

NASD

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

**BRIAN R. MITCHELL
(CRD No. 1191608),**

Respondent.

Disciplinary Proceeding
No. 2005001017102

Hearing Officer - SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 25, 2005

INTRODUCTION

Disciplinary Proceeding No. CLI050009 was filed on May 20, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Brian R. Mitchell ("Mitchell" or "Respondent") submitted an Offer of Settlement ("Offer") to Complainant dated October 17, 2005. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

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Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of his permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent first became registered with NASD as a Municipal Securities Representative with NASD on October 13, 1983. On September 26, 1986, Mitchell commenced employment with Austin Securities, Inc. (BD No. 17074) ("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 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. Mitchell is not currently registered with any NASD member firm. However, he remains subject to NASD's jurisdiction pursuant to Article V, Section 4 of NASD's By-Laws.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

- (1) In connection with the offer, purchase and 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. 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. The scheme involved: (1) 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, Mitchell violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

- (2) In furtherance of the misconduct, 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 and overstated by several million dollars the value of the MFT Account. By reason of the foregoing, Mitchell violated NASD Conduct Rule 2110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that:

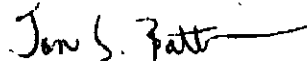
- Respondent is barred from associating with any member firm in any capacity.

Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval of this Order by the NAC.

SO ORDERED.

NASD

Signed on behalf of the
Director of ODA, by delegated authority



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