

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PAUL ROLES
(CRD No. 2847856),

Respondent.

Disciplinary Proceeding
No. 2005002151001

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

July 1, 2008

Respondent is barred from associating with any member firm in any capacity for (1) falsifying account documents, in violation of NASD Conduct Rules 3110 and 2110; (2) making unsuitable recommendations, in violation of Conduct Rules 2310 and 2110; and (3) engaging in excessive trading in a customer's account, in violation of Conduct Rules 2310 and 2110.

Appearances

Jeff Kern, Senior Regional Counsel, and David Jaffe, Regional Chief Counsel, New York, NY (Mark P. Dauer, Deputy Chief Litigation Counsel, Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Paul Roles.

DECISION

I. INTRODUCTION

On February 26, 2008, the Department of Enforcement ("Enforcement") filed the attached Complaint against Paul Roles ("Roles" or the "Respondent"). The Complaint contains three causes of action relating to Roles' management of the securities accounts of customer GS at six FINRA member firms. The Complaint charges Roles with (1) falsifying account documents and thereby causing his firms to have inaccurate books and records; (2) making unsuitable recommendations; and (3) engaging in excessive trading.

Enforcement served the Complaint and First Notice of Complaint on the Respondent by first-class certified mail on February 25, 2008, addressed to his most current residential address listed in the Central Registration Depository ("CRD Address").¹ Roles did not file an answer within the time required by Procedural Rule 9215. On March 25, 2008, Enforcement served the Respondent with copies of the Complaint and the Second Notice of Complaint by first-class certified mail addressed to his CRD Address.² Roles did not file an Answer or otherwise respond to the Second Notice of Complaint.

On May 14, 2008, Enforcement filed a Motion for Entry of Default and Imposition of Sanctions ("Default Motion") with the Office of Hearing Officers, along with the declaration of Jeff Kern, Esq., counsel for Enforcement in this proceeding, and eight exhibits. Roles did not respond to the Default Motion. Accordingly, for the reasons discussed below, the Hearing Officer grants Enforcement's motion.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Roles entered the securities industry in 1996. Between late 2001 and the middle of 2005, the relevant period for the charges in the Complaint, Roles was associated with six FINRA member firms: Morgan Stanley DW Inc. ("Morgan Stanley"); Ladenburg Capital Management, Inc. ("Ladenburg Capital"); Ladenburg, Thalman & Co., Inc. ("Ladenburg Thalman"), Joseph Gunnar & Co. LLC ("Gunnar"); S.W. Bach & Company ("Bach"); and Robert R. Meredith & Co., Inc. ("Meredith").³ Most recently, Roles was associated with Investors Capital Corp. ("Investors Capital") from November 2005 and June 2007.⁴ Roles was registered as a General Securities Representative with each firm. His last registration terminated on June 25, 2007, since which date he has not been associated with a FINRA member firm.

¹ Default Decl. ¶ 94.

² *Id.* ¶ 97.

³ Enf. Ex. 1.

⁴ *Id.* at 5.

FINRA has jurisdiction of this disciplinary proceeding because the misconduct alleged in the Complaint occurred while Roles was registered as a General Securities Representative, and Enforcement filed the Complaint within two years following the termination of his latest FINRA registration.⁵

B. Respondent's Default

The Hearing Officer finds that Roles defaulted by failing to file an Answer or otherwise respond to the Complaint. Enforcement properly served Roles with copies of the Complaint by mailing them to his CRD Address by first-class certified mail pursuant to Procedural Rules 9131(b), 9134(a)(2), and 9134(b)(1), which gave him constructive notice of this proceeding.⁶ In addition, the Hearing Officer deems the allegations in the attached Complaint admitted pursuant to Procedural Rules 9215(f).

C. Falsification of Account Documents

SEC Rule 17a-3(a) requires every broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 to make and keep current certain books and records relating to its business, including an account record with the customer's annual income, net worth (excluding value of the customer's primary residence), and a statement of the account's investment objectives.⁷ In turn, NASD Conduct Rule 3110 requires every FINRA member to make and preserve the books and records required under SEC Rule 17a-3. It is a violation of Conduct Rule 2110 to falsify a member's books and records.⁸

The First Cause of Action alleges that Roles submitted false information on customer GS's new account documentation at six firms as follows:

⁵ Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "NASD Manual" hyperlink to "Corporate Organization: Bylaws").

⁶ *Department of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁷ SEC Rule 17a-3(a)(17)(i)(A).

⁸ E.g., *Charles E. Kautz*, Exchange Act Release No. 37,072, 1996 SEC LEXIS 994, at *11-12 (Apr. 5, 1996).

