

**NASD
OFFICE OF HEARING OFFICERS**

Department of Market Regulation,

Complainant,

v.

Carl Cirillo (CRD No. 1321207)

[REDACTED]

Respondent.

Disciplinary Proceeding No.:
20050000286-03

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant, the Department of Market Regulation, alleges as follows:

Summary

1. Carl Cirillo ("Cirillo"), while a registered representative of Delta Asset Management Co. ("Delta"), a member firm, employed fraudulent and deceptive sales practices when he recommended and sold to two customers units in a private placement of Delta Capital Holdings ("DCH"), a company that was owned and controlled by his stepfather, Barry Schwartz. Cirillo also offered a guarantee against loss to one of the two customers.

The Respondent

2. Cirillo was employed as a General Securities Representative with Delta from March 2000 through July 2004. He first became registered in 1985, and has worked at ten firms: Citiwide Securities; Greentree Securities; Levco Securities; Barrett Day Securities; BG Capital;

Alex Moore & Company; Gold Country Securities (*a.k.a.* FI Trading.com); Delta; GunnAllen Financial; and Basic Investors, where he is currently employed.

Barry Schwartz

3. Cirillo's stepfather, Barry Schwartz ("Schwartz"), was first employed in the securities business in 1982, and has worked at five member firms: Citiwide; Greentree; Levco; Barrett Day; and Delta. Schwartz was employed as a "non-registered fingerprint person" at Delta while his stepson was working there. Schwartz had an office at Delta and was actively involved in operating and managing the broker-dealer despite not being registered.

4. Schwartz was also the president, secretary, treasurer, director, and sole stockholder of Delta Asset Holding Corp. ("Asset Holding"), an entity through which he was paid for providing consulting services to the broker-dealer. Delta's records reflect that the firm paid Asset Holding \$757,481 in 2001, and \$706,000 in 2002.

5. Schwartz was last registered with NASD in 1995, when he was vice president, managing partner, and 50% owner of Barrett Day. He left Barrett Day after working there for seven years, purportedly to retire. His departure coincided with several disciplinary actions:

- In March 1995, the same month Schwartz left Barrett Day, Connecticut revoked his registration and ordered the firm to pay \$12,000 in fines;
- In May 1995, NASD expelled Barrett Day for non-payment of fines and fees; and
- In July 1996, Pennsylvania revoked Schwartz's and the firm's registrations for failing to exercise diligent supervision over their agents, and for the wrongdoing that took place as a result: sales of unregistered securities; employment of unregistered agents; unsuitable recommendations to customers; and omissions of material facts in the offer and sale of securities.

6. In May 1998, Barrett Day was dissolved in bankruptcy.

7. Previously, Schwartz had been named in several customer arbitrations, and NASD and state securities regulators had on several occasions imposed disciplinary sanctions against him and his firm:

- In 1991, Minnesota censured and fined Barrett Day \$7,500 for selling unregistered non-exempt securities;
- In August 1992, NASD censured Schwartz and imposed a \$20,000 fine jointly on him and another individual. These sanctions were imposed after Schwartz agreed to settle an NASD complaint alleging that he and Barrett Day violated the penny stock rules, failed to supervise adequately, and violated NASD's free-riding and withholding interpretation;
- In June 1993, New Mexico revoked Barrett Day's registration and fined the firm \$7,500 for selling unregistered non-exempt securities, employing unlicensed representatives, and failing to supervise;
- In January 1994, Delaware suspended Barrett Day's registration for a year, imposed a fine of \$5,000, and ordered restitution in the amount of \$9,387;
- In March 1994, NASD censured Schwartz, suspended him from acting as a principal for ten business days, and fined him \$10,000. NASD also fined Barrett Day \$10,000 and ordered it to disgorge \$82,419 to its customers. Schwartz agreed to these sanctions to settle a complaint alleging that he and others at the firm charged unfair and fraudulent markups ranging from 81% to 100% over prevailing market prices, and that he failed to establish and maintain a reasonably designed supervisory system; and
- In December 1994, New Jersey revoked Schwartz's registration for dishonest and unethical activities.

