

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

Department of Enforcement,

Complainant,

v.

**[REDACTED]
General Securities Principal,
General Securities Representative,
and Options Principal
CRD No. [REDACTED]**

**[REDACTED]
General Securities Principal and
General Securities Representative
CRD No. [REDACTED]**

**Russell Philip Macke
General Securities Representative
and Investment Company and
Variable Contracts Products
Representative
CRD No. 1882345**

**[REDACTED]
Financial and Operations Principal,
General Securities Principal, General
Securities Representative, Investment
Banking Representative, Municipal
Securities Principal, and Options
Principal
CRD No. [REDACTED]**

Respondents.

Disciplinary Proceeding No. 2008016437801

COMPLAINT

000062173 2011

SUMMARY

1. [REDACTED] was charged and pleaded guilty to a felony for non-payment of child support. Despite repeated prompts from FINRA, [REDACTED] willfully failed to disclose the felony charge on his Form U4 for more than nine months, and he willfully failed to disclose his guilty plea to that charge on his Form U4 for more than two and a half years.

2. [REDACTED] was charged with a felony for driving while intoxicated. Nevertheless, he willfully failed to disclose this felony charge on his Form U4 for more than eight months.

3. 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.

4. [REDACTED] was the supervisor of [REDACTED] [REDACTED] and Macke. [REDACTED] knew or should have known of [REDACTED] felony charge and guilty plea, but he failed to ensure that [REDACTED] amended his Form U4 to disclose these items. Likewise, [REDACTED] knew or should have known of [REDACTED] felony charge, but he failed to ensure that [REDACTED] amended his Form U4 to disclose this charge. Additionally, [REDACTED] was aware of Macke's control over the two customer accounts and the high volume of trading in these accounts, but he failed to prevent Macke from trading excessively in these accounts.

RESPONDENTS AND JURISDICTION

5. [REDACTED] entered the securities industry in December 1981. From May 9, 2005 through the present, [REDACTED] has been associated with FINRA broker-dealer Forsyth Securities, Inc. (Forsyth) and registered with FINRA as a general securities principal, general securities representative, and options principal.

6. [REDACTED] entered the securities industry in March 1981. From July 16, 1999 through June 22, 2009, [REDACTED] was associated with FINRA broker-dealer Forsyth and was registered with FINRA as a general securities principal and general securities representative. Forsyth filed a Uniform Termination Notice for Securities Industry Registration (Form U5) for [REDACTED] on June 25, 2009. [REDACTED] is not currently associated with any FINRA broker-dealer.

7. Although [REDACTED] has not been associated with a FINRA broker-dealer since June 22, 2009, 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.

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

9. [REDACTED] entered the securities industry in September 1976. From June 27, 1985 through the present, [REDACTED] has been associated with FINRA broker-dealer Forsyth and registered with FINRA as a financial and operations principal, general securities

principal, general securities representative, investment banