly investment reporting schedules which she had prepared. A comparison of Kingsway's Q1 2008 financials and Helen's Q1 2008 schedules confirm that Helen reconciled her schedules, prior to the Press Release, against Kingsway financials which had incorporated the Lincoln Reserve Increase and reflected a material loss.
15. With knowledge that Kingsway's loss would cause the share price to decline, the Kuszpers engaged in strategic trading in Kingsway puts² and calls³ designed to maximize profit and avoid loss. To profit:
 - (a) **Purchased Kingsway Puts:** the Kuszpers purchased hundreds of Kingsway put contracts prior to the issuance of the Press Release. Helen began to purchase these puts on April 29. She purchased them first through her son's account (she later denied having made these trades, as set out below). She continued to accumulate put contracts on almost every trading day from April 29 until the Press Release was issued, in small increments, and on an alternating basis through Paul and her own

¹ On May 1, Kingsway's draft financials were further revised to reflect a larger net loss of \$34.4 million, which was ultimately reported in the Press Release, as noted above.

² *Put:* An option contract giving the owner the right, but not the obligation, to sell a specified amount of an underlying asset at a set price within a specified time. The buyer of a put option estimates that the underlying asset will drop below the exercise price before the expiration date.

³ *Call:* An option contract giving the owner the right, but not the obligation, to buy a specified amount of an underlying security at a specified price within a specified time. The buyer of a call option estimates that the underlying asset will increase above the exercise price before the expiration date.

trading accounts. By May 7, the Kuszpers had acquired over 980 Kingsway put contracts at considerable cost (\$31,574), all with a short expiration date of May 16.

Date	Helen Kuszper	Paul Kuszper
April 29, 2008		Bought 10 KFS Puts
April 29, 2008		Bought 100 KFS Puts
April 30, 2008		Bought 100 KFS Puts
April 30, 2008		Bought 100 KFS Puts
April 30, 2008	Bought 100 KFS Puts	
May 1, 2008		Bought 100 KFS Puts
May 1, 2008	Bought 100 KFS Puts	
May 2, 2008	Bought 28 KFS Puts	
May 2, 2008	Bought 100 KFS Puts	
May 2, 2008		Bought 50 KFS Puts
May 5, 2008	Bought 100 KFS Puts	
May 7, 2008	Bought 50 KFS Puts	
May 7, 2008	Bought 50 KFS Puts	
Total =	528 Puts	460 Puts

- (b) **Sold Calls Short:** On May 1, Paul also sold short⁴ 50 Kingsway call options.

Date	Helen Kuszper	Paul Kuszper
May 1, 2008		Sold 50 KFS Calls

16. Further, to avoid future loss on their existing Kingsway holdings:

- (a) **Sold Existing Calls:** Helen divested her account of 75 Kingsway call options on April 29. She had been holding these calls since February and sold them at a loss.

Date	Helen Kuszper	Paul Kuszper
April 29, 2008	Sold 75 KFS Calls	

- (b) **Closed Existing Open Puts:** On May 1, Paul also closed 57 open Kingsway put options which he had sold short in February.

Date	Helen Kuszper	Paul Kuszper
May 1, 2008		Bought 30 KFS Puts
May 1, 2008		Bought 27 KFS Puts

17. The Kuszpers were in regular contact during the above trading period and would often discuss the insider trading in code language. For example:

⁴ *Short Selling:* The selling of a security that the seller does not own, or any sale that is completed by the delivery of a security borrowed by the seller. Short sellers assume that they will be able to buy the security at a lower amount than the price at which they sold short.

- (a) on April 30, 2008, while accumulating Kingsway put contracts prior to the issuance of the Press Release, Helen e-mailed Paul and stated: “*still watching the potatos [sic], just like tinky wait and watch and then pounce.*” To which Paul responded: “*good metaphor... just don’t go too wild!*” Staff allege that the term “potatos” was a metaphor for “Kingsway options”. Helen was indicating to her son that she was continuing to monitor the Kingsway options market, waiting for further opportunities to purchase Kingsway options; and
- (b) on May 1, six days prior to the issuance of the Press Release, Helen sent an urgent e-mail to Paul instructing him to “*sell to open 50 jun 12 call for barabola a 2.40*”. To which Paul responded: “*i sold at 2.45*”. To which Helen replied: “*that will net us 10 g’s*”. Staff allege that the term “barabola” was code for “Kingsway”. Helen was instructing Paul on May 1 to sell as an opening transaction (that is, short) 50 Kingsway calls expiring in June with a strike price of \$12 at a price of \$2.40. As noted below, Paul did sell 50 Kingsway calls short on May 1 at \$2.45, as he indicated in his reply to his mother, and covered the position on May 12, resulting in a net profit of \$11,292.

