

B 10 (Official Form 10) (12/12)

UNITED STATES BANKRUPTCY COURT District of Delaware		PROOF OF CLAIM
Name of Debtor: Penson Worldwide, Inc., et al.		Case Number: 13-10061(PJW)
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		<div style="font-size: 24pt; font-weight: bold; margin-bottom: 5px;">RECEIVED</div> <div style="font-size: 18pt; font-weight: bold; margin-bottom: 5px;">MAR 11 2013</div> <div style="font-size: 14pt; font-weight: bold; margin-bottom: 5px;">KURTZMAN CARSON CONSULTANTS</div> <div style="font-size: 10pt; font-weight: bold; margin-bottom: 5px;">COURT USE ONLY</div> <div style="font-size: 10pt;"> <input type="checkbox"/> Check this box if this claim amends a previously filed claim. </div> <div style="font-size: 10pt;"> Court Claim Number: _____ (If known) </div> <div style="font-size: 10pt;"> Filed on: _____ </div>
Name of Creditor (the person or other entity to whom the debtor owes money or property): Aleksander Lesz and Grazyna Lesz		
Name and address where notices should be sent: Aleksander Lesz c/o W. Scott Greco, Greco & Greco, P.C., 1300 Old Chain Bridge Rd., McLean, VA 22101		
Telephone number: (703) 821-2777 email: wsgreco@grecogrecolaw.com		
Name and address where payment should be sent (if different from above): same		
Telephone number: email:		
1. Amount of Claim as of Date Case Filed: \$ <u>539,996.68</u>		
If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>See attachment incorporated herein</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: 3 9 9 0	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Value of Property: \$ _____		Basis for perfection: _____
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable		Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____ (when case was filed)
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)().
Amount entitled to priority: \$ _____		
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

- Date Stamped Copy Returned
- No self addressed stamped envelope
- No copy to return



7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

RECEIVED

MAR 11 2013

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

KURTZMAN CARSON CONSULTANTS

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Aleksander Lesz and Grazyna Lesz

Title: _____

Company: _____

Address and telephone number (if different from notice address above):

same as above

[Handwritten Signature]
(Signature)

03/06/13
(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

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FREDERICK D. GRECO
ADMITTED TO PRACTICE IN
VA, DC, MD & NY

W. SCOTT GRECO
ADMITTED TO PRACTICE IN
VA, DC, & MD

March 8, 2013

BY FEDEX OVERNIGHT DELIVERY

Penson Claims Processing Center
c/o Kurtzman Carson Consultants, LLC
2335 Alaska Avenue
El Segundo, CA 90245

Re: *In Re: Penson Worldwide, et al.*
U.S. Bankruptcy Court, District of Delaware, Case No. 13-10061
Creditor Proofs of Claim for Aleksander and Grazyna Lesz, Natalia Lesz,
and GNA Societe Anonyme SPF
Debtor: Penson Financial Services, Inc.

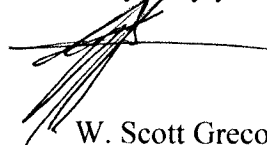
Dear Sir or Madam:

Enclosed please find proofs of claim forms for Aleksander and Grazyna Lesz, Natalia Lesz, and GNA Societe Anonyme SPF. These proofs of claim are to be filed against the Debtor, Penson Financial Services, Inc. in the above-referenced case. Please advise if anything further is needed.

Also enclosed are extra copies of the proofs of claim and a stamped return envelope addressed to my office. Please date stamp the extra copies and return them to me in the enclosed envelope.

Please call with any questions.

Very truly yours,



W. Scott Greco

WSG:lm
Enclosures

**In Re: Penson Worldwide, Inc. et al.
U.S. Bankruptcy Court for the District of Delaware
Case No. 13-10061(PJW)**

**Attachment to Proofs of Claim for Aleksander Lesz, Grazyna Lesz, Natalia Lesz,
and GNA Societe Anonyme Holding**

1. Aleksander Lesz first met Roman Sledziejowski pursuant to a recommendation by an employee at Citibank Poland in the early 2000's. Mr. Sledziejowski was working for Smith Barney at the time. Mr. Sledziejowski was originally from Poland but was working in the United States as a NASD registered representative selling securities. Mr. Lesz and his wife Grazyna Lesz opened an account with Mr. Sledziejowski and moved with him to several subsequent firms.

