

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

AUSTIN SECURITIES, INC.
(BD No. 17094)

--and--

BRIAN R. MITCHELL
(CRD No. 1191608)

Respondents.

Disciplinary Proceeding No. CLI050009

Hearing Officer _____

COMPLAINT

Upon information and belief, the Department of Enforcement alleges the following:

JURISDICTION

1. Respondent Austin Securities, Inc. ("Austin"), a broker-dealer, has been an NASD member since in or around September 1986. Austin is currently a member of NASD.
2. Respondent Brian R. Mitchell ("Respondent" or "Mitchell") first became registered as a Municipal Securities Representative with NASD through a member firm on October 13, 1983. On September 25, 1986, Mitchell commenced employment with Austin and first became registered with NASD through the firm as a general securities representative on or about November 19, 1986. At all times relevant to the violations alleged in this Complaint, Mitchell was: (i) the majority and controlling owner and president of Austin; and (ii) registered with NASD through Austin in multiple

capacities including as a general securities principal and general securities representative.

3. Mitchell is not currently associated with any member firm. However, he remains subject to NASD's jurisdiction. The effective date of the termination of Mitchell's registration with NASD through Respondent's last securities industry employer is April 14, 2005. Pursuant to Article V, Section 4 of NASD's By-Laws, NASD retains jurisdiction through April 13, 2007 to prosecute Mitchell for the alleged violations.

FIRST CAUSE OF COMPLAINT

Scheme to Defraud

(Violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110).

4. Paragraphs one through three are re-alleged and incorporated herein by reference.
5. In connection with the offer, purchase or sale of securities, and through the means and instrumentalities of interstate commerce, including the mails, Austin, acting through Mitchell: (i) employed a device, scheme or artifice to defraud; (ii) obtained money or property by means of an untrue statement of material fact or omission to state a material fact necessary to make the statement not misleading; and (iii) engaged in transactions, practices or courses of business that operate as a fraud or deceit upon the purchaser.
6. Specifically, from in or around January 2003 through in or around February 2005, Austin, acting through Mitchell, engaged in a fraudulent scheme, involving unauthorized transactions and unauthorized use of margin to cover many of the unauthorized transactions, that caused the account of an Austin customer, MFT ("the MFT Account"), to sustain millions of dollars in losses.

7. The scheme involved: (i) Mitchell's placement of profitable trades in the firm's proprietary account(s) and on occasion into certain Austin customers' accounts and allocating losing trades to the MFT Account without the knowledge or authority of the trustees for the account; and (ii) the unauthorized use of margin to cover many of the unauthorized transactions that had been placed in the MFT Account.

By reason of the foregoing, Austin, acting through Mitchell, contravened Section 17(a) of the Securities Act of 1933 and thus violated NASD Conduct Rule 2110, and Austin and Mitchell violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

SECOND CAUSE OF COMPLAINT
Preparation and Issuance of False and Fictitious Account Statements
(Violation of NASD Conduct Rule 2110)

8. Paragraphs one through seven are re-alleged and incorporated herein by reference.
9. In furtherance of the misconduct set forth in the First Cause of Complaint, Austin, acting through Mitchell, prepared and issued, or caused to be prepared and issued, to the trustees of the MFT Account false and fictitious account statements, confirmation statements and Forms 1099 of the Internal Revenue Service, which purported to represent the performance of the MFT Account, and thus concealed the misconduct alleged under the First Cause of Complaint and overstated by several million dollars the value of the MFT Account.

Based on the foregoing, Austin and Mitchell violated NASD Conduct Rule 2110.

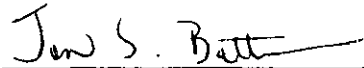
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

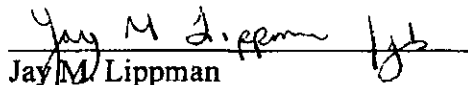
- A. Findings of fact and conclusions of law that Austin and Mitchell committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Austin and Mitchell in accordance with NASD Procedural Rule 8310;
- C. An order, pursuant to NASD Procedural Rule 8310, requiring Austin and Mitchell to fully disgorge any 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 and in accordance with NASD Rule 8330; and
- E. An order, pursuant to NASD Procedural Rule 8310, imposing any other fitting sanction.

Dated: May 20, 2005

DEPARTMENT OF ENFORCEMENT



Jon S. Batterman
Regional Counsel
NASD, District 10
Long Island Office
Two Jericho Plaza, 2nd Floor
Jericho, New York 11753
(516) 949-4216



Jay M. Lippman
Deputy Chief Counsel
NASD, District 10
One Liberty Plaza
New York, NY 10006
(212) 858-4080

Of Counsel:

David M. Jaffe, Esq.
Regional Chief Counsel
NASD, District 10
One Liberty Plaza
New York, NY 10006

Rory C. Flynn, Esq.
Chief Litigation Counsel
NASD
1801 K Street, NW, Suite 800
Washington, D.C. 20006