

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

RECEIVED

2000 DEC 20 A 9 32

REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

GREGORY ARTHUR NIEBLER
(CRD No. 716226),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2007009405201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between April 2000 and September 2004, Gregory Arthur Niebler ("Niebler") received money totaling approximately \$370,000 from an elderly customer, DL, in the form of cash and personal checks written directly to him or his credit card companies to pay down his credit card debt.
2. In 1999, Niebler was appointed a power of attorney over DL.
3. Beginning in April 2000, Niebler began receiving money from DL on a consistent basis.
4. As of November 2002, DL was incompetent, suffering from dementia and Alzheimer's disease. After DL became incompetent, Niebler took at least \$172,900 from DL's bank account, vis-à-vis checks directly to him and/or to his credit card company.
5. Niebler abused his power of attorney to sign DL's name to certain of the checks he received or which were sent to his credit card company.

000059358 2000

6. Niebler exercised discretion in DL's account after November 2002, when she was incompetent, effecting 95 transactions without receiving written authorization from his member firm employer.

7. Niebler hid the receipt of money from DL from his firm, falsely stating on multiple annual compliance questionnaires that he had not received any cash or gifts valued in excess of \$100 from any of his customers when he was receiving substantial amounts of money from DL's bank account.

8. Niebler concealed that he had obtained a power of attorney for DL from his member firm employer by not disclosing it in responses to annual compliance questionnaires.

9. By virtue of the aforementioned conduct, Niebler violated NASD Rules 2110 and 2510(b).

RESPONDENT AND JURISDICTION

10. Niebler entered the securities industry in June 1980 when he became associated with the Milwaukee Company. Niebler passed the Series 7 and 63 examinations and became a branch manager in January 1986. The Milwaukee Company was purchased by Dain Bosworth in 1988 and became Dain Rauscher Incorporated, and then RBC Dain Rauscher Inc. ("RBC" or the "Firm"), a member of FINRA. Niebler served as a registered representative and assistant *branch office manager* of RBC until May 2004.

11. Since May 2004, Niebler has been employed with another FINRA member firm, and is subject to the jurisdiction of FINRA pursuant to Article V, Section 2 of FINRA's By-Laws.

BACKGROUND

12. DL was born in [REDACTED], never married, did not have any children or close relatives, and lived alone. In or around 1985, DL opened an account with Niebler at RBC. According to an updated account information form dated September 15, 1999, DL's liquid assets were \$50,000 and her net worth was \$1,500,000.

13. Toward the latter part of 1999, DL moved into an assisted living facility in Menomonee Falls, WI. In or around 2002, DL's mental capacity began to deteriorate. From at least November 11, 2002, DL was mentally incompetent. She entered the Alzheimer's unit at the assisted living facility in 2004.

14. DL passed away in November 2004.

FIRST CAUSE OF ACTION

NIEBLER FALSELY DENIED TO HIS FIRM THAT HE RECEIVED CASH OR GIFTS FROM AN ELDERLY CUSTOMER

(Violation of NASD Conduct Rule 2110)

15. The Department realleges and incorporates by reference paragraphs 1-14 above.

16. For several years beginning in 2000 until shortly before DL's death, Niebler received money from DL in the form of cash or personal checks from DL's checking account.

17. On several occasions in 2003 and 2004, Niebler received cash in amounts ranging from \$5,000 to \$10,000 from DL.

18. From 2000 to 2004, Niebler received approximately \$358,000 in checks from DL's bank account, receiving checks paid to himself or his credit card company. See Exhibit 1.

19. RBC had specific policies and procedures related to the receipt of gifts from customers. During the relevant period, the firm's procedures stated:

"An employee may not accept gifts of over \$100 in value from anyone with whom Dain Rauscher does or may do business. Similarly, an employee should not offer more than nominal gifts, in order to avoid the appearance of trying to improperly influence the conduct of another.

