

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

Department of Enforcement,

Complainant,

v.

David Laifer,
CRD No. 300673,

Respondent.

Disciplinary Proceeding
No. 2007010941701

Hearing Officer Andrew H. Perkins

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 17, 2010

INTRODUCTION

Disciplinary Proceeding No. 2007010941701 was filed on November 17, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent David Laifer submitted an Offer of Settlement (Offer) to Complainant dated April 28, 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

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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

1. Respondent David Laifer (CRD No. 300673) ("Laifer") first became registered with FINRA as a General Securities Representative in 1967 and successfully completed the Uniform Securities Agent State Law Examination in 1982. From January 2, 2002, through September 18, 2007, Laifer was registered with Oppenheimer as a General Securities Representative.

2. After his termination from Oppenheimer, Laifer became registered as a General Securities Representative at another FINRA member firm between October 10, 2007 and November 27, 2007, when he resigned.

3. Laifer has not been registered with any member firm since his resignation from his most recent FINRA member firm employer. Pursuant to Article V § 4(a) of the FINRA By-Laws, Laifer is subject to FINRA's jurisdiction since the conduct which serves as the basis for this action commenced prior to the termination of his registration from a member firm and this complaint has been filed within two years after the effective date of the termination of Laifer's registration.

FINDINGS AND CONCLUSIONS

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

SUMMARY

4. On or about April 12, 2006, Oppenheimer & Co. (the "Firm" or "Oppenheimer") forbade David Laifer ("Laifer") to enter further buy orders for shares of a thinly-traded pink sheet penny stock, Visual Industries, Inc. ("VUAL"), due to the high concentration of shares held in his customers' accounts at the Firm. From April 12, 2006 through May 17, 2007, Laifer circumvented the restriction and facilitated trades by matching up customers who were interested in buying and selling shares of VUAL, providing price quotes for VUAL, and processing instructions to transfer shares of VUAL between customers' accounts. Based upon the foregoing conduct, Laifer violated NASD Conduct Rule 2110 and caused the books and records of his firm to be inaccurate, in violation of NASD Conduct Rules 3110 and 2110.

5. From December 2005 through May 2007, Laifer falsified documents by affixing previously obtained customer signatures and/or dates onto three IRA distribution forms and a stock transfer request. Based on the foregoing conduct, Laifer violated NASD Conduct Rule 2110 and caused the books and records of his firm to be inaccurate, in violation of NASD Conduct Rules 3110 and 2110.

6. Additionally, from January 2006 through March 2007, Laifer exercised discretion in two accounts owned by customer TL pursuant to a verbal, not written grant of discretionary authority and without his member firm employer's having accepted the accounts as discretionary. Moreover, in this same period, Laifer entered an excessive number of transactions in the two accounts owned by customer TL. Based upon the foregoing conduct, Laifer violated NASD Conduct Rules 2510(b), 2310, 2110 and IM-2310-2(b)(2).

RECOMMENDING AND FACILITATING EVASION BY CUSTOMERS OF A MEMBER FIRM'S PROHIBITION ON FURTHER PURCHASES OF A THINLY-TRADED PENNY STOCK (NASD Conduct Rule 2110)

7. Between January 2006 and September 2007, approximately 72 of Laifer's customers held shares of VUAL.

8. During that time period, VUAL was a low-priced and thinly-traded security that traded on the Pink OTC Markets.

9. On April 12, 2006, by e-mail, the Firm informed Laifer that, due to the large size of VUAL positions held in accounts that he serviced, "we will no longer permit purchases of this security on either a solicited or un-solicited basis. Any buy orders placed will not be honored, and any trades executed will be broken with responsibility for loss charged to you." With this e-mail was attached a "Letter of Advisement to cease all purchases of Visual Industries Inc.," which Laifer signed to acknowledge that he had "been advised to cease any and all further purchases, either solicited or un-solicited" of VUAL stock.

10. Beginning this same day, or shortly thereafter, Laifer was contacted by customers who asked to make additional purchases of VUAL for their accounts.

11. Laifer advised these customers that he could no longer purchase shares of VUAL for them but that he could put them into contact with other customers who might be willing to sell shares of VUAL.

12. Laifer supplied to customers who wanted to acquire VUAL shares the names of other customers whose accounts he serviced who he thought might be willing to sell VUAL shares.

13. On occasion, Laifer provided price quotations for VUAL to facilitate transfers of VUAL positions between his customers.