1. In November 2001, GS's investment advisor moved and she decided to transfer her investment account to Roles at Morgan Stanley. At the time, GS was 77 years old, and her investment account had a current market value of approximately \$19,000. Her only significant asset was her home. Her sources of income were social security (\$462 per month), rent from tenants in her home (\$1,200 per month), and restitution from the German government as a result of her childhood Nazi persecution (\$450 per month).⁹ In connection with opening the account at Morgan Stanley, Roles completed a new account application in which he falsely described GS's investment objectives as "capital appreciation/speculation." Roles accurately listed GS's income as \$15,000; her liquid net worth as \$50,000; and her total net worth as \$500,000. GS's actual investment objective was more conservative than what Roles listed. GS wanted to sell her home and invest the proceeds to pay her living expenses.

2. In March 2002, after Roles had moved from Morgan Stanley to Ladenburg Capital, GS transferred the proceeds of her Morgan Stanley brokerage account to Roles' management at Ladenburg Capital. In connection with this transfer, Roles completed a new account application in which he falsely described GS's investment objectives as "short term trading/speculation"; her annual income as \$100,000; and her liquid net worth as \$100,000.

3. In December 2002, as a result of a business reorganization involving Ladenburg Capital and Ladenburg Thalman, Roles' FINRA registration and his customer accounts were transferred from Ladenburg Capital to Ladenburg Thalman. In June 2003, in connection with GS's brokerage account moving from Ladenburg Capital to Ladenburg Thalman, Roles completed a new account application in which he falsely listed GS's risk profile as "aggressive/speculative," her annual income as \$100,000, and her liquid net worth as \$100,000.

4. In December 2003, GS transferred the proceeds of her Ladenburg Thalman account to Roles' management at Gunnar. In connection with this transfer, Roles completed a new account application in which he falsely listed GS's investment objective as "capital

⁹ GS Aff. ¶¶ 14-23.

appreciation/speculation,” her risk profile as “moderately aggressive/aggressive,” and her liquid net worth as \$200,000.

5. In June 2004, after Roles moved to Bach, GS transferred the proceeds of her Gunnar account to Roles’ management at Bach. The value of the account at that time was approximately \$5,000. In connection with this transfer, Roles completed a new account application in which he falsely described GS’s annual income as \$100,000, her liquid net worth as \$100,000, her total net worth as \$1,500,000. He also portrayed her as having greater and more diverse investment experience than she possessed, and completed an options account application for GS. In the options application, Roles falsely described GS’s annual income as \$100,000, her liquid net worth as \$1,000,000, her total net worth as \$1,500,000. Roles described GS as having 40 years of investment experience with options, stocks, and bonds.

6. In November 2004, after Roles had moved from Bach to Meredith, GS transferred her Bach account to Meredith. In connection with the transfer, Roles completed a new account application for GS to execute. In this new account application, Roles falsely described GS’s investment objectives as “short term growth,” her risk profile as “speculation/high risk,” her annual income as \$200,000-\$250,000, her total net worth as \$1,700,000-\$2,000,000, and her investment experience as 40 years. Roles also completed an options account application for GS to execute in which he falsely described GS’s investment objectives as “speculation/hedging,” her annual income as \$250,000, her total net worth as \$2,200,000, and her investment experience as 10 years with options and 40 years with stocks and bonds.

In fact, during the relevant period, GS’s income never exceeded \$25,000 per year; her net worth (including the value of her home) never exceeded \$500,000, and her true investment objective did not include speculative or aggressive trading.

On several occasions when Roles met with GS to obtain her signature on the new account documents, she questioned Roles about the incorrect information she noticed on the forms. Roles assured her that the information was “just a matter of form,” and he reassured her that the

presence of the subject information on the new account documents was necessary in order for him to pursue her specific investment goals.¹⁰ GS relied on his explanations and signed the new account documents with the inaccurate information.

The Hearing Officer finds that the allegations in the Complaint along with the other evidence Enforcement submitted with its Default Motion are sufficient to establish that Roles falsified GS's account documents, which caused his firms' books and records to be inaccurate. Accordingly, the Hearing Officer finds that Roles violated Conduct Rules 3110 and 2110.

D. Unsuitable Recommendations and Excessive Trading

NASD Conduct Rule 2310 requires that "in recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." Thus, "a representative may make only such recommendations...as would be consistent with the customer's financial situation and needs."¹¹

Conduct Rule 2310 also can be violated if a representative's recommendations are quantitatively unsuitable, *i.e.*, the representative excessively trades the account.¹² "In either case, a representative may make only such recommendations—or effect such transactions in cases where the representative controls the account—as would be consistent with the customer's financial situation and needs."¹³ "[E]xcessive trading occurs when a registered representative has control over trading in an account and the level of activity in that account is inconsistent with the customer's objectives and financial situation."¹⁴

¹⁰ Enf. Ex. 2 ¶ 46.