2. Ultimately Mr. Sledziejowski opened his own Broker-Dealer securities firm, TWS Financial, LLC (hereafter "TWS"), and in 2006 Mr. Lesz opened a joint account there with his wife, Grazyna Lesz. The Lesz's daughter, Natalia Lesz also opened an account at TWS 2007, and Mr. Lesz opened an account at TWS for his Luxembourg corporation, GNA Societe Anonyme Holding (GNA), in 2007. Mr. Lesz is the President and owner of GNA. Aleksander, Grazyna, and Natalia Lesz are all Polish citizens.

3. Penson Financial Services, Inc. (hereafter "Penson") was the clearing firm used by TWS to process all back office transactions, to process and execute deposits and withdrawals, and to hold all securities and funds in the TWS accounts. Penson further was responsible for issuing all monthly statements, confirmations, and withdrawal documents to the customers.

4. In their discussions about the accounts, Mr. Lesz requested that Mr. Sledziejowski invest in conservative safe investments such as bonds and government backed securities, and Mr. Sledziejowski always assured Mr. Lesz that he was doing so.

5. As of January, 2008, the accounts were valued as follows:

a. Aleksander and Grazyna Lesz:	\$1,649,126.80 (two accounts)
b. Natalia Lesz:	\$ 329,152.77
c. GNA:	\$ 845,691.60

6. Throughout the life of the accounts, the monthly statements and confirmations issued by Penson listed the TWS office handling the accounts as 1101 Pennsylvania Ave, Suite 600, Washington, DC 20004. Thus, Washington, D.C. law applies to the Lesz's and GNA's claims.

7. Starting in approximately April, 2009, Mr. Sledziejowski and TWS began to fraudulently withdraw and convert funds without authorization from the GNA and Lesz accounts, as well as multiple other customer accounts.

8. Penson processed the fraudulent withdrawals and transfer of funds to Mr. Sledziejowski's holding company, Innovest Holdings, LLC, which owned TWS. Upon information and belief, these withdrawals were processed by Penson without the submission of any written requests or signatures (legitimate or otherwise) from the customers.

9. The fraudulent and unauthorized withdrawals from the joint Lesz account and the GNA account included the following fraudulent and unauthorized withdrawals processed by Penson:

Acct #	Date	Amount	Account Title
38002465	4/21/2009	\$ 524,000.00	Aleksander Lesz & Grazyna Lesz JTWROS
38002465	7/22/2009	\$ 15,996.68	Aleksander Lesz & Grazyna Lesz JTWROS
38002200	10/1/2009	\$ 125,000.00	GNA Societe Anonyme Holding
38002200	11/3/2009	\$ 75,000.00	GNA Societe Anonyme Holding
38002200	11/20/2009	\$ 175,000.00	GNA Societe Anonyme Holding
38002200	3/1/2010	\$ 90,000.00	GNA Societe Anonyme Holding
38002200	7/14/2010	\$ 150,000.00	GNA Societe Anonyme Holding
38002200	8/9/2010	\$ 160,000.00	GNA Societe Anonyme Holding
38002200	9/21/2010	\$ 40,000.00	GNA Societe Anonyme Holding
38002200	10/1/2010	\$ 25,000.00	GNA Societe Anonyme Holding
38002200	10/22/2010	\$ 20,000.00	GNA Societe Anonyme Holding
38002200	11/3/2010	\$ 19,000.00	GNA Societe Anonyme Holding
38002200	12/1/2010	\$ 50,000.00	GNA Societe Anonyme Holding
38002200	10/11/2011	\$ 130,000.00	GNA Societe Anonyme Holding
38002200	10/14/2011	\$ 25,000.00	GNA Societe Anonyme Holding

10. The fraudulent and unauthorized withdrawals from the Natalia Lesz account (38001194) which were processed by Penson included the following:

a. November 2, 2009:	\$300,000.00
b. November 23, 2009:	\$ 30,000.00
c. February 16, 2010:	\$350,000.00
d. July 16, 2010:	\$ 7,266.68

11. Mr. Sledziejowski apparently wired back \$343,000 into the Natalia Lesz account in December, 2009.

12. The above fraudulent withdrawals involved the sales of securities to free up funds for withdrawal, implicating federal and state securities laws.

