

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**KAPIL S. SHAH
(CRD No. 4409290),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2006 003 6847 03**

Hearing Officer SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: July 6, 2009

INTRODUCTION

Disciplinary Proceeding No. 2006 003 6847 03 was filed on January 6, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant).

Respondent Kapil S. Shah submitted an Offer of Settlement (Offer) to Complainant on June 24, 2009. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA 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.*

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 FINRA, or to which FINRA 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 Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Shah first became registered with FINRA as a General Securities Representative (GSR) on June 18, 2001 through a former member firm. From April 15, 2005 through August 4, 2006, Shah was registered as a GSR through Carlton Capital, Inc. (BD No. 42533). Shah first became registered as a General Securities Principal (GSP) through a member firm on January 19, 2007. Shah has been registered with FINRA through a total of nine member firms, and is currently registered as a GSR and GSP through a member firm. Shah has no disciplinary history.

FINDINGS AND CONCLUSIONS

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

Kapil Shah and his partner GV were the largest producers at Carlton Capital in 2006. Their customers were primarily Indian doctors living in the United States. Tape recordings produced by Carlton Capital reveal that Shah promised unrealistic returns to five of his customers and made an improper price prediction to one of those customers.

Customer SD

In a telephone call with SD on February 22, 2006, Shah represents that, if SD gives him permission to "day trade" the account "with \$100,000 worth of stock every day," Shah can deliver a return of \$1,000 to \$1,500 per day. With approximately 250 trading days in a year, this

would represent an annual gain of 250 to 375 percent. Shah adds, "I have other people that I do it for them." In the telephone call, SD declines to give Shah "day trading" authority. Shah had never separated out the day-trading activity of his other customers from their "regular" trades to calculate whether or not day trading had been a successful strategy.

Customer AP

In a phone call with AP on March 20, 2006, Shah predicts that AP should make \$75,000 to \$80,000 in ten weeks "easily," and "at least \$100,000" in gains in the next three months. AP had net assets of approximately \$955,400 in his largest and most active account with Carlton Capital at the end of March 2006. Three months later, at the end of June, AP's large account had net assets of approximately \$634,400 – a loss of approximately \$321,000 or 33.6 percent. No money was withdrawn or added during the three month period. Approximately \$29,000 of the \$321,000 loss was from margin interest. The S&P 500 Index was down approximately two percent over that three month period.

Customer MN

To comfort MN for losses in his account, Shah suggests in a telephone call on March 13, 2006 that he can take MN's account from 77 to 78 thousand dollars up to 85 to 90 thousand dollars by the end of the month, stating "My idea is to at least take it up to 85 to 90 by the end of this month. 85, 90 thousand dollars I'm trying to take it up to." With fourteen business days left in March, such a gain would represent a 160 to 240 percent return on an annualized basis.

In a telephone call with MN a week later, on March 20, 2006, Shah makes a specific price prediction for the stock of Shanda Interactive Entertainment, LTD. Shah states that he is "very positive" that the stock, of which MN owns 3,000 shares, will go from approximately \$13.90 to "at least" \$15.00 in "a week or so," giving MN a gain of "around six and a half thousand dollars." An increase in price to \$15 would represent a gain of approximately eight percent in "a week or so." In fact, Shanda Interactive Entertainment closed at \$14.31 a week later and \$14.13 ten days later, and never traded higher than \$14.55 in the six weeks following March 20, 2006. The stock closed at \$12.36 on the last trading day of April 2006.

Customer RS

In a telephone call with RS on March 15, 2006, Shah states that RS "should have 20, 25 thousand dollars back in gains for the account" by the end of the month. Such a gain would represent a return on an annualized basis of well over 250 percent.

Customer SS

In a call with SS on March 15, 2006, SS complains of losses. In an effort to placate the customer and solicit more money, Shah states that he is "very confident" that he can make the money back for the customer. Shah continues:

If you can send me another \$20,000. We have at least \$23,000. Every month I think I can do you at least, make you back at least like two to three thousand dollars, Doctor. Trust me, I'm very positive that I'll be able to do it.

A return of \$2,000 to \$3,000 per month on an investment of \$43,000 would represent an annual gain of approximately 56 to 84 percent.

*** * ***

Shah had no reasonable basis for his price prediction or promises of unrealistic returns. Shah's price prediction and promises of unrealistic returns were material.

Accordingly, Shah misrepresented or omitted material facts in his conversations with customers.

By reason of the foregoing and in each and every instance, Shah 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 FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be

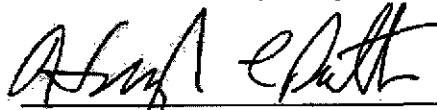
- suspended in all capacities for 20 business days; and
- fined \$10,000.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read "Hugh C. Patton", is written over a horizontal line.

Hugh C. Patton
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