¹¹ *Department of Enforcement v. Stein*, Complaint No. C07000003, 2001 NASD Discip. LEXIS 38, at *10 (N.A.C. Dec. 3, 2001), *aff'd*, Exchange Act Release No. No. 47,335 (Feb. 10, 2003).

¹² *Paul C. Kettler*, 51 S.E.C. 30, 32 (1992) ("Excessive trading represents an unsuitable frequency of trading and violates NASD suitability standards.").

¹³ *Department of Enforcement v. O'Hare*, No. C9B030045, 2005 NASD Discip. LEXIS 39, at *12 (Apr. 21, 2005) (citation omitted).

¹⁴ *Id.* at *15.

Here, the evidence establishes that Roles' recommendations to GS between September 2004 and July 2005 were unsuitable. Rather than recommending investments that would protect her capital and provide income, Roles embarked on a more speculative and aggressive strategy once GS deposited the proceeds from the sale of her personal residence (\$390,000) into her securities account. Roles recommended volatile, low-priced stock and options trading, which generated \$95,000 in commissions from more than 600 trades at Bach and Meredith. Indeed, the only purpose for some of the trading appears to have been to generate commissions.

At the time Roles recommended these transactions, he knew that GS had moved into a residence for seniors in Manhattan and that her rent was \$5,000 per month. He also knew that she would rely on her investment account to meet her living expenses. Indeed, Roles had assisted GS with the decision to move into that residence by preparing an investment plan while he was associated with Ladenburg Capital that demonstrated that she could afford to live at the facility.¹⁵

By the time GS sold her home in August 2004, Roles had *de facto* control of her account. GS did not understand the aggressive trading strategy he started at Bach and wholly relied on his judgment and advice.¹⁶ Indeed, Roles testified at his on-the-record interview in September 2006 that he had control over the management of GS's accounts throughout his relationship with her.¹⁷ Roles formalized his control over her account when he moved to Meredith in December 2004 by inducing her to sign a document that gave him discretionary authority over her account. From that point on, he had actual control of GS's account.

The Hearing Officer further finds that the level of activity in her accounts at Bach and Meredith were excessive based on a commission-to-equity analysis for the account. Commission-to-equity ratios are calculated by dividing the commissions and mark-ups and mark-downs incurred in an account by its average equity. Commission-to-equity ratios measure

¹⁵ Enf. Ex. 2 ¶¶ 37-38.

¹⁶ See, e.g., *District Bus. Conduct Comm. v. Gliksman*, No. C02960039, 1999 NASD Discip. LEXIS 12, at *24 (N.A.C. Mar. 31, 1999).

¹⁷ Enf. Ex. 4.

the fraction of the average equity in the account that is consumed by explicit trading costs. Viewed differently, the commission-to-equity ratio represents the percentage return on the customer's average net equity needed to pay commissions and other expenses.¹⁸ In this case, Enforcement calculated that the annualized commission-to-equity ratio during the period September 2004 to July 2005 expressed as a percentage is 33%.¹⁹ In other words, she would have had to earn a 33% return on her investment just to break even on the 600 trades Roles executed in her account during that period.

Based on the foregoing, the Hearing Officer finds that Roles violated NASD Conduct Rules 2310 and 2110. Roles lacked reasonable grounds to believe his investment recommendations were suitable for GS in light of her financial situation, investment objectives and needs, and he engaged in excessive trading in GS's accounts at Bach and Meredith. In addition, the Hearing Officer finds that Roles unsuitable recommendations and excessive trading caused GS to lose \$77,254.

III. SANCTIONS

The Hearing Officer concludes based upon a review of the FINRA Sanction Guidelines ("Guidelines") principal considerations and the specific considerations for each violation that the appropriate sanction for each violation is a bar. The Guidelines for recordkeeping violations recommend a fine of \$1,000 to \$10,000 for each violation and a suspension for up to 30 business days.²⁰ For cases involving egregious misconduct, the Guidelines recommend a longer suspension or a bar.²¹ The Guidelines for unsuitable recommendations recommend a fine of

¹⁸ *Department of Enforcement v. Howard*, No. C11970032, 2000 NASD Discip. LEXIS 16, at *21 (N.A.C. Nov. 16, 2000), *aff'd*, *Daniel Richard Howard*, Exchange Act Release No. 46,269 (July 26, 2002).

¹⁹ The ratio was computed by dividing total commission generated in the account during the relevant period by the average monthly equity. During the relevant period, the average monthly equity in GS's accounts at Bach and Meredith was \$312,733, and Roles' trading generated approximately \$95,427 in commissions. Performing the calculation, the resulting rate 30.5%. When calculated on an annual basis, the rate is 33%.

