

**FINRA
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

**~~Roger J. Mouallem,~~
CRD No. ~~1815781~~**

Respondent.

**Disciplinary Proceeding
No. ~~2007009934703~~**

Hearing Officer - RSH

**ORDER ACCEPTING OFFER
OF SETTLEMENT**

FEBRUARY 1, 2010

INTRODUCTION

Disciplinary Proceeding No. 2007009934703 was filed on November 19, 2009 by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondent Roger J. Mouallem submitted an Offer of Settlement ("Offer") to Complainant on January 13, 2010. 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

000036035 2010

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

Roger J. Mouallem, CRD No. 1815781, entered the securities industry in January 1989 as a general securities representative and remained registered in that capacity with FINRA-regulated firms through January 16, 2009. During the relevant period, he was a general securities representative with Capital Growth Financial, LLC ("Capital Growth" or "the firm"). He has not been registered with another broker-dealer since his termination on January 16, 2009. FINRA retains jurisdiction over Mouallem pursuant to Article V, § 4(a) of the By-Laws since the conduct which serves as the basis for this action commenced prior to his last termination of registration

FINDINGS AND CONCLUSIONS

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

Between September and December 2005 ("the relevant period"), Mouallem, acting in concert with one of his customers, engaged in a series of manipulative trades in the common stock of Tally-Ho Ventures, Inc. ("Tally-Ho"). Mouallem entered retail customer orders and *arranged for other trades to be done at specific times and prices in an attempt to stabilize or increase the price of the security.*

Mouallem entered the securities industry in January 1989 as a general securities representative and remained registered in that capacity with FINRA-regulated firms through January 16, 2009. During the relevant period, he was a general securities representative with

Capital Growth Financial, LLC ("Capital Growth" or "the firm"). He has not been registered with another broker-dealer since January 16, 2009, when his U5 terminating his employment with his last employer was filed with Central Registration Depository. FINRA retains jurisdiction over Mouallem pursuant to Article V, Section 4 of the By-Laws as the conduct which serves as the basis for this action commenced prior to his termination from a member firm and this action is filed within two years after the effective date of his last termination of registration from a member firm.

In June 2005, Mouallem was a registered representative at Capital Growth.

In June or July 2005, a long time friend of Mouallem introduced him to Tally-Ho, a Delaware corporation with its administrative offices in Europe. Tally-Ho's stock was traded on the OTC Bulletin Board.

Mouallem's friend was a principal of ACV, an investor relations firm, which had a contract to promote Tally-Ho.

Shortly thereafter, Mouallem contacted the President of Tally-Ho and invited him to Capital Growth to present Tally-Ho to the brokers.

Following that meeting, ACV, through a related account on behalf of Tally-Ho, gave Mouallem and others at Capital Growth Tally-Ho stock at no cost. Mouallem personally received 7,500 shares of Tally-Ho at no cost.

In late August 2005, Mouallem began soliciting some of his customers to purchase Tally-Ho stock. On August 30, 2005, the first day Tally-Ho was purchased by a Capital Growth customer, the closing price of the stock was \$5.00.

The President of Tally-Ho introduced Mouallem to several foreign residents who became Mouallem's customers. One of those was SB, a U.S. citizen residing in Spain who was President of WG, a company based in Spain.

SB had a significant financial interest in Tally-Ho, having received 500,000 shares of Tally-Ho from the company on May 11, 2005.

On approximately September 6, 2005, SB opened a brokerage account at Capital Growth in the name of WG with Mouallem as the broker of record. The first transactions in the account were purchases of Tally-Ho stock, despite SB's already substantial holdings of Tally-Ho elsewhere.

During the relevant period, Tally-Ho was a thinly traded stock, with volumes as low as 500 shares a day.

The price of Tally-Ho stock generally rose in September 2005. On September 28, it traded at \$6.00 a share. Following that, however, the price began to slide.

Beginning at the end of September 2005, Mouallem and SB started communicating by instant message ("IM") on a recurring basis about Tally-Ho. Despite Mouallem not being a trader at the firm and Capital Growth not making a market in the stock during the relevant period, the IMs included particulars of who was on the bid and offer for the stock.

Beginning in October 2005, Mouallem and SB began to take actions to attempt to artificially stabilize or inflate the price of Tally-Ho and their IM conversations extended well beyond normal market discussions between a broker and his customer.

During these IM discussions, Mouallem and SB discussed actions each had taken and intended to take to control the price of the stock. For example, on October 3, Mouallem initiated

contact with SB via IM to tell her that he was "moving [the price of] the stock." She responded favorably, telling him to "keep it up." He replied he was "trying."

On the same day, Mouallem solicited customers to purchase Tally-Ho stock, with the trades entered in the price range discussed in the IM, between \$5.60 and \$5.85, above the previous day's close of \$5.15.

In the same time frame, Mouallem tried to deter one of his customers who wanted to sell the stock and even convinced him to buy more. On October 12, 2005, AC, one of Mouallem's customers, emailed Mouallem and said that he wanted to "seriously lighten up on Tally-Ho (or know that jumps upward for these are imminent)." Mouallem did not give a substantive response.

Mouallem did not sell any of AC's Tally-Ho stock. In fact, he solicited AC to purchase 1,000 more shares of Tally-Ho two days after this email. Then a few weeks later, on two different occasions he solicited AC to purchase 2,200 more shares.

During this time period, Mouallem and others at Capital Growth sold the Tally-Ho stock they had received at no cost. Between September 30, 2005 and October 31, 2005, Mouallem sold 5,500 of his shares at prices between \$4.85 and \$5.64 per share.

All of the other Capital Growth employees who received free Tally-Ho shares sold all of their shares in the same time frame and price range.

In some situations, Mouallem solicited purchases at the same time that he and other Capital Growth employees were selling their stock.

In November 2005, the conversations between Mouallem and SB became more aggressive in terms of actions taken or to be taken to stabilize or increase the price of the stock.

The price of Tally-Ho continued to drop through November, however, from just above \$5.00 a share at the beginning of the month to approximately \$4.30 at the end of the month.

A series of IMs between Mouallem and SB on November 28, 2005 demonstrate their attempts to manipulate the price of the stock. Throughout the trading day, Mouallem and SB were in communication, monitoring the trading of Tally-Ho and strategizing on ways to raise the stock's price.

In the first IM that day, at 10:13:50 AM, Mouallem indicated he had moved the price higher through a purchase, when he "took ... out" a seller in his office.

Just over 10 minutes later, Mouallem suggested in an IM that he and SB were working together in a "battle" to keep the price up, and his customers' purchases were part of that battle. He complained that despite his customers' purchases of a large number of shares of Tally-Ho, its price was down approximately 20%. He added "i (sic) was under the impression that there was not that much stock for sale.....and that 100-150k of buying would really move this thing higher.....ive (sic) delivered from my end.....yet im (sic) down." This was a reference to Mouallem's customers' purchases of 118,000 shares of Tally-Ho between August 30, 2005 and November 28, 2005.

Ten minutes later, Mouallem expressed concern about Tally-Ho's monthly closing price, concerned that a lower price reflected on customers' statements would cause them to want to sell, further deflating the price.

In their IMs, Mouallem and SB developed a strategy to try to raise the price of Tally-Ho, which included SB agreeing to buy the stock a little at a time at another broker to try to raise the price and show buying interest at multiple firms.

Their discussions continued in that hour, with a fairly constant monitoring of the price and the identity of the sellers. Both Mouallem and SB entered purchase orders to attempt to ease selling pressure, and followed and discussed the impact of those purchases. This included SB asking Mouallem at what price her order was executed, even though she placed the order through another broker.

At 11:03:08 AM, Mouallem entered a customer Tally-Ho purchase order for 1000 shares at \$4.20.

A little more than 15 minutes later, at 11:20:53 AM on November 28, 2005, Mouallem first advised SB that "another 2 or 3 thousand (sic) and the stock should be back to 5...." SB responded in the IM that she would buy shares and others assisting in the effort would buy some "to get back to 5." Mouallem replied "ill (sic) help out later today as well."

Just over an hour later, Mouallem and SB discussed Tally-Ho again. After addressing the current price, indicating his bid at \$4.40 had not traded in some time, Mouallem stated "seems as though the 'must sell immediately' (sic) sellers are now out of the way....and now its just a function of some buying to get the stock back over 5 again."

SB bought the stock several times that day through another firm, after Mouallem instructed her twice to buy through that firm.

Despite being a retail broker who was paid based on his commissions, at no time during that day did Mouallem suggest that SB transfer money to her Capital Growth account to make the purchases through him.

Mouallem never advised SB in the IMs that day that he had sold some of his own shares of Tally-Ho about a week before. He sold 700 shares on November 22, 2005 at \$4.70, the same

day he solicited customer purchases at higher prices, and sold 300 shares on November 23 at \$4.60.

After November 28, 2005, Mouallem and SB continued to discuss what was happening with Tally-Ho. Particularly as the price of the stock dropped, SB expressed concern that one of the active sellers was someone who they believed was supposed to be assisting them in supporting the price of the stock.

On December 13, 2005 at 02:31:08 PM, in an IM to SB, Mouallem suggested additional buying to increase the price of the stock. He said "lets move the stock without them ...just you and I" and "im going to call a few clients ... and put some orders in..."

Almost immediately thereafter, Mouallem solicited customers to buy shares of Tally-Ho. He entered four purchase orders for his customers in Tally-Ho between 2:38 and 2:55 PM that day.

The discussions between SB and Mouallem diminished after December 13, and the price of the stock continued to drop.

Mouallem sold the balance of his shares in December 2005. He sold 400 shares at \$4.20 on December 2. He sold the remainder of his holdings on December 22 and 23, at \$3.68 and \$3.60.

Engaging in the conduct described above, Mouallem, working in concert with SB, artificially affected the market price for Tally-Ho stock.

Based on the foregoing, Respondent willfully violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 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 for Two (2) Years from associating with any FINRA member in all capacities. It is further ordered that Respondent be fined Twenty-Five Thousand (\$25,000) Dollars. The fine shall be due and payable either immediately upon reassociation with a member firm following the two year suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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



Jeffrey P. Bloom, Senior Special Counsel
Department of Enforcement
FINRA
1801 K Street, NW, Suite 800
Washington, DC 20006
Telephone No. 202-974-2808
Facsimile No. 202-721-8395
E-mail: jeffrey.bloom@finra.org