"Whether an employee is dealing with customers, vendors, competitors or governmental or regulatory authorities, the offer of a gift may raise ethical concerns. The \$100 limit on gifts is designed to permit only those **de minimis** offers that do not create the appearance of improper influence or conflict of interest. The limit, however, is not a complete substitute for the employee's judgment. Even a gift under the limit may create the appearance of a conflict of interest – for example, if it is one of several gifts, each under \$100, within a short time. If the gift would appear inappropriate, the employee must reject it. A gift to an immediate family member is the same as a gift to the employee for purposes of this policy."

(Emphasis in original)

20. Niebler concealed from the Firm his receipt of approximately \$370,000 from DL, knowing that the Firm prohibited him from receiving more than \$100 in the form of cash or gifts from any customer.

21. RBC's compliance questionnaire for its registered representatives in 2000, which Niebler signed on August 31, 2000, asked, "Employees are allowed to accept or give gifts of up to what value from clients or vendors?" Niebler checked off the box representing "\$100," acknowledging his understanding of the Firm's policies regarding the acceptance of gifts.

22. The compliance questionnaires in each of the years 2001, 2002 and 2003, asked "In the past 12 months have you given or received cash or a gift valued in excess of \$100 to/from a client?"

23. In responses dated May 8, 2001, April 19, 2002, and September 22, 2003, respectively, Niebler responded, "No." Each of the above-referenced questionnaires required Niebler to attest that his responses were true and accurate to the best of his ability, and he signed each of said questionnaires.

24. Given that he had received substantial sums of money in excess of \$100 from DL during the time periods covered by the respective questionnaires, these attestations were false.

25. Accordingly, Niebler violated NASD Conduct Rule 2110 in that he failed to observe high standards of commercial honor and just and equitable principles of trade by deceiving his Firm about receiving approximately \$370,000 from an elderly customer.

SECOND CAUSE OF ACTION

NIEBLER IMPROPERLY TOOK MONEY FROM AN ELDERLY CUSTOMER

(Violation of NASD Conduct Rule 2110)

26. The Department realleges and incorporates by reference paragraphs 1-25 above.

27. In or around 2002, DL's mental capacity began to deteriorate and from at least November 11, 2002, she became mentally incompetent.

28. After such deterioration began to occur and after she became mentally incompetent, Niebler improperly received cash and checks payable directly to him and checks payable to his credit card companies from DL.

29. From November 11, 2002, Niebler received a total of at least 24 improper payments from DL's checking account for a total of at least \$172,900. See Exhibit 1.

30. Accordingly, Niebler violated NASD Conduct Rule 2110 in that he failed to observe high standards of commercial honor and just and equitable principles of trade by improperly taking money from DL after she was incompetent.

THIRD CAUSE OF ACTION

NIEBLER ABUSED HIS POWER OF ATTORNEY TO OBTAIN FUNDS FROM AN ELDERLY CUSTOMER

(VIOLATION OF NASD CONDUCT RULE 2110)

31. The Department realleges and incorporates by reference paragraphs 1-30 above.

32. In or around September 1999, DL appointed Niebler to act as her power of attorney. The power of attorney did not specifically allow Niebler to transfer property to himself or to make gratuitous transfers from DL to himself.

33. Among other things, the power of attorney permitted Niebler to “sign in [DL’s] name checks or orders on all accounts in [DL’s] name or for [DL’s] benefit,” “withdraw funds from said accounts” and “open accounts in [DL’s] name.” With respect to securities, the power of attorney permitted Niebler to “buy, sell, pledge, exchange, etc., securities of all kinds” and “sign and deliver in [DL’s] name transfers and assignments of securities.”

34. Under Wisconsin law, as a power of attorney for DL, Niebler had a duty to exercise his power of attorney solely in the best interest of DL and could not transfer money to himself absent explicit written authorization from DL.

35. Between April 2000 and September 2004, Niebler used the power of attorney to complete and sign DL’s name on DL’s personal checks written out to Niebler or his credit card companies.

36. In effecting the transfer of funds for his benefit from DL to himself or to his credit card company, Niebler acted contrary to his duty as a power of attorney in that he failed to act solely in the best interest of DL and he did not have explicit written authorization from DL to transfer money to himself.

37. Accordingly, Niebler violated NASD Conduct Rule 2110 in that he failed to observe high standards of commercial honor and just and equitable principles of trade by abusing his power of attorney to improperly transfer money from DL to himself.

FOURTH CAUSE OF ACTION

NIEBLER FAILED TO DISCLOSE HIS POWER OF ATTORNEY TO HIS MEMBER FIRM EMPLOYER

(VIOLATION OF NASD CONDUCT RULE 2110)

38. The Department realleges and incorporates by reference paragraphs 1-37 above.

39. RBC had specific policies and procedures related to obtaining powers of attorney for customer accounts. During the relevant period, it stated:

“Situations may arise when the owner or owners of an account wish to grant authority over the account to a third party, who is frequently called an “agent.” Documentation of such third party authorization must be provided by the client, and is subjected to the strictest interpretation.

Note: Employees of Dain Rauscher must receive written approval from their immediate supervisor and the Compliance Department prior to acting as an agent for any public person.” ...

“Note: Employees of Dain Rauscher may not act as Power of Attorney for any member of the public (except family members) except in extraordinary circumstances and only with the prior written approval of the Compliance Department.”

(Emphasis in original)

40. Niebler did not receive written approval from the Firm to act as power of attorney for DL.

41. RBC required each registered representative to complete an annual compliance questionnaire which required the registered representative to attest that his responses were true and accurate to the best of his ability. In 2000 and 2001, the questionnaire's asked whether Niebler had power of attorney or trading authorization for any customer account. In responses dated August 31, 2000, and May 8, 2001, Niebler answered "Yes," but disclosed only his family trust accounts. Niebler's attestations were rendered false by his omission of the power of attorney he had for DL.

42. Niebler concealed from the Firm that he had received a power of attorney from DL.

43. Accordingly, Niebler violated NASD Conduct Rule 2110 in that he failed to observe high standards of commercial honor and just and equitable principles of trade by making material misstatements to his member firm employer.

FIFTH CAUSE OF ACTION

NIEBLER EFFECTED DISCRETIONARY TRANSACTIONS IN THE ACCOUNT OF A CUSTOMER WITHOUT WRITTEN AUTHORITY ACCEPTED BY THE FIRM

(VIOLATION OF NASD CONDUCT RULES 2510(b) AND 2110)

44. The Department realleges and incorporates by reference paragraphs 1-43 above.

45. From at least November 11, 2002, DL was mentally incompetent and could not make investment decisions for her account.

46. Niebler did not submit his power of attorney for DL to the Firm for approval.

47. The Firm did not accept or approve Niebler's power of attorney over DL's account.

48. Niebler effected 95 transactions for DL's account on or after November 11, 2002. See Exhibit 2.

49. Accordingly, Niebler violated NASD Conduct Rules 2510(b) and 2110 in that he exercised discretionary power in a customer's account without written authority accepted by his Firm.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under FINRA 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 FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 23, 2009



Penny Rosenberg, Director
Michael S. Choi, Senior Counsel
FINRA Department of Enforcement
14 Wall Street
New York, New York
Phone: (646) 315-7323
Fax: (202) 689-3430
michael.choi@finra.org

Exhibit 1

The following checks, some of which were signed by Niebler using DL's name, were paid to Niebler from DL's personal checking account:

Date	Check #	Amount
4/6/00	2449	\$10,000
5/1/00	2450	\$11,050
6/15/00	2206	\$11,050
8/1/00	2209	\$9,900
9/1/00	2210	\$12,000
9/15/00	2211	\$5,000
10/12/00	2226	\$2,500
11/15/00	2229	\$2,500
1/13/01	2232	\$2,500
1/15/01	2233	\$1,500
3/1/01	2235	\$1,500
4/1/01	2212	\$1,500
4/11/01	2236	\$4,000
6/1/01	2237	\$4,050
7/1/01	2241	\$4,000
10/15/01	2247	\$4,000
12/1/01	2250	\$5,000
1/5/02	2213	\$2,000
2/1/02	2214	\$1,500
3/1/02	2216	\$1,000
4/1/02	2219	\$1,000
6/30/02	2223	\$1,500
8/1/02	2224	\$1,600
4/1/03	2234	\$10,000
5/1/03	2235	\$5,000
7/10/03	2239	\$10,000
11/10/03	2243	\$5,000
12/1/03	2245	\$5,500
9/1/04	2256	\$10,000
Total		\$146,150

The following checks, some of which were signed by Niebler using DL's name, were paid to Niebler's credit card company, First USA Bank and Bank One,¹ from DL's personal checking account:

Date	Check #	Amount
6/7/01	2239	\$15,000
7/18/01	2242	\$15,000
8/20/01	2244	\$20,500
11/5/01	2248	\$11,000
4/18/02	2220	\$4,000
5/11/02	2221	\$3,500
4/19/03	2233	\$20,000
5/13/03	2236	\$14,000
6/19/03	2237	\$6,500
7/10/03	2238	\$10,000
8/5/03	2240	\$9,000
10/20/03	2241	\$10,000
11/19/03	2242	\$10,000
12/19/03	2246	\$5,000
5/16/04	2249	\$10,000
8/18/04	2253	\$12,000
Total		\$175,500

The following checks, some of which were signed by Niebler using DL's name, were paid to Niebler's credit card company, US Bank, from DL's personal checking account:

Date	Check #	Amount
6/4/01	2238	\$3,000
8/5/01	2243	\$6,000
6/5/02	2222	\$1,500
9/10/02	2225	\$2,000
10/10/02	2226	\$1,500
11/1/02	2228	\$1,500
12/10/02	2229	\$1,500
2/11/03	2231	\$3,500
3/14/03	2232	\$2,000
12/10/03	2244	\$5,000
5/10/04	2248	\$2,500
5/10/04	2247	\$1,500
6/9/04	2251	\$2,400
6/10/04	2250	\$2,500
Total		\$36,400

¹ First USA Bank was purchased by Bank One and operated as Bank One during this time frame.

Exhibit 2

Security Purchased/Sold	Buy/Sell	Date	# of Shares	Total (\$)
IDEX Pimco Total Return	BUY	12/10/02	2403.846	\$ (25,000.00)
ASAF Federated High Yield BC Fund	SELL	12/10/02	3900.642	\$ 25,000.02
Evergreen Strategic Inc.	BUY	12/11/02	12328.182	\$ (75,078.63)
Federated Fixed Income Sec Strategic	BUY	12/11/02	9865.574	\$ (75,077.02)
Federated Liberty US Govt Money Market	SELL	12/11/02	75077.020	\$ 75,077.02
Evergreen Adjustable Rate	SELL	12/11/02	7764.078	\$ 75,078.63
IDEX Pimco Total Return	BUY	01/06/03	2402.136	\$ (25,000.00)
ASAF Federated High Yield BC Fund	SELL	01/06/03	3234.205	\$ 20,823.78
ASAF Federated High Yield BC Fund	SELL	01/06/03	4573.171	\$ 29,444.85
Pioneer High Yield Fund	BUY	02/04/03	4016.064	\$ (40,000.00)
ASAF NB Mid Cap Value	SELL	02/04/03	5365.962	\$ 65,804.91
Pimco Real Return Fund	BUY	03/10/03	2125.850	\$ (25,000.00)
ASAF Federated High Yield BC Fund	SELL	03/10/03	9185.050	\$ 59,248.16
Pimco Real Return Fund	BUY	03/31/03	2626.970	\$ (30,000.00)
Franklin Age High Income	BUY	04/04/03	11299.435	\$ (20,000.00)
ASAF Profund Managed OTC	BUY	05/08/03	13661.202	\$ (25,000.00)
Pioneer High Yield Fund	SELL	05/08/03	4552.734	\$ 46,863.44
Franklin Age High Income	SELL	05/08/03	33348.568	\$ 60,000.03
State Street Research Aurora	SELL	05/08/03	2468.043	\$ 60,000.06
ASAF Gabelli Small Cap	SELL	05/08/03	7422.907	\$ 75,000.03
ASAF NB Mid Cap Value	BUY	05/09/03	7055.503	\$ (75,000.00)
Pimco PEA Growth	BUY	05/09/03	4006.394	\$ (54,847.54)
Pimco Real Return Fund	SELL	05/09/03	4752.820	\$ 54,847.54
ASAF Gabelli Small Cap	SELL	05/09/03	7156.489	\$ 75,000.00
Pioneer High Yield Fund	BUY	06/05/03	3127.793	\$ (35,000.00)
Federated Strategic Income	BUY	09/15/03	11848.341	\$ (100,000.00)
Federated Market Opportunity Fund	SELL	09/15/03	8210.181	\$ 100,000.00
Pioneer High Yield Fund	BUY	09/22/03	3127.793	\$ (35,000.00)
Fidelity Advisors Ser 1 High Income Fund	BUY	10/01/03	10857.763	\$ (100,000.00)
Evergreen Strategic Inc.	BUY	10/01/03	7428.286	\$ (49,100.97)
Evergreen Cap Growth	SELL	10/01/03	2604.826	\$ 49,100.97
Fidelity Advantage Small Cap	SELL	10/01/03	5865.103	\$ 100,000.00

Security Purchased/Sold	Buy/Sell	Date	# of Shares	Total (\$)
State Street Research High Income	BUY	10/20/03	22255.193	\$ (75,000.00)
Federated High Income Bond	BUY	10/20/03	8905.852	\$ (70,000.00)
ASAF Federated High Yield BC Fund	BUY	10/20/03	7273.438	\$ (52,441.49)
ASAF Federated High Yield BC Fund	BUY	10/20/03	5547.850	\$ (40,000.00)
ASAF NB Mid Cap Value	SELL	10/20/03	3236.246	\$ 40,000.00
ASAF Gabelli Small Cap	SELL	10/20/03	4178.605	\$ 52,441.49
Federated Market Opportunity Fund	SELL	10/20/03	5709.625	\$ 70,000.00
State Street Research Aurora	SELL	10/20/03	2324.861	\$ 75,000.00
Evergreen Strategic Inc.	SELL	11/07/03	45.000	\$ 295.65
Federated Strategic Income	SELL	11/07/03	225.000	\$ 1,919.25
Pimco PEA Growth	SELL	11/07/03	575.000	\$ 9,193.94
Pioneer Strategic Income	BUY	11/10/03	14679.611	\$ (148,851.26)
State Street Research High Income	BUY	11/10/03	25029.210	\$ (84,598.73)
ASAF Federated High Yield BC Fund	BUY	11/10/03	6855.619	\$ (49,497.57)
ASAF Federated High Yield BC Fund	BUY	11/10/03	4673.569	\$ (33,743.17)
ASAF Profund Managed OTC	SELL	11/10/03	13661.202	\$ 33,743.17
ASAF NB Mid Cap Value	SELL	11/10/03	3819.257	\$ 49,497.57
State Street Research Aurora	SELL	11/10/03	2506.629	\$ 84,598.73
Pioneer High Yield Fund	SELL	11/10/03	12711.465	\$ 148,851.26
Franklin Utilities	BUY	11/18/03	4062.183	\$ (35,787.83)
Franklin Age High Income	SELL	11/18/03	17629.473	\$ 35,787.83
Evergreen Adjustable Rate	BUY	12/01/03	11271.351	\$ (107,528.69)
Federated High Income Bond	BUY	12/01/03	10418.628	\$ (82,619.72)
Pimco Real Return Fund	BUY	12/01/03	4727.497	\$ (55,028.06)
ASAF NB Mid Cap Value	BUY	12/01/03	2944.641	\$ (50,000.00)
ASAF Federated High Yield BC Fund	SELL	12/01/03	6887.052	\$ 50,000.00
Pimco PEA Growth	SELL	12/01/03	3439.254	\$ 55,028.06
Federated Strategic Income	SELL	12/01/03	9640.574	\$ 82,619.72
Evergreen Healthcare Fund	SELL	12/01/03	6446.564	\$ 107,528.69
IDEX Transamerica Con High Yield	BUY	12/29/03	9160.374	\$ (84,641.86)
Evergreen High Yield Bond	BUY	12/29/03	20172.911	\$ (70,000.00)
Evergreen Special Values Fund	BUY	12/29/03	2132.196	\$ (50,000.00)
Evergreen Strategic Inc.	SELL	12/29/03	7374.631	\$ 50,000.00
Evergreen Strategic Inc.	SELL	12/29/03	10324.484	\$ 70,000.00