²⁰ FINRA Sanction Guidelines 30 (2007) (Recordkeeping Violations), *available at* <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink).

²¹ *Id.*

\$2,500 to \$75,000 and a suspension of ten business days to one year.²² In cases involving egregious misconduct, the Guidelines recommend a longer suspension or a bar.²³ Finally, the Guidelines for excessive trading recommend a fine of \$5,000 to \$75,000 and a suspension of ten business days to one year.²⁴ For cases involving egregious misconduct, the Guidelines recommend a longer suspension or a bar.²⁵

The Hearing Officer finds that this is a particularly egregious case. Roles took advantage of his elderly customer, whom he knew did not understand the trades and strategy he employed. Over the course of three years, GS came to rely heavily on Roles as she sold her personal residence to move into a home for senior citizens. She was retired with limited financial resources. Roles knew from discussions he had with GS that she needed to conserve the money she would get from the sale of her home to pay her living expenses. Nonetheless, Roles repeatedly submitted false documentation concerning her finances so that he could engage in unsuitable trading in her account. Once she sold her home and Roles had access to the proceeds from the sale, his conduct became more egregious as he started options trading in her account. By the time GS received guidance from another broker questioning the appropriateness of the activity in her account, Roles had lost \$77,254 in her account.²⁶ At that point, she learned that Roles had invested the majority of her account in penny stocks, and that a significant number of trades had been done on margin.²⁷

Based on the foregoing, the Hearing Officer concludes that any sanction less than a bar would not be sufficient to protect the investing public.

²² Guidelines 99 (Unsuitable Recommendations).

²³ *Id.*

²⁴ Guidelines 82 (Churning or Excessive Trading).

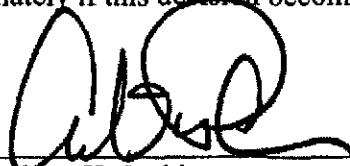
²⁵ *Id.*

²⁶ See Enf. Ex. 2 ¶¶ 77, 81-84

²⁷ *Id.* ¶ 84.

IV. ORDER

Paul Roles violated NASD Conduct Rules 3110, 2310, and 2110 by falsifying account documents, making unsuitable recommendations, and engaging in excessive trading in a customer's account. For each violation, Roles is barred from associating with any member firm in any capacity. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

Copies to:

Paul Roles (by FedEx, next day delivery, and first-class mail)
Jeff Kern, Esq. (by e-mail and first-class mail)
David Jaffe, Esq. (by e-mail and first-class mail)
Mark P. Dauer, Esq. (by e-mail and first-class mail)
David R. Sonnenberg, Esq. (by e-mail and first-class mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

COMPLAINANT,

V.

PAUL ROLES (CRD NO. 2847856),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2005002151001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From late 2001 to mid 2005, Paul Roles ("Respondent" or "Roles") serviced the brokerage account of customer GS at six different FINRA (formerly NASD) member firms.
2. During this time, Roles cultivated the trust and friendship of GS, an elderly Holocaust survivor, with no children or close family members.
3. Starting in September 2004 and continuing until July 2005, Roles exploited this trust and friendship, first, by placing GS in volatile, risky, and costly investments, including options, that were inconsistent with GS's clearly expressed desire to maintain her

accumulated wealth so that she could support herself for the rest of her life; and, second by excessively trading her account.

4. In order to provide cover for his mishandling of GS's accounts, Roles inputted inaccurate information on numerous new account applications pertaining to GS, all of which provided an exaggerated picture of GS's investment objectives, risk profile, income, net worth and investment experience.
5. By engaging in the conduct summarized above and more particularly described below, Respondent violated NASD Conduct Rules 2310, 3110 and 2110.

JURISDICTION

6. Respondent first became registered with NASD as a General Securities Representative ("GSR") in May 2000 through FINRA member firm Morgan Stanley DW Inc. (BD No. 7556) ("Morgan Stanley").
7. During the time period May 2000 to June 2007, Respondent was registered with FINRA as a GSR through numerous FINRA member firms, as more particularly described below.
8. From November 2005 to June 2007, Respondent was registered as a GSR with FINRA member firm Investors Capital Corp. (BD No. 30613) ("Investors Capital").
9. On June 25, 2007, Investors Capital filed a Uniform Termination Notice for Securities Industry Registration (Form U5) reflecting Respondent's voluntary termination from the firm.
10. Respondent is not currently registered with FINRA and upon information and belief, is not employed in the securities industry. Pursuant to Article V, Section 4 of its By-Laws, FINRA retains jurisdiction over Respondent.

