

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD W. MENTZ
(CRD No. 2150829),

Respondent.

Disciplinary Proceeding
No. 2005001087801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between August 2003 and July 2004, Richard W. Mentz, while registered with NASD member Emmett A. Larkin Company, Inc., executed 164 transactions in customer WJ's account, using margin. This account activity yielded a modified Looper annualized turnover rate of 47, and an annualized cost-to-equity ratio of approximately 220%. The total charges WJ paid on the transactions in his account amounted to approximately \$26,665, which included commission costs of \$21,595, other ticket and clearing charges of \$4,455 and margin interest of \$615. WJ was an auto mechanic in his mid-fifties with annual income ranging from \$15,000 to \$24,000 per year and a net worth of approximately \$25,000. He had no prior securities experience. The account, which opened with \$18,100, closed with \$7,575. The transactions in

WJ's account recommended by Mentz and executed using margin were excessive, and therefore unsuitable in light of WJ's financial situation and needs, his account objective of growth and his complete lack of prior investment experience. In short, Mentz's reckless or intentional conduct was intended to generate commissions for himself and entirely disregarded WJ's best interests.

2. Mentz's conduct violated Section 10(b) of the Securities and Exchange Act of 1934, Rule 10b-5 promulgated thereunder, as well as NASD Conduct Rules 2310, 2120, 2110 and IM-2310-2.

RESPONDENT

3. From on or about August 2003 through August 2004, Mentz was associated with NASD member Emmett Larkin as a General Securities Principal and General Securities Representative. Prior to joining Emmett Larkin, between August 2002 and August 2003, Mentz was employed with NASD member Morgan Stanley DW Inc. From on or about September 2004 through April 2005, Mentz was associated with NASD member Brokersxpress LLC in the foregoing capacities. Although Mentz is not presently associated with or registered through another NASD member, NASD has jurisdiction over Mentz to issue this complaint until April 18, 2007, pursuant to Article V, Section 4 of the NASD By-Laws.

FIRST CAUSE OF ACTION

Unsuitable Recommendations Resulting in Excessive Trading by Mentz (NASD Conduct Rules 2110 and 2310 and IM-2310-2)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.

5. In or about August 2003, customer WJ opened an individual securities brokerage account at Emmett Larkin. Mentz was the registered representative who serviced WJ's account.

6. At the time the account was opened, WJ was in his mid-fifties. He was an

automotive repair technician operating a small car repair and restoration business out of a rented warehouse space. WJ did not own a home and his net worth was about \$25,000. WJ's annual income during 2001 through 2003 ranged from approximately \$21,000 to \$24,000 per year. In or about 2003, after WJ started his own auto repair business, his approximate annual income was \$15,000. WJ's investment objective for his Emmett Larkin account was income.

7. WJ did not complete the new account documents to open his account at Emmett Larkin. Instead, Mentz provided WJ with new account documents to sign that contained inaccurate financial information and misstated his investment objectives. Specifically, the new Client Account Application incorrectly listed WJ's net worth as ranging between \$75,001 and \$200,000, his annual income as ranging between \$40,000 and \$64,999; and his investment objective as "growth." WJ did not realize that the new Client Account Application contained inaccuracies at the time he signed the form.

8. WJ was an unsophisticated investor whose only prior investment experience was the purchase of a \$20,000 Bank Certificate of Deposit, in 2002, while Mentz was WJ's account representative associated with another NASD member firm.

9. In or about September 2003, WJ made an initial deposit into his individual Emmett Larkin account using his prior CD investment, which had a market value of \$18,100. On or about October 3, 2003, Mentz liquidated this CD and WJ's account was credited in the amount of \$18,076.64. The funds in WJ's individual Emmett Larkin account represented 100% of WJ's savings.

10. On October 15, 2003, Mentz opened a margin account for WJ's account. WJ did not complete the information contained on the margin account application. The margin account application had the same inaccurate information about WJ's annual income, net worth and

investment objectives that was also misstated on the client account application form. WJ was not aware of the inaccuracies on the margin account application at the time he signed the document. WJ thought the margin account application was necessary to transfer his account. WJ did not realize that the form he signed authorized Mentz to execute transactions through the use of margin.

Mentz's Control of WJ's Account, Account Activity and Costs

11. From in or about August 2003 through in or about July 2004, while exercising effective control over WJ's account, Mentz recommended and executed, or caused the execution of, approximately 164 transactions in WJ's account. The average monthly equity in WJ's account, over the 12 months between August 2003 and July 2004, was approximately \$12,141.

12. In or about September 2003, the equity in WJ's account was approximately \$17,979. On or about May 2004, WJ made a cash deposit of \$10,000 into his account which were proceeds he earned from a car restoration project.

13. Between October 2003 and July 2004, Mentz executed or caused the execution of approximately 164 transactions in the WJ account. Mentz exercised effective control over the WJ account. It was Mentz's practice to effect the transactions and then call WJ to seek approval for the transactions. WJ consistently followed his recommendations. WJ relied on Mentz to make the appropriate investment decisions in WJ's account. WJ made no unsolicited purchases or sales in his account.

14. The transactions comprised approximately 75 purchases on margin, which totaled about \$571,389; and 89 sales, which totaled about \$570,551. The net result of the activity in WJ's account yielded a modified Looper annualized turnover rate of approximately 47.

15. The trading activity Mentz effected in WJ's account generated transaction-based commissions of approximately \$21,595. This represented approximately 37% of the total commissions Mentz generated from all of his accounts at Emmett Larkin between approximately October 2003 and July 2004.

16. Between October 2003 and July 2004, WJ paid commissions of approximately \$21,595, other ticket and clearing charges of approximately \$4,455 and margin interest of approximately \$615. The total charges WJ paid on the transactions in his account amounted to approximately \$26,665. The annualized cost-to-equity ratio for these expenses was 220%.

17. By in or about June 2004, the equity in WJ's account was approximately \$8,925. In or about July 2004, WJ requested Emmett Larkin to liquidate all securities and close his account, whereupon WJ received a check for the balance of the remaining funds in the approximate amount of \$7,575.

Recommended Transactions Were Unsuitable

18. The transactions Mentz executed in WJ's account were unsuitable for WJ because they were excessive in number and frequency and the purchases were made with the use of margin. As a result of the costs associated with that level of activity and the margin costs, WJ's account would have had to realize a return of approximately 220% to break even. This rate of return was unlikely to be achieved and the loss of some, or all, of WJ's principal, reasonably could be foreseen.

19. Mentz did not have a reasonable basis for believing that his expressed and implicit recommendations for the frequent purchase and sale of securities on margin to WJ were suitable in light of WJ's financial situation and needs, his investment objectives and his other security holdings. Each unsuitable recommendation he made constituted a separate and distinct

violation of NASD Conduct Rule 2310 and IM-2310-2 by Mentz. Further, each such recommendation was inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Mentz.

SECOND CAUSE OF ACTION

Churning by Mentz

(Section 10(b) of the Securities and Exchange Act and SEC Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110)

20. The Department realleges and incorporates by reference paragraphs 1 through 19 above.

21. In connection with the course of conduct described in First Cause of Action above, Mentz, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly used or employed, in connection with the purchase or sale of securities, manipulative or deceptive devices or contrivances; and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances.

22. The foregoing acts, practices and conduct constitute separate and distinct violations of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110.

PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and

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

DATED: April 11, 2007

NASD DEPARTMENT OF ENFORCEMENT


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