

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

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REGISTRATION & DISCLOSURE

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

JERRY W. BURCH (CRD 1450138)



Respondent.

DISCIPLINARY PROCEEDING
No. 2005000324301

HEARING OFFICER:

COMPLAINT

On information and belief, the Department of Market Regulation alleges:

Summary

1. Respondent Jerry W. Burch failed to disclose to his member firm that TDB Capital, his wife's new corporation, had opened a securities account at another broker-dealer and deposited a block of Dogs International stock, which it had begun to sell into the market. At the same time, Burch actively recommended Dogs International stock to his customers without disclosing these material facts. Six customers purchased the stock that day based on his recommendation, but Burch claimed that the transactions were unsolicited. Finally, Burch failed to update his Form U4 after receiving a Wells letter formally notifying him of the staff's investigation.

The Respondent

2. Jerry Burch, age 46, first entered the securities business in 1985 as a registered representative with Pruco Securities Corporation. From March 1986 to February 2002, he was

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registered with four different firms: E.F. Hutton & Company, Inc.; Smith Barney Harris Upham & Co., Inc.; Merrill Lynch Pierce, Fenner & Smith, Inc.; and Pacific American Securities, Inc. In February 2002, Burch joined his present firm, Westfield Bakerink Brozak, LLC (now known as WBB Securities, LLC), where he is a vice president and general securities principal.

Statement of Facts

3. Dogs International was a development stage company that hoped to build or acquire a chain of upscale pet care facilities. In March 2003, the company merged with Juris Travel, a publicly traded shell, but retained the name Dogs International. In its SEC filing for the first quarter of 2003, the newly merged company reported current assets of just \$22,340 and liabilities of \$25,000, with no income or sales.

4. Jerry Burch first heard of Dogs International sometime before February 12, 2003, from a friend and former colleague at Merrill Lynch, Dominic Alvarez, who operated an entity called Elite Capital Partners that assisted startup companies in finding financing. Alvarez told Burch that Dogs International was his principal project.

5. On or about March 19, 2003, Jerry Burch's wife Teri incorporated a company called TDB Capital, Ltd., supposedly for the purpose of entering the pet grooming supply business and starting a "Miss Beverly Hills" pet beauty contest. The name of the new company came from Ms. Burch's initials. According to company documents, Teri Burch was TDB Capital's president, secretary, treasurer, and sole director.

6. At the time, Teri Burch, then age 39, was a San Diego-based flight attendant with American Airlines, while her supposed business partner, Karina Ducoulombier, then age 27, worked as a concierge at the Ritz-Carlton hotel in Dana Point. According to Jerry Burch, the two had been friends for only one to two years.

7. On or about March 28, 2003, Teri Burch opened a securities account for TDB Capital at ACAP Financial, a small broker-dealer located in Salt Lake City. In doing so, Teri Burch stated that her husband, who is identified on the new account form only as "Mr. Burch," was self-employed and worked at home. She did not disclose that he was, in fact, employed by Westfield Bakerink, a broker-dealer.

8. The mailing address, telephone number, and fax number that Teri Burch provided for TDB Capital were those of the couple's home in Newport Beach. According to the account opening documents, Teri Burch was the only person authorized to trade in the account.

9. That same day, Teri Burch deposited into the company's new account 50,000 shares of Dogs International common stock. An ACAP Financial document suggests that these shares were issued to TDB Capital on the previous day.

10. Two other companies with initials in their names opened accounts at ACAP Financial on March 28, 2003. JLA Capital, Ltd., was incorporated in Nevada on March 19, 2003 (the same date, and by the same law firm, as TDB Capital) by Judith Alvarez, a relative of Dominic Alvarez. Like TDB Capital, JLA Capital deposited 50,000 newly-issued shares into its new account that same day.

11. AM Capital, Ltd., was incorporated in Nevada by the same law firm on March 20, 2003 by Alejandra Maj, of Flagler Beach, Florida. Dogs International later acquired and operated its first (and only) kennel in Flagler Beach. AM Capital also opened an account at ACAP on March 28, 2003, and deposited 200,000 shares of Dogs International issued to it on the previous day.

12. March 28, 2003 was also the first day that Dogs International began trading on the OTC Bulletin Board under its new symbol, DOGN. After opening the account at ACAP

Financial, Teri Burch caused TDB Capital to sell 800 shares of Dogs International at \$5.75 per share, for total proceeds of \$4,600. On Monday, March 31, TDB Capital sold an additional 1,000 shares at \$5.70 per share, for a total of \$5,700. And on April 14, 2003, Teri Burch instructed the firm to wire \$8,500 to a Bank of America account at a location in Newport Beach.

13. Jerry Burch did not disclose to Westfield Bakerink, his member firm, the existence of the TDB Capital account at ACAP Financial, or that his wife's company received and sold shares of Dogs International.

14. On the same day that Teri Burch opened the account for TDB Capital at ACAP Financial, March 28, 2003, six of Jerry Burch's clients bought a total of 16,100 shares of Dogs International based on his recommendations. But Burch caused the order tickets for these purchases to be falsely marked unsolicited.