BACKGROUND

11. Paragraphs 1 through 10 are re-alleged and incorporated herein by reference.
12. *In the fall of 2001*, GS was a 77-year-old divorcee living alone in a home she owned in the Howard Beach section of Queens, New York. GS had no children or close relatives.
13. At that time, GS was retired after having worked, first, as a photographic colorist and, then, as the owner of a mail order jewelry business.
14. GS's investment experience at this time consisted of maintaining a brokerage account at former FINRA member firm Carl H. Pforzheimer (BD No. 3024) ("Pforzheimer") and then, at FINRA Member firm Granite Financial Group, Inc. (BD No. 44732) (Granite Financial) for approximately 40 years. GS did not actively participate in the management of these accounts, which were invested in a conservative manner.
15. In 2001, GS's Granite Financial broker moved to California and she decided to find a New York City-based broker as a replacement.
16. In the fall of 2001, GS met Roles, then registered at Morgan Stanley, at a sales presentation conducted by Roles at a Howard Beach restaurant.
17. As a result of Roles's presentation, GS decided to open an account with him at Morgan Stanley. In November 2001, she opened this account by transferring the approximate \$19,000 balance then in her Granite Financial account to Morgan Stanley.
18. At that time, GS's income was derived from her monthly Social Security payment of \$450, a monthly payment of approximately \$462 from the German government for the Nazi persecution she endured as a child and some rental income from her home. This rental income was largely offset by the costs of maintaining the premises. GS's only

significant tangible asset was her home, which was encumbered by approximately \$50,000 in home equity and small business loans.

19. In the discussions leading up to GS's account opening, GS told Roles that she was interested in selling her home and having him manage the proceeds in a way that would preserve her capital and allow her to withdraw enough funds each month to cover her monthly expenses.
20. In December, 2001, Roles moved from Morgan Stanley to Ladenburg Capital Management Inc. (BD No. 14623) ("Ladenburg Capital"). GS moved her account with Roles to Ladenburg Capital.
21. In November 2002, Roles then moved to an affiliated entity, Ladenburg, Thalman & Co. LLC (BD. No. 505) ("Ladenburg Thalman") after a corporate reorganization involving these two firms. GS moved her account with Roles to Ladenburg Thalman.
22. During the first several years of managing GS's account, Roles took a personal interest in GS and she eventually came to regard him as a friend. Roles visited GS at her home on several occasions. He helped her resolve some personal issues. In November of 2002, when GS had two stents placed in her heart, Roles picked her up from the Long Island hospital at which she received treatment and drove her home to Howard Beach.
23. In the fall of 2002, GS told Roles that she had identified a particular senior facility in the Battery Park section of Manhattan, the Hallmark, into which she wanted to move. The Hallmark was a high-end senior facility that required a monthly rent of \$5,000. GS asked Roles whether she could afford to move into the Hallmark based on her financial resources.

24. In response, Roles provided GS with a document entitled "Investment Policy Statement for GS by Ladenburg Capital Management" ("Ladenburg Policy Statement").
25. The Ladenburg Policy Statement presented an "analysis" whereby, if GS received \$450,000 in home sale proceeds and gave them to Roles to invest on her behalf, GS could withdraw \$60,000 per year to cover her rent at the Hallmark for the next 20 years, during which GS's initial investment would double in value. This analysis was predicated upon a projected rate of return of 13.8%
26. The Ladenburg Policy Statement analysis was based upon a description of GS's risk tolerance as moderate, her investment objective as capital appreciation and income, and it stated that her portfolio would be comprised of mutual funds.
27. Based on this analysis, in May 2004, GS signed a lease to live at the Hallmark and began paying the \$5,000 monthly rent.
28. By September 2004, when GS sold her home, Roles had moved from Ladenburg Thalman to FINRA member firm Joseph Gunnar & Co. LLC (BD No. 24795) ("Gunnar") and then, in March 2004 to former FINRA member firm S.W. Bach & Company (BD No. 43522) ("Bach"). Each time Roles moved to a new firm, GS moved with him.
29. At that time, the approximate amount of funds in GS's account at Bach was \$5,000. After paying closing costs, taxes, legal fees and satisfying all her outstanding loans, GS derived \$390,000 from the sale of her home. She deposited this amount in her Bach account in early September 2004.
30. In December 2004, Roles once again switched firms, moving from Bach to FINRA member firm Robert R. Meredith & Co., Inc. (BD No. 29501) ("Meredith"). Once again, GS moved her account with Roles.