(b) Profit and Loss Avoided

18. After the Press Release was issued (May 7, after the close of trading) and the material loss was publicly disclosed, Kingsway’s share price fell dramatically. The stock price closed the next trading day (May 8) at \$9.97, which represented a one day decline of 30% from the closing price of \$14.26 the day before.
19. The Kuszpers proceeded to immediately sell their Kingsway puts for considerable profit:

Date	Helen Kuszper	Paul Kuszper	Proceeds
May 8, 2008		Sold 150 KFS Puts	\$44,852.51
May 8, 2008		Sold 140 KFS Puts	\$55,815.01
May 8, 2008		Sold 10 KFS Puts	\$3,987.50
May 8, 2008	Sold 150 KFS Puts		\$60,557.53
May 8, 2008	Sold 150 KFS Puts		\$59,057.52
May 9, 2008		Sold 100 KFS Puts	\$29,365.01
May 9, 2008		Sold 60 KFS Puts	\$18,815.01
May 9, 2008	Sold 128 KFS Puts		\$29,870.64
May 9, 2008	Sold 100 KFS Puts		\$39,734.41
TOTAL =			\$342,055.14

20. Paul also later purchased Kingsway calls in order to cover his earlier open short position in these options and profited more than \$11,000 from this trade:

Date	Transaction	Total
May 1, 2008	Sold 50 KFS Calls - Opening	\$12,115.00 (Proceeds)
May 12, 2008	Bought 50 KFS Calls - Closing	\$822.49 (Cost)
TOTAL =		\$11,292.51

21. The Kuszpers remained in regular contact during this period and would continue to discuss their trading in code. For example:

(a) on May 8, the day after the Press Release had been issued and while selling the Kingsway puts which they had purchased earlier, Paul e-mailed his mother asking: “Whats [sic] going on JERK!” To which Helen responded: “*NOTHING since we last spoke, just watching barabola wondering when to pounce next, what about you*”. Paul: “*so 16gs tomorrow?\$\$\$\$\$\$\$ in my chequing?*” Helen: “*3 days to settle. So early next week*” Paul: “*How many potatoes for meeeee?*” Helen: “*15 or 16*” Paul: “*huhhh... thats [sic] just from today... more potatoes to come?*” Helen: “*fuffalo, talk to you tonight*”. Staff allege that the term “barabola” was once again being used as a code word for “Kingsway” and that Helen was monitoring the Kingsway option market waiting for further opportunities to now sell previously purchased Kingsway puts. Staff further allege that the term “potatoes” now meant “money” and that Helen was being requested by Paul to transfer trading proceeds to his chequing account. The next morning, trading profits were transferred to Paul’s chequing account in the amount of \$35,000.

22. The total profit realized by the Kuszpers from their trading (after accounting for commissions) is at least \$321,772. Of this amount, Helen Kuszper realized \$173,080 and Paul Kuszper realized profits of \$148,692. As noted above, the Kuszpers also avoided considerable loss through their loss avoidance transactions.

V. FALSE AND MISLEADING STATEMENTS TO STAFF

23. During separate compelled examinations, Helen and Paul Kuszper each misled Staff by denying that Helen had access to Paul's trading account and that she had executed the Kingsway put option trades on his behalf.
24. Internet and trading records indicate that all put option trading originated from a computer located at Kingsway's head office in Mississauga, Ontario and at a time when Paul was living abroad in Antigua.
25. Only after being confronted with evidence to the contrary did Paul admit to Staff that he had instructed his mother to execute the put option trades in his account on his behalf.

VI. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

26. Pursuant to subsection 76(6) of the Act, the Kuszpers' trading in puts and calls constitutes trading in securities of Kingsway.
27. Throughout the relevant trading period, each of Helen and Paul were in a special relationship with Kingsway. Helen was an employee of Kingsway and was, accordingly, a person deemed to be in a special relationship with Kingsway within the meaning of subsection 76(5)(c) of the Act. Paul had learned material information with respect to Kingsway from his mother who he knew to be an employee of Kingsway and was, accordingly, also deemed to be in a special relationship with the issuer pursuant to subsection 76(5)(e).
28. Staff allege that by purchasing and selling securities of Kingsway with knowledge of Kingsway's undisclosed material loss, Helen and Paul contravened subsection 76(1) of the Act and acted contrary to the public interest.
29. Staff further allege that by informing Paul of the material non-public information regarding Kingsway, Helen contravened subsection 76(2) of the Act and acted contrary to the public interest.

30. Staff further allege that both Helen and Paul Kuszper made misleading and untrue statements to Staff contrary to subsection 122(1) of the Act and the public interest.
31. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED AT TORONTO this 13th day of December, 2010.