

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

Department of Enforcement,

Complainant,

v.

**Russell Philip Macke
CRD No. 1882345**

**Hugh Vincent Murray III
CRD No. 826261**

Respondents.

Disciplinary Proceeding No. 2008016437801

Hearing Officer: LB

April 12, 2012

**ORDER ACCEPTING OFFER OF SETTLEMENT OF
RUSSELL PHILIP MACKE**

INTRODUCTION

Disciplinary Proceeding No. 2008016437801 was filed on June 21, 2011 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Macke submitted an Offer of Settlement (Offer) to Complainant dated April 5, 2012. 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, Macke 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, except that the Third Cause of Action in the Complaint, which was the only cause of action against Macke, has been amended to be consistent with the findings below. Macke has also consented to the imposition of the sanctions set forth below, and fully understands that this Order will become part of his permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Summary

Taking advantage of his discretionary authority over two customer accounts, Macke engaged in excessive trading and use of margin in those accounts. In doing so, Macke caused both customers to pay excessive margin interest, commissions and fees. The amount of trading in the accounts was inconsistent with the customers' financial circumstances and investment objectives.

Respondent and Jurisdiction

Russell Philip Macke entered the securities industry in January 1989. From October 14, 2005 through January 5, 2012, Macke was associated with FINRA broker-dealer Forsyth and registered with FINRA as a general securities representative and investment company and variable contracts products representative.

Although Macke has not been associated with a FINRA broker-dealer since January 5, 2012, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA broker-dealer, and (2) the

Complaint charges him misconduct committed while he was associated with a FINRA broker-dealer.

FINDINGS AND CONCLUSIONS

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

Excessive Trading in Customer Accounts **NASD Conduct Rules 2310 and 2110**

Excessive Trading in the Account of Customers A.K. and R.&C.H.

1. Customers R.&C.H. opened a brokerage account at Forsyth on August 6, 2007 for the benefit of customer A.K. Macke was the broker of record for this account. A.K. was 85 years old and living in a nursing home. C.H. was A.K.'s niece and had a power of attorney to handle A.K.'s finances.
2. The initial account balance was \$390,558.15. The customers used money from the account to pay A.K.'s health care and living expenses. They withdrew \$55,923.74 from August 6, 2007 through June 30, 2008 to pay these expenses. Macke was aware of the customers' use of the account and these withdrawals.
3. According to the August 6, 2007 new account form, A.K. had an annual income of \$60,000, a net worth of \$600,000, and liquid assets of \$380,000. The risk tolerance was noted as moderate, and the investment objectives of the account were growth and income, and trading and speculation.
4. When opening the account on August 6, 2007, the customers requested and received approval for the use of margin on the account.
5. Also when opening the account on August 6, 2007, the customers gave Macke discretionary authority over the account in writing. In the written authorization, the customers

granted Macke the power to purchase one stock position a day, with this permission being limited to the lesser of 1,000 shares or \$50,000. They also authorized Macke to sell any positions at any time. This written discretionary authority was approved by Hugh Murray, who was Forsyth's president and Macke's supervisor.

6. Macke's written discretionary authority for this account ended on May 23, 2008.

7. Beyond holding discretionary authority over the account from August 6, 2007 through May 23, 2008, Macke actually controlled the trading in the account from August 6, 2007 through June 30, 2008. The customers trusted Macke completely to make and execute recommendations in the account.

8. From August 6, 2007 through June 30, 2008, while controlling this account, Macke recommended and effected 99 stock transactions in the account, with total purchases of \$2,275,730.99. Many of the stock purchases were made using margin.

9. During this time period, the account lost \$52,905.21 in value, with the customers paying \$50,117.18 in margin interest, fees and discounted commissions. The customers also withdrew \$55,923.74 from the account during this time period.

10. During this time period, the average net portfolio value at month end was \$299,340.74. The account's annualized turnover ratio was 8.29, and its annualized cost-to-equity ratio (converted to a percentage) was 18.26%.

11. This volume of trading was excessive and unsuitable for the customers.

12. Through this conduct, Macke violated NASD Conduct Rules 2310 and 2110 from August 6, 2007 through June 30, 2008.

Excessive Trading in Customers N.&C.H.'s Account

13. Customers N.&C.H. opened a brokerage account at Forsyth on January 19, 2006. Macke was the broker of record for this account. N.&C.H. were both retired and were 65 and 67 years old.

14. N.&C.H. used money from the account to help pay their living expenses. Beginning in December 2007, N.&C.H. regularly withdrew \$1,000 a month to pay these expenses. Macke was aware of the customers' use of the account and these withdrawals.

15. According to their January 19, 2006 new account form, N.&C.H. had an annual income in the range of 0 to \$49,999, a net worth in the range of \$200,000 to \$499,999, and liquid assets of \$125,000. Their risk tolerance was noted as aggressive, and their investment objective was income.

16. On May 15, 2006, N.&C.H. requested and received approval for the use of margin on the account.

17. On May 8, 2007, N.&C.H. gave Macke discretionary authority over the account in writing. In the written authorization, N.&C.H. granted Macke the power to purchase one stock position a day, with this permission being limited to the lesser of 1,000 shares or \$50,000. N.&C.H. also authorized Macke to sell any positions at any time. This written discretionary authority was approved by Murray.

18. Macke's written discretionary authority for this account ended on May 23, 2008.

19. Beyond holding discretionary authority over N.&C.H.'s account from May 8, 2007 through May 23, 2008, Macke actually controlled the trading in N.&C.H.'s account from February 1, 2007 through June 30, 2008. N.&C.H. trusted Macke completely to make and execute recommendations in the account.

20. From February 1, 2007 through June 30, 2008, while controlling N.&C.H.'s account, Macke recommended and effected 67 stock transactions in the account, with total purchases of \$900,433.11. Many of the stock purchases were made using margin.

21. During this time period, the account balance dropped from \$118,422.62 to \$95,741.36. The customers paid \$32,403.32 in margin interest, fees and discounted commissions. They also made net deposits of \$9,000 to the account during this time period.

22. During this time period, the average net portfolio value at month end was \$129,143.80. The account's annualized turnover ratio was 4.92, and its annualized cost-to-equity ratio (converted to a percentage) was 17.71%.

23. This volume of trading was excessive and unsuitable for the customers.

24. Through this conduct, Macke violated NASD Conduct Rules 2310 and 2110 from February 1, 2007 through June 30, 2008.

Based on the foregoing, Macke violated NASD Conduct Rules 2310 and 2110 from February 1, 2007 through June 30, 2008.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Macke 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 Macke be suspended from association with any FINRA broker-dealer for two months in any capacity. Macke has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Macke, no monetary sanctions have been imposed.

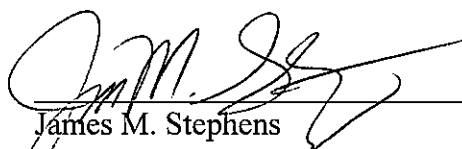
The findings herein are pursuant to Macke's Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

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 'James M. Stephens', is written over a horizontal line.

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