FIRST CAUSE OF COMPLAINT
(Falsification of Account Documents/Books and Records Violations)
(Violation of NASD Conduct Rule 3110 and 2110)

31. Paragraphs 1 through 30 are re-alleged and incorporated herein by reference.
32. In November 2001, GS opened a brokerage account with Roles at Morgan Stanley.
33. In connection with this account opening, Roles completed a new account application for GS to execute.
34. In this new account application, Roles falsely described GS's investment objectives as "capital appreciation/speculation."
35. However, in this new account application, Roles did accurately describe GS's income as \$15,000; her liquid net worth as \$50,000; and her total net worth as \$500,000.
36. In March 2002, after Roles had moved from Morgan Stanley to Ladenburg Capital, GS transferred the proceeds of her Morgan Stanley brokerage account to Roles's management at Ladenburg Capital.
37. In connection with this transfer, Roles completed a new account application for GS to execute.
38. In this new account application, Roles falsely described GS's investment objectives as "short term trading/speculation;" her annual income as \$100,000; and her liquid net worth as \$100,000. As set forth in paragraph 35, above, Roles, in GS's Morgan Stanley new account application, had previously described her annual income as \$15,000; her liquid net worth as \$50,000; and her total net worth as \$500,000.
39. Ladenburg Capital and Ladenburg Thalman are subsidiaries of Ladenburg Financial Services.

40. In December 2002, as a result of a business reorganization involving Ladenburg Capital and Ladenburg Thalman, Roles's FINRA registration and his customer accounts were transferred from Ladenburg Capital to Ladenburg Thalman.
41. In June 2003, in connection with GS's brokerage account moving from Ladenburg Capital to Ladenburg Thalman, Roles completed a new account application for GS to execute.
42. In this new account application, Roles falsely described GS's risk profile as "aggressive/speculative," her annual income as \$100,000, and her liquid net worth as \$100,000. As set forth in paragraph 35, above, Roles, in GS's Morgan Stanley new account application, had previously described her annual income as \$15,000 and her liquid net worth as \$50,000.
43. In December 2003, after Roles had moved from Ladenburg Thalman to Gunnar, GS transferred the proceeds of her Ladenburg Thalman account to Roles's management at Gunnar.
44. In connection with this transfer, Roles completed a new account application for GS to execute.
45. In this new account application, Roles falsely described GS's investment objective as "capital appreciation/speculation," her risk profile as "moderately aggressive/aggressive," and her liquid net worth as \$200,000. As set forth in paragraph 35, above, Roles, in GS's Morgan Stanley new account application, had previously described her liquid net worth as \$50,000.
46. In June 2004, after Roles had moved from Gunnar to Bach, GS transferred the proceeds of her Gunnar account to Roles's management at Bach.

47. In connection with this transfer, in September 2004, Roles completed a new account application for GS to execute.
48. In this new account application, Roles falsely described GS's annual income as \$100,000, her liquid net worth as \$100,000, her total net worth as \$1,500,000 and her investment experience as stocks, bonds, funds, and options. As set forth in paragraph 35, above, Roles, in GS's Morgan Stanley new account application, had previously described her annual income as \$15,000 and her total net worth as \$500,000.
49. In connection with the transfer of GS's brokerage account from Gunnar to Bach, Roles completed an options account application for GS to execute.
50. In this options application, Roles falsely described GS's annual income as \$100,000, her liquid net worth as \$1,000,000, her total net worth as \$1,500,000 and her investment experience as 40 years options, stocks, bonds, and buying options. As set forth in paragraph 35, above, Roles, in GS's Morgan Stanley new account application, had previously described her annual income as \$15,000 and her total net worth as \$500,000.
51. In November 2004, after Roles had moved from Bach to Meredith, GS transferred the proceeds of her Bach account to Roles's management at Meredith.
52. In connection with the transfer of GS's brokerage account from Bach to Meredith, Roles completed a new account application for GS to execute.
53. In this new account application, Roles falsely described GS's investment objectives as "short term growth," her risk profile as "speculation/high risk," her annual income as \$200,000-\$250,000, her total net worth as \$1,700,000-\$2,000,000 and her investment experience as 40 years. As set forth in paragraph 35, above, Roles, in GS's Morgan

Stanley new account application, had previously described her annual income as \$15,000 and her total net worth as \$500,000.