8. In January 2005, NASD permanently barred Schwartz for failing to appear and give testimony in connection with Market Regulation's investigation of Delta and the DCH private placement.

The Delta Capital Holdings Private Placement

9. In October 2001, DCH purportedly entered into an agreement to acquire a 20% ownership interest in Delta, the broker-dealer, for \$100,000. As part of the deal, DCH also received an option to purchase an additional 30% of Delta for \$10.

10. In March 2002, DCH was incorporated in Nevada. Schwartz owned all of DCH's issued and outstanding stock. Two weeks later, DCH initiated a Regulation D, Rule 504 private offering with Delta serving as the company's placement agent. A maximum of 500,000 units and minimum of 95,000 units were offered at \$2.00 each. Each unit consisted of one share of Series A Convertible Preferred Stock, convertible into two shares of common stock one year from the date of issuance, and a warrant enabling its owner to purchase one additional share of common stock for \$1.40. The minimum subscription amount was 5,000 units (\$10,000).

11. DCH had no business operations and its only asset, aside from its interest in Delta, was \$750 in cash. Schwartz's stated business plan was to develop DCH into a diversified financial services company offering asset management services and products. DCH was to accomplish this by developing financial business and acquiring brokerage firms and assets such as branch offices and client lists.

CAUSE ONE

Cirillo Engaged in Fraudulent Sales Practices and Made a Guarantee Against Loss

(Violations of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2110, 2120, and 2330(e))

12. The allegations set forth above in paragraphs 1 through 11 are re-alleged and incorporated by reference.

13. In or about July and August 2002, Cirillo, in connection with the purchase or sale of securities, and by the use of means or instrumentalities of interstate commerce, or by the

mails, directly or indirectly, knowingly or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

14. Specifically, Cirillo, deliberately or recklessly made baseless price predictions, and misrepresented and omitted material facts in connection with his recommendations and sales of DCH units to two customers: GG and DM.

Customer GG

15. Customer GG is a wealthy, retired farmer who manages an apartment building. In May 2002, Cirillo took over GG's account from another Delta broker named Mario Rodriguez.

16. In July 2002, Cirillo called GG and recommended that he purchase DCH units to make up for losses GG had sustained in an earlier private placement recommended to him by Rodriguez. In his conversation with GG, Cirillo predicted, without having a reasonable basis in fact, that the price of DCH units would rise from \$2.00 to \$8.00, and then "we will all be rich," or words to that effect.

17. Cirillo misrepresented to GG that investing in DCH was equivalent to investing directly in Delta itself. In fact, the DCH units represented only a small ownership interest in the broker-dealer.

18. Cirillo also misrepresented to GG that Delta was a very sound brokerage firm. He did not inform GG that, according to the firm's financial statements for the year ending December 31, 2001, Delta's net income was only \$52,470, and the firm's assets totaled just \$256,573.

19. Cirillo also failed to inform GG about the serious risks of investing in DCH units and went so far as to contradict specific warnings in the private placement memo by telling GG that DCH was “a sure thing,” or words to that effect.

20. And finally, Cirillo told GG of Schwartz’s business plan for DCH and claimed that Schwartz had a highly successful and profitable record of building and then selling off brokerage firms. However, Cirillo said nothing to GG about Schwartz’s customer arbitrations, Schwartz’s and Barrett Day’s extensive disciplinary histories, or that Barrett Day, the last brokerage firm that Schwartz had owned and operated, had failed and was dissolved in bankruptcy.

21. Following Cirillo’s recommendation, in August 2002, GG purchased 50,000 units in the DCH private placement. That \$100,000 investment is now essentially worthless.

22. By reason of the foregoing, Cirillo used fraudulent and deceptive price predictions, misrepresentations, and omissions in recommending and selling DCH units to customer GG, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2110 and 2120.

Customer DM

23. Customer DM is currently employed as a consultant, partner, and director to a medical equipment company. Previously, he had been an executive with a software technology company and had retired early.