14. Laifer subsequently received orders from certain of his customers to transfer VUAL shares from their accounts to the accounts of other customers whose accounts Laifer serviced, or to parties or locations outside the Firm.

15. Laifer assumed that money was exchanged between the customers who transferred and customers who received VUAL stock.

16. Transfers of VUAL shares between Laifer's customers were not reflected as trades by the Firm and were not included in the trading volume reported by the Pink OTC Markets.

17. Between April 12, 2006 and May 17, 2007, Laifer processed and/or otherwise facilitated the following direct transfers of VUAL shares among his customers' Oppenheimer accounts. All of these transfers were between customer accounts that Laifer serviced at Oppenheimer.

Date (as per account statements)	Transferor	Transferee	No. Shares
04/17/06	KS	NG	10,000
		GH	25,000
		DR	12,500
		LS	4,000
		PS	11,000
		JM	10,000
5/5/06	KS	JM	6,000
		CR	15,000
		EM	30,000
		DD	20,000
5/15/06	KS	JM	10,000
5/26/06	KS	DD	5,000
6/8/06	MV	SS	500
10/26/06	MV	GT	20,000
10/27/06	KS	EM	2,000
11/21/06	DR	GH	12,500

19. In or about November 2006, the Firm directed that transfers of VUAL shares between Laifer's customers not be allowed and that Laifer do no trades in VUAL except liquidating trades. Beginning in or about December 2006, until in or about May 2007, Laifer facilitated the trading of VUAL shares by allowing his customers to have their VUAL share certificates reissued in another person's name. The reissued shares were subsequently deposited into the Oppenheimer accounts of the transferee customers.

Date (as per account statements)	Original Customer	Customer on Reissued Shares	No. Shares
12/1/06	MV	JW	50,000
3/7/07	MV	PR & AR	33,000
5/17/07	MV	HK MS & IL	27,800 22,400

20. By recommending and facilitating evasion by his customers of the bar that his firm had imposed against further purchases of a low-priced and thinly-traded stock, Laifer violated NASD Conduct Rule 2110.

FALSIFICATION/ ALTERATION OF DOCUMENTS (NASD Conduct Rule 2110)

Laifer Falsifies Customer Account Documents

21. Beginning in or about 1999, in servicing certain customer accounts, Laifer falsified documents that supported customer withdrawals or transfers by photocopying actual customer signatures from documents and taping the photocopied signatures to other forms. During the period from in or about December 2005 through August 2007, Laifer falsified such documents with regard to four customer accounts. Laifer subsequently submitted such falsified documents for processing by Oppenheimer, often by fax transmission from his home office.

IRA Distribution Form of Customer LW:

22. While employed at the Firm, Laifer serviced an IRA account owned by customer LW.

23. On or about December 6, 2005, to support a transaction requested by the customer, Laifer falsified an IRA Distribution Form for customer LW by taping a photocopy of LW's signature that Laifer had previously obtained to a blank IRA Distribution Form.

Transfer Request of Customer JW:

24. While employed at the Firm, Laifer serviced a securities account owned by customer JW. JW owned shares of VUAL.

25. On or about February 9, 2006, to support a transaction requested by the customer, Laifer falsified a stock transfer request relating to this account.

26. Customer JW had directed that VUAL shares be transferred from his account to the accounts of several members of his family. To carry out this transfer, Laifer taped to a new LOA a copy of customer JW's signature from a previously-obtained document and a column of figures, from a different document, specifying the number of shares to be transferred to each of the set of transferee customers.

IRA Distribution Form of Customer AG:

27. While employed at the Firm, Laifer serviced an IRA account owned by customer AG.

28. On or about July 6, 2006, to support a transaction requested by the customer, Laifer falsified an IRA Distribution Form for customer AG by whiting out the date on a previously-signed IRA Distribution Form and entering a new date.

IRA Distribution Form of Customer RW:

29. While employed at the Firm, Laifer serviced an IRA account owned by customer RW.

30. On or about August 8, 2007, to support a transaction requested by the customer, Laifer falsified an IRA Distribution Form for customer RW by taping a photocopy of RW's signature that Laifer had previously obtained to the IRA Distribution Form.

31. By reason of the foregoing, Laifer violated NASD Conduct Rule 2110.

**CAUSING INACCURATE FIRM BOOKS AND RECORDS
(NASD Conduct Rules 3110 and 2110)**

32. FINRA Rule 3110 requires, in pertinent part, that broker-dealers make and keep for prescribed periods such records as the Securities and Exchange Commission prescribes, including records of purchases, sales, receipts, and deliveries of securities for each customer account and all other debits or credits to such account.