54. In connection with the transfer of GS's brokerage account from Bach to Meredith, Roles also completed an options account application for GS to execute.
55. In this options application, Roles falsely described GS's investment objectives as "speculation/hedging," her annual income as \$250,000, her total net worth as \$2,200,000 and her investment experience as 10 years options and 40 years stocks/bonds. As set forth in paragraph 35, above, Roles, in GS's Morgan Stanley new account application, had previously described her annual income as \$15,000 and her total net worth as \$500,000.
56. Between December 2001, when GS opened her account at Morgan Stanley and September 2004, when she deposited the proceeds of her house sale into her Bach account, GS's true investment objectives were income and capital appreciation; her risk tolerance was moderate; her approximate yearly income never exceeded \$25,000; and her approximate liquid net worth never exceeded \$50,000.
57. Between September 2004, when GS deposited the proceeds of her house sale into her Bach account, and July 2005, when she closed her account at Meredith and terminated her professional relationship with Roles, GS's true investment objective was income and capital appreciation; her risk tolerance was moderate; her approximate yearly income never exceeded \$25,000; her approximate liquid net worth never exceeded \$500,000; her approximate total net worth never exceeded \$500,000; and her investment experience did not include trading options.

58. GS did not input any of the financial background information in any of the new account applications or options applications discussed in the preceding paragraphs. This information was inputted either by Roles, himself, or at his direction by an employee of whichever member firm he was employed by at the time.
59. Each time Roles moved to another member firm, after GS's financial background information was inputted on a new account or options application at the firm, he visited GS so that she could execute new account applications, and, with respect to Bach and Meredith, options applications.
60. In several of these visits, GS noticed that the new account documents that Roles presented her to sign reflected that she had more money, income and investment experience than she actually did.
61. When GS questioned Roles about these inaccuracies, he typically told her that the information was "just a matter of form" and reassured her that the presence of the subject information on the new account documents was necessary in order for him to pursue her specific investment goals.
62. Based on Roles's explanations, GS signed all the new account documents Roles presented to her.
63. By inputting false information into GS's account forms relating to GS's income, net worth and investment objectives, Roles also caused the books and records of each firm discussed above to be inaccurate in violation of SEC Rule 17a-3.

By reason of the foregoing, Respondent violated NASD Conduct Rules 3110 and 2110.

SECOND CAUSE OF COMPLAINT
(Qualitative Unsuitability)
(Violation of NASD Conduct Rules 2310 and 2110)

64. Paragraphs 1 through 63 are re-alleged and incorporated herein by reference.
65. When GS began her professional relationship with Roles at Morgan Stanley in December 2001, GS made it clear to Roles that her overriding investment concern was to make sure that her accumulated wealth would be managed as to provide her a means of support for the rest of her life.
66. Approximately one year later, GS told Roles that she was interested in moving into the Hallmark, a senior facility that charged a monthly rent of \$5,000. GS specifically asked Roles whether based on her then current financial situation, she could afford to make this move.
67. After preparing the Ladenburg Policy Statement for GS, Roles told GS that she could afford to make this move.
68. Based on this recommendation by Roles, in May 2004, GS signed a lease to live at the Hallmark.
69. In August 2004, GS sold her house in Howard Beach. After she paid legal fees and attendant costs and satisfied all her outstanding indebtedness, the proceeds of GS's home sale totaled \$390,000.
70. By that time, GS's brokerage account was under Roles's management at Bach. The amount in the account was approximately \$5,000. In early September 2004, through a series of individual deposits, GS deposited her home sale proceeds of \$390,000 into her Bach account. The approximate \$395,000 in GS's Bach account represented the bulk of her total accumulated wealth.

71. Because the \$390,000 amount of home sale proceeds was \$60,000 less than the \$450,000 investment projection premise employed by the Ladenburg Policy Statement, GS specifically asked Roles whether she could still afford to live at the Hallmark. Roles replied in the affirmative.
72. At this point, Roles had been GS's registered representative for nearly three years. He not only had established a close professional relationship with GS but he had also cultivated a personal friendship with her as well.
73. As such, Roles was familiar with GS's true investment objectives, her risk tolerance, her annual income, her net worth and her investment experience. He knew that GS's paramount financial concern was to have enough money to be able to live out the rest of her years in relative comfort. He knew that, in order to insure that this concern was addressed, GS's investment objectives were preservation of capital/income and that she had a moderate risk tolerance. He knew that her annual income was less than \$20,000 per year. He knew that her net worth consisted primarily of the approximate \$400,000 in her Bach account. He knew that her investment experience was limited as she had never actively managed either her Pforzheimer or Granite Financial accounts or any of the brokerage accounts she had previously maintained with Roles.
74. Despite this knowledge of GS's true investment objectives, risk tolerance, annual income, net worth and investment experience, Roles inputted inflated descriptions of these elements of GS's financial situation on various new account documents, as described in paragraphs 31 to 63 above, in order to pursue an aggressive investment strategy on GS's behalf that was unsuitable in light of GS's true financial situation.