24. DM’s first contact with Cirillo occurred in 2000. DM met with Cirillo and Schwartz, who recommended that he invest in a company that they said was about to go public. Both Cirillo and Schwartz made optimistic price predictions. As a result of their recommendations, DM invested \$400,000. He suffered a substantial loss.

25. When Cirillo contacted DM in July 2002 about purchasing units in the DCH private placement, Cirillo said he would not let DM miss out because he owed DM an opportunity to recover some of his previous losses. Cirillo falsely told DM that there would be two DCH private placements, the first at \$1.00 per unit, and a second a few months later at \$2.00.

26. Cirillo told DM that DCH was raising money to buy brokerage firms that were doing poorly and could be bought at a steep discount, and misrepresented that DCH had already acquired some firms and had plans to acquire several others.

27. Cirillo also misrepresented to DM that Schwartz had a successful track record in building and selling off brokerage firms, and had made so much money doing so, that he had retired. Cirillo told DM that after retiring, Schwartz had become bored and now wanted to get active again by building up and then selling DCH. Cirillo did not inform DM of material facts such as Schwartz's customer arbitrations and disciplinary history. He also failed to disclose Barrett Day's disciplinary history or that the firm, which Schwartz had previously owned and operated, had failed and was dissolved in bankruptcy.

28. Cirillo also misrepresented to DM that DCH would go public within a year, and that Delta would take DCH public, if necessary. He told DM that it would be worth a lot of money to Delta when DCH went public, and that investing in DCH was the equivalent to investing in the broker-dealer itself.

29. Cirillo also led DM to believe that Delta was financially strong and that DCH and Delta were essentially one and the same. He did not inform DM that, according to the firm's financial statements for the year ending December 31, 2001, Delta's net income was only \$52,470, and the firm's assets totaled just \$256,573.

30. And Cirillo said nothing to DM about the serious risks of investing in DCH, and did not disclose that the units offered in the private placement represented only a small interest in Delta, the broker-dealer.

31. Cirillo went further and guaranteed DM against loss by promising DM that if he wished to recover the money he invested prior to the supposedly upcoming second private placement, Cirillo could and would find a buyer and return the full amount of his initial investment within 30 days.

32. Following Cirillo's recommendation and guarantee, in July 2002, DM agreed to purchase 100,000 units of DCH in the private placement at a price of \$1.00 per unit. But to his surprise, when DM received his confirmation for the \$100,000 purchase, he discovered that he had, instead, purchased 50,000 DCH units at \$2.00 apiece.

33. In February 2003, DM contacted Cirillo to tell him he wanted his money back, just as Cirillo had promised. DM requested that Cirillo repay him by April 15. Cirillo told DM that it would be no problem and that he would proceed to do so.

34. In April 2003, however, Cirillo contacted DM to ask for more time to find a buyer. DM agreed to wait an additional 45 days. But, that deadline also passed without the return of DM's money. In the following months, Cirillo offered DM various excuses for failing to fulfill his promise. One such excuse, for example, was that he had located a buyer for DM's shares and had been about to execute the sale, when the prospective purchaser died suddenly.

35. In November 2003, Cirillo called and told DM that he had sold 25,000 of DM's units of DCH, and was able to return one-half of DM's initial investment. But it was not until February 2004, one year after DM first asked Cirillo to return all his money, that Cirillo did so.

36. By reason of the foregoing, Cirillo made an improper guarantee against loss and used fraudulent and deceptive price predictions, misrepresentations, and omissions in recommending and selling DCH units to customer DM, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2110, 2120, and 2330(c).

Request For Relief

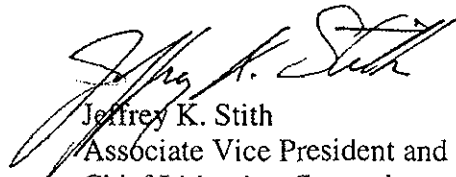
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Date: October 20, 2006



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