33. Laifer altered documents related to customer accounts as set forth in the Second Cause of Action and engaged in transfers of VUAL shares that were not duly reflected as trades by the Firm as set forth in the First Cause of Action. This caused inaccuracies in records that his member firm was required to make and keep.

34. By causing the books and records of his firm to be inaccurate, Laifer violated NASD Conduct Rules 3110 and 2110.

**EXERCISING DISCRETION IN NON-DISCRETIONARY ACCOUNTS
(NASD Conduct Rules 2510(b) and 2110)**

36. The Department realleges and incorporates by reference paragraphs 1 through 35 above.

37. While Laifer was employed at the Firm, he serviced accounts owned or controlled by Customer TL. Customer TL held two accounts, the "DL Trust Account" and the "TL Trust Account." Customer TL was approximately 75 years old when she inherited these accounts from her husband.

38. TL's husband, who died in April 2005, had been a customer of Laifer's for over 40 years. TL was listed as a joint holder on the accounts prior to her husband's death.

39. In or about April 2005, after her husband's death, TL verbally instructed Laifer to make investment decisions in her accounts. Laifer understood that he was to hold certain stocks that TL had delivered into her accounts, but was to do what he thought was best with other stocks in TL's portfolio. Laifer understood that TL wanted him to use discretion, but also knew she had not given him written authorization.

40. Laifer did not obtain TL's grant of discretionary authority in writing and the Firm did not accept TL's accounts as discretionary.

41. Laifer, nonetheless, exercised discretionary power in non-discretionary accounts by executing buy and sell transactions in TL's accounts.

42. Between January 1, 2006 and March 31, 2007, Laifer executed 238 trades, collectively, in TL's two accounts. Laifer did not contact TL to obtain authorization before entering these transactions.

43. By reason of the foregoing, Laifer violated NASD Conduct Rules 2510(b) and 2110 by executing discretionary trades in non-discretionary accounts.

**EXCESSIVE TRADING IN ACCOUNT OF CUSTOMER TL
BY RESPONDENT (NASD Conduct Rules 2310 and 2110)**

44. TL was an elderly woman. She had no previous investment experience and had relied on her late husband to make all investment decisions in their joint account. Given her lack of understanding of investments, TL was unable to exercise independent judgment and evaluate Laifer's investments.

45. In the period between January 1, 2006 and March 31, 2007:

- Despite not having written authorization, Laifer made investment decisions, using his own discretion, and improperly exercised control for the DL Trust Account;
- Laifer executed 214 equity trades in the DL Trust Account;
- TL paid commissions and/or fees of \$59,524.35 on the 214 trades executed in the DL Trust Account between January 1, 2006 and March 31, 2007;
- The average monthly account value of the DL Trust Account in this period was approximately \$483,913;
- The portfolio turnover for the DL Trust Account in this period was approximately 3.83, or 3.06 on an annualized basis; and
- The cost-to-equity ratio for this account, the amount that the customer would have to earn in order to break even, was approximately 12% for this period, or 9.8% on an annualized basis.

46. In the period between January 1, 2006 and March 31, 2007:

- Despite not having written authorization, Laifer made investment decisions, using his own discretion, and improperly exercised control for the TL Trust Account;
- Laifer executed 24 trades in the TL Trust Account;
- TL paid commissions and/or fees of \$4,281.78 on the 24 trades executed in the TL Trust account;
- The average account value of the TL Trust Account was approximately \$14,638;
- The portfolio turnover for the TL Trust Account in this period was approximately 5.67, or 4.54 on an annualized basis; and
- The cost-to-equity ratio of this account, the amount that the customer would have to earn in order to break even, was approximately 29% for this period, or 23.4% on an annualized basis.

47. The above-described course of conduct by Laifer constituted excessive trading, in violation of NASD Conduct Rules 2110, 2310 and IM-2310-2(b)(2).

Based on the foregoing, Respondent violated NASD Conduct Rule 2110 and NASD Conduct Rules 3110 and 2110; and violated NASD Conduct Rules 2510(b), 2310, 2110 and IM-2310-2(b)(2).

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

- (a) suspended from association with any FINRA registrant for fifteen months; and
- (b) fined \$15,000, which shall be due and payable either immediately upon reassociation with a member firm following the fifteen months' 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



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