15. On about May 21, 2003, an additional 47,200 shares of Dogs International stock were delivered into the TDB Capital account at ACAP Financial. On June 4 and June 23, 2003, Teri Burch instructed ACAP Financial to wire \$7,500 and \$12,000, respectively, to the same Bank of America account in Newport Beach as before.

16. Meanwhile, Burch continued to recommend the stock to other customers without disclosing his material adverse interest. He even purchased a small number of shares for a trust account at Westfield Bakerink that he held with his wife. During the three-month period March 17, 2003 through June 18, 2003, Burch's customers bought a total of about 46,220 shares of Dogs International for about \$265,950.

17. For the period March 28, 2003 through December 31, 2004, the TDB Capital account sold a total about 93,200 shares of Dogs International and received proceeds totaling almost \$200,000.

CAUSE ONE

Burch Failed to Disclose to his Customers a Material Adverse Interest

(Violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 and NASD Conduct Rules 2110 and 2120)

18. The preceding paragraphs are re-alleged here.

19. By engaging in the foregoing conduct, in which he failed to disclose to his customers that TDB Capital received two large blocks of Dogs International stock and that it was selling the stock as he recommended to his customers that they buy it, Burch, directly or indirectly, by use of means or instrumentalities of interstate commerce, intentionally or recklessly employed a device, scheme or artifice to defraud or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit in connection with the purchase or sale of a security, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120.

CAUSE TWO

Burch Failed to Notify a Member Firm of his Association with Westfield Bakerink and Failed to Notify Westfield Bakerink of an Account in which he had a Financial Interest

(Violations of NASD Conduct Rules 2110 and 3050(c))

20. The preceding paragraphs are re-alleged here.

21. Conduct Rule 3050(c) obligates a person associated with a member, before opening an account or placing an initial order with another member, to notify both his employer member and the executing member, in writing, of his association with the other member. Rule 3050(e) states that this requirement applies to any account or order in which an associated person has a financial interest or exercises discretionary authority.

22. Burch failed to notify Westfield Bakerink, in writing, of the existence of the TDB Capital account, in which he had a financial interest, and he failed to notify ACAP Financial, in writing, of his association with another member firm, in violation of NASD Conduct Rules 2110 and 3050(c).

CAUSE THREE

Burch Falsely Told his Firm that Customer Purchases of Dogs International were Unsolicited and Created False, Inaccurate or Misleading Firm Records that Customer Purchases of Dogs International were Unsolicited

(Violations of NASD Conduct Rules 2110 and 3110 and SEC Rules 17a-3 and 17a-4)

23. The preceding paragraphs of this Complaint are re-alleged here.

24. From about March 2003 through about July 2003, Burch falsely told Westfield Bakerink that customer purchases of Dogs International were unsolicited or otherwise failed to disclose that he solicited his customers' purchases of Dogs International.

25. Burch created false, inaccurate, or misleading firm records that his customers' purchases of Dogs International were unsolicited when, in fact, Burch solicited customers to buy Dogs International.

26. This misconduct constitutes violations of SEC Rules 17a-3 and 17a-4 and NASD Conduct Rules 2110 and 3110.

CAUSE FOUR

Burch Failed to Update His Form U4 after Receiving a Wells Notice

(Violations of Membership and Registration Rule IM-1000-1, Conduct Rule 2110 and Article III, Section 4(f), and Article V, Section 2(c), of FINRA's By-Laws)

27. The preceding paragraphs are re-alleged here.

28. FINRA By-Laws require that a registered person keep current his application for registration by filing amendments within 30 days of learning of facts or circumstances giving rise to the amendment. A "Wells" notice that a registered person is the subject of an investigation obligates a registered person to amend Form U4.

29. FINRA staff informed Burch's counsel in a telephone conversation on July 17, 2006, that Burch was the subject of an investigation into his activities relating to Dogs International. The next day, July 18, 2006, FINRA staff sent Burch's counsel a "Wells" letter confirming the conversation and the notice of the investigation and that advised Burch to update his Form U4. A copy of the letter was mailed to Burch.

30. Burch's failure to update his Form U4 was willful and constituted a false or misleading omission with respect to a material fact. Burch's conduct constituted a violation of Article III, Section 4(f), of FINRA's By-Laws.

31. Burch failed to keep current his Form U4 and failed to amend the Form U4 within 30 days of learning of the facts or circumstances giving rise to the amendments. Burch's conduct constituted a violation of Article V, Section 2(c), of FINRA's By-Laws.

32. By reason of the foregoing conduct, Burch also violated Membership and Registration Rule IM-1000-1 and Conduct Rule 2110.

Prayer for Relief

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent Jerry W. Burch committed the violations charged and alleged herein;
- B. order that sanctions provided under NASD Procedural Rule 8310 be imposed;

C. order Respondent to disgorge fully any and all ill-gotten gains and to make full and complete restitution, together with interest;

D. order that Respondent bear such costs of any proceeding as are deemed fair and appropriate under the circumstances, in accordance with NASD Procedural Rule 8330; and

E. grant all further relief, legal or equitable, that is warranted under the circumstances.



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