75. Roles embarked on this unsuitable aggressive investment strategy as soon as the deposit of the proceeds of GS's home sale moved the value of GS's Bank account from approximately \$5,000 to \$395,000. This unsuitable investment strategy in GS's account consisted of frequent purchases and sales, investment in low-priced, volatile equities and utilization of options.
76. Roles employed this unsuitable investment strategy from September 2004 until mid-July 2005 (the "relevant period"), when GS terminated her relationship with Roles.
77. The volatility of the low-priced equities, the expense of options and the high commissions generated by Roles's frequent trading put GS's accumulated wealth at risk.
78. During the relevant period, the value of GS's account declined from approximately \$400,000 to approximately \$241,746.
79. While some of this decline was attributable to GS's monthly withdrawals and her withdrawal of \$45,000 in April 2005 to pay capital gains taxes on her home sale, most of this decline was the result of Roles' unsuitable investment recommendations and his generation of over \$95,000 in commissions.
80. For example, in two separate instances, Roles allowed call options that he had purchased on GS's behalf to expire without either exercising them or selling them. The total cost of these unused options was \$30,592.
81. In these two instances, even if Roles had exercised the options, GS did not nearly have the funds in the account to support the purchases.
82. For example, Roles purchased 500 call contracts of Biogen. The strike price was \$70 per share. If Roles had exercised these options on GS's behalf, it would have cost GS \$3,500,000 when she only had approximately 10% of that amount in her account.

83. Similarly, Roles bought 300 EBay calls with a strike price of \$50. If Roles had exercised these calls, it would have cost GS \$1,500,000.
84. In other instances, Roles exercised questionable strategy while investing in options on GS's behalf.
85. For example, in March 2005, Roles purchased a put in Maytag on GS's behalf. The strike price was \$12.50. He also purchased a corresponding number of long shares at \$13.92 per share. He then engaged in a series of purchases and sales, cancellations and short sales that had no apparent purpose. GS sustained a \$433 loss on the applicable premiums. She also incurred an additional \$4352 loss when Roles elected to not exercise the options and instead sold out the long position at \$10.07 per share. Roles also expended another \$4227 of GS's funds on an additional ten Maytag puts, which he allowed to expire.
86. In recommending the above-described investment strategy, Roles lacked reasonable grounds to believe this strategy was suitable for GS, in light of her financial situation, investment objectives and needs.
87. As a result of recommending this unsuitable investment strategy in GS's account, Roles caused GS's account to sustain approximately \$153,000 in losses during the relevant period. GS has never received any compensation or restitution from Roles, Bach or Meredith for these losses.

By reason of the foregoing, Roles violated NASD Conduct Rules 2310 and 2110.

THIRD CAUSE OF COMPLAINT
(Excessive Trading)
(Violation of NASD Conduct Rules 2310 and 2110)

88. Paragraphs 1 through 87 are re-alleged and incorporated herein by reference.

89. During the relevant period (i.e. September 2004 to mid-July 2005), Roles executed over 600 trades in GS's accounts at Bach and Meredith, generating over \$95,000 in commissions.
90. GS's accounts at Bach and Meredith both traded options.
91. The commission-to-equity ratio is the appropriate formula to use when analyzing the level of activity in an account that trades options.
92. The commission-to-equity ratio measures the level of activity in an options account by comparing the amount of commissions generated as a percentage of equity during the relevant period. It is computed by dividing total commission generated in the account during the relevant period by the average monthly equity.
93. During the relevant period, the average monthly equity in GS's accounts at Bach and Meredith was \$312,733 and Roles's trading generated approximately \$95,427 in commissions.
94. Using these figures, the commission-to-equity ratio in this case, is 31% and on an annualized basis, is 33%.
95. Roles had *de facto* control over GS's Bach account by virtue of the fact that the friendship and trust he had cultivated in GS over the previous three years of managing her accounts caused GS to routinely rely on Roles for his investment advice and blindly follow his recommendations.
96. When GS opened her account at Meredith in December 2004, Roles induced her to sign an agreement conferring discretionary authority over her account. Therefore, Roles exercised actual control over GS's Meredith account.

97. The trading activity in GS's account at both Bach and Meredith was excessive in size and frequency in view of GS's financial circumstances and investment objectives.

98. Roles executed the transactions in GS's account *without reasonable grounds* for believing that the level of activity represented by such transactions was suitable for GS on the basis of her financial situation, investment objectives and needs.

By reason of the foregoing, Roles violated NASD Conduct Rules 2310 and 2110.

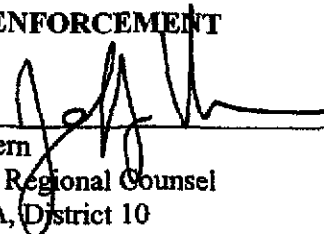
RELIEF REQUESTED

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

FINRA DEPARTMENT OF ENFORCEMENT

Date: February 25, 2008



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