Security Purchased/Sold	Buy/Sell	Date	# of Shares	Total (\$)
IDEX Isabell Small Cap	SELL	12/29/03	6191.797	\$ 84,641.86
Franklin Utilities	SELL	01/27/04	4062.183	\$ 37,294.71
Evergreen Special Values Fund	SELL	01/27/04	2132.196	\$ 50,837.15
ASAF Federated High Yield BC Fund	SELL	01/27/04	10274.220	\$ 75,000.05
IDEX Pimco Total Return	SELL	01/27/04	7915.541	\$ 80,000.00
Evergreen Adjustable Rate	SELL	01/27/04	10785.946	\$ 100,000.01
State Street Research High Income	SELL	01/27/04	29287.719	\$ 100,000.09
Federated High Income Bond	SELL	01/28/04	7313.059	\$ 57,500.00
Evergreen High Yield Bond	BUY	01/29/04	1314.179	\$ (4,625.91)
Evergreen Adjustable Rate	SELL	01/29/04	485.405	\$ 4,630.77
Federated High Income Bond	SELL	02/19/04	7313.059	\$ 2,101.43
Federated Strategic Income	SELL	03/23/04	68.886	\$ 600.00
Fidelity Advisors Ser 1 High Income Fund	SELL	03/23/04	63.425	\$ 600.00
IDEX Pimco Total Return	SELL	03/23/04	56.338	\$ 600.00
Pioneer Strategic Income	SELL	03/23/04	95.877	\$ 1,000.00
Federated High Income Bond	SELL	03/23/04	517.395	\$ 4,000.00
Evergreen Strategic Inc.	SELL	03/23/04	2021.195	\$ 12,826.31
Franklin Utilities	SELL	04/06/04	4062.183	\$ 1,214.79
Evergreen Special Values Fund	SELL	04/06/04	2132.196	\$ 1,572.23
ASAF Federated High Yield BC Fund	SELL	04/06/04	10274.220	\$ 1,953.86
Evergreen Adjustable Rate	SELL	04/06/04	10785.946	\$ 2,897.91
State Street Research High Income	SELL	04/06/04	29287.719	\$ 3,092.68
IDEX Pimco Total Return	SELL	04/06/04	7915.541	\$ 3,192.34
Federated High Income Bond	SELL	04/07/04	517.395	\$ 149.51
Evergreen Strategic Inc.	SELL	04/07/04	2021.195	\$ 493.36
Federated Strategic Income	SELL	04/08/04	57.604	\$ 500.00
Fidelity Advantage Small Cap	SELL	04/08/04	23.753	\$ 500.00
Pioneer Strategic Income	SELL	04/08/04	96.618	\$ 1,000.00
Pioneer Strategic Income	SELL	04/23/04	97.847	\$ 1,000.00