13. During this time period Penson was apparently sending monthly statements and confirmations for the joint account and the Natalia Lesz account to Natalia Lesz's West Hollywood address despite the fact that she moved from there in approximately

May, 2008. Mail should have been returned to Penson putting them on notice that the statements and confirmations were not being delivered to the customers.

14. The Luxembourg address for GNA on the account statements was the address of its registered office. However, they were not sent on a regular basis despite the numerous requests and reminders sent to TWS by GNA's directors and accountant, thus making it impossible to finalise and establish the 2010 annual accounts so far. These statements were not sent on to Mr. Lesz, and Mr. Sledziejowski was aware that the customers were not receiving the statements sent to the West Hollywood or Luxembourg addresses. Mr. Lesz would periodically receive statements for all of the accounts hand delivered by Mr. Sledziejowski when he would visit Poland. These statements were later determined to be fake and fraudulent, thereby hiding the fraudulent transfers from the customers, and grossly overstating the values of the accounts.

15. The above fraudulent withdrawals in the above accounts and the accounts of other customers wherein millions of dollars were being transferred from customers to TWS's holding company constituted a clear pattern of wrongful and fraudulent activity. This pattern should have and did put Penson on notice that it was involved in potential fraudulent activity, yet it continued to process the withdrawals and took no action to stop it or otherwise notify the customers of the fraudulent conduct.

16. Penson was required by federal law to implement and establish anti money laundering procedures under the Bank Secrecy Act and FINRA Rule 3310. Penson failed to comply with its AML duties and failed to monitor accounts for suspicious activity and failed to discover and report red flags and suspicious activity. Suspicious activity in this case involved multiple millions of dollars being transferred by Penson from customer accounts to its introducing broker's holding company through multiple transactions.

17. Pursuant to the legal counts below, Penson's wrongful action and inaction directly and indirectly caused the loss of the fraudulently withdrawn funds set out above, totaling \$1,968,263.20 in damages, plus interest and reasonable attorneys fees.

18. The Lesz's and GNA will be filing a FINRA arbitration claim against Apex Clearing Corporation as the successor in interest to Penson, and the filing of this Proof of Claim does not in any way waive such claims.

Count I.

Violation of the Washington, D.C. Securities Act, Common Law Fraud and Constructive Fraud, and Securities Fraud

1. The Washington, D.C. Securities Act, DC Code 31-5605.02, et seq., imposes civil liability upon persons for the commission of securities fraud and provides for the recovery of damages, reasonable attorneys fees, and interest. Specifically, Section 31-5605.02 makes it unlawful, in the rendering of investment advice or in the offer, sale, or purchase of any securities or investments, to directly or indirectly:

“(A) Employ a device, scheme or artifice to defraud; (B) Obtain money or property by means of any untrue statement of a material fact or an omission to state a

material fact in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (C) Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a person.”

2. Aiding and abetting liability is further set out in DC Code 31-5605.05:

“(c) A person who directly or indirectly controls a person liable under subsection (a) of this section; a partner, officer, or director of the person liable; a person occupying a similar status or performing similar functions; an employee of the person liable who materially aids in the conduct giving rise to the liability; and a broker-dealer or agent who materially aids in the conduct shall be liable jointly and severally with, and to the same extent as the person liable, unless her or she is able to sustain the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.”

3. Federal securities fraud under Section 10(b) of the Securities Exchange Act of 1934 is defined as “(1) material misstatements or omissions, (2) indicating an intent to deceive or defraud, (3) in connection with the purchase or sale of a security.” *Brown v. E.F. Hutton Group, Inc.*, 991 F.2d 1020 (2nd Cir. 1993).

