

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ERIC ANTHONY FOSTER (CRD
No.3267556),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008015382001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period from February 28, 2006 through June 6, 2006, Respondent Eric Anthony Foster (CRD No. 3267556) effected six unauthorized purchase and sale transactions in the Maxim Group LLC (BD No. 120708) ("Maxim") account of deceased customer LS. Customer LS had died on January 12, 2006, prior to the transactions.
2. In the alternative, in effecting the above-described transactions, Foster exercised discretion without written authorization, in violation of NASD Conduct Rule 2510(b).

RESPONDENT AND JURISDICTION

3. Foster first became registered with FINRA as a General Securities Representative (“GSR”) through an association with a member firm. Foster’s registration through that firm terminated on April 28, 2000.
4. During the period from April 28, 2000 through October 23, 2002, Foster was registered as a GSR through associations with four different member firms.
5. From October 23, 2002 through October 20, 2008, Foster was registered as a GSR through member firm Maxim. Foster’s employment with Maxim was terminated on October 10, 2008 and the Uniform Termination Notice of Securities Registration (Form U5) filed with respect to Foster states that he was “discharged” by the firm.
6. From October 14, 2008 through January 6, 2010, Foster was registered as a GSR through a member firm. Since July 2, 2010, Foster has been registered as a GSR through a different member firm.
7. Foster is subject to FINRA jurisdiction because he is currently registered through a FINRA member firm.

FIRST CAUSE OF ACTION
(Unauthorized Trading)
(Violation of NASD Conduct Rule 2110)

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.
9. In or around late 2003, Foster solicited customer LS to open a securities account at Maxim.
10. On January 12, 2006, customer LS died at the age of 84 as a result of injuries he sustained in a fall.

11. During the period from February 28, 2006 to June 6, 2006, which was after customer LS had died, Foster effected the following unauthorized transactions in LS's Maxim account:

- a. On February 28, 2006, Foster effected a purchase of 1,000 Healthcare Acquisition Corp. New ("Healthcare") warrants at a price of \$2.105 per warrant and a total price of \$2,125.00. This purchase was made using available cash in the account.
- b. On March 13, 2006, Foster effected a purchase of an additional 1,500 Healthcare warrants at a price of \$2.10 per warrant for a total purchase price of \$3,170.00. This purchase was made using available cash in the account.
- c. On May 3, 2006, Foster effected a purchase of an additional 100 Healthcare warrants at a price of \$1.86 per unit and total purchase price of \$206.00. This purchase was made using available cash in the account.
- d. On June 6, 2006, Foster effected sale transactions of a total of 7,600 Healthcare warrants. While these warrants were all sold on the same date, the account statements and trade confirmations list seven separate sales transactions on that date with different prices ranging between \$2.00 and \$2.15 per warrant where the total proceeds from the sales were \$15,270.98.
- e. Also on June 6, 2006, Foster effected the purchase of two securities in the account: 20,000 shares of Harken at \$.728 per share for a total purchase price of \$14,580, and 1,000 IGC warrants at \$.61 per warrant with a total purchase price of \$630. These purchases were made using proceeds from the sale of Healthcare warrants.

12. Foster had no authorization for the foregoing transactions from either LS or from the estate representative of LS.

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

SECOND CAUSE OF ACTION

(Pleaded in the Alternative to the First Cause of Action)

(Exercise of Discretion Without Written Authority)

(Violation of NASD Conduct Rule 2510(b))

13. The Department realleges and incorporates by reference paragraphs 12 above.

14. NASD Conduct Rule 2510(b) provides that “no member or registered representative shall exercise any discretionary power in a customer’s account unless such customer has given prior written authorization . . . and the account has been accepted by the member, as evidenced in writing”

15. LS signed a new account form for the account dated November 21, 2003. The new account form contained an area to indicate whether LS had granted discretionary authority over the account to any party. No boxes were checked on the form to indicate that LS had granted discretionary authority.

16. Foster did not have prior written authorization to exercise discretion in LS’s account and Maxim had not accepted the account as discretionary.

17. Nevertheless, Foster effected the transactions described above in Paragraph 11, exercising discretion in the account prior to being advised of LS’s death.

By reason of the foregoing, Foster violated NASD Conduct Rules 2510(b) and 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. 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; and
- C. order that the Respondent(s) 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 19, 2011



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