4. The elements of a cause of action for common law fraud are a false representation of a material fact, made intentionally and knowingly, with intent to mislead, reliance by the party misled, and resulting damage to him.

5. Constructive fraud and negligent misrepresentation differs from actual fraud in that the misrepresentation of material fact is not made with the intent to mislead, but is made innocently or negligently although resulting in damage to the one relying on it.

6. Person violated the DC Securities Act and committed federal securities fraud by aiding and abetting the fraud and securities fraud of TWS and Mr. Sledziejowski by its acts above.

Count II. Negligence

1. As set out in *Merrill Lynch, Pierce, Fenner & Smith v. Cheng*, 697 F.Supp. 1224, 1227 (D.D.C. 1988): “It is clear from the case law that a stockbroker can be held liable to his client for negligence.” The *Cheng* court went on to state that although it did not find a private right of action based upon NASD [now known as FINRA] rules, a violation of the NASD rules would be a “factor for consideration by the jury as to whether [the broker] acted as a ‘reasonable’ person in his conduct...” *Id.*

2. Person also owed the Lesz’s and GNA a duty of ordinary care which it breached by the actions and inaction above as well as the FINRA mandated duties of observing high standards of commercial honor and just and equitable principles of trade.

3. Penson's negligent actions set out above constituted negligent breaches of its duties owed to the Lesz's and GNA. Penson negligently breached those duties by their acts and failure to act as set out herein, including, but not limited to breaching its duties to only transfer funds from the account with proper authorization, its duties to institute and follow anti money laundering procedures, and its duties to protect its customers from fraud upon being on notice of red flags and unusual account activities by its introducing firm.

**Count III.
Breach of Contract**

1. Penson was a member of FINRA at the time of the fraudulent withdrawals. As such, it was contractually subject to comply with FINRA's rules and regulations. The Lesz's and GNA were third party beneficiaries of Penson's contracts and agreements with FINRA and the Rules promulgated by FINRA. Furthermore, Penson had an express and implied contract with the Lesz's and GNA to comply with FINRA Rules, to comply with federal and state law, and to require proper withdrawal procedures be followed when transferring funds from customer accounts. Penson's actions above violated FINRA Rules, including aiding and abetting securities fraud and the failure to observe high standards of commercial honor and just and equitable principles of trade.

**Count IV.
Clearing Firm Liability**

1. In McDaniel v. Bear Stearns & Co., Inc., 196 F.Supp.2d 343 (S.D.N.Y. 2002) the Court addressed and confirmed a NASD arbitration award against a clearing firm, Bear Stearns, which had found Bear liable for aiding and abetting the fraud of the introducing broker and liable for breach of contract. The McDaniel Court found as follows at 353:

"... where a clearing firm moves beyond performing mere ministerial or routine clearing functions and becomes actively and directly involved in the introductory broker's actions, it may expose itself to liability with respect to the broker's misdeeds."

2. The Lesz's submit that the action and inaction of Penson set out above in approving an extended pattern of withdrawals and transferring funds without written authorization went beyond performing mere ministerial or routine clearing functions and became actively involved in TWS's actions. Furthermore, the extensive and repetitive nature of the withdrawals from many customer accounts should have raised red flags to Penson of fraudulent activity. These red flags were ignored by Penson, further evidence of involvement beyond ministerial functions.

3. The McDaniel Court also discussed and confirmed the arbitration panel's finding that the customer agreement with the clearing firm created a "duty of good faith

and fair dealing” and stated that this “determination was not contrary to well-established law.” Id. at 361. Similar to the case at bar, Penson owed a duty of good faith and fair dealing to the Lesz’s and GNA which they violated by the actions above.

4. Similarly, the court in Koruga v. Fiserv Correspondent Services, Inc., 183 F.Supp.2d 1245 (D.Or. 2001) also confirmed an arbitration award finding liability against a clearing firm, Fiserv. Both the arbitration panel and the Court relied upon the Washington and California securities acts which extends liability to a broker-dealer who “materially aids” in the transaction. Penson is therefore also liable for its material aid with regard to federal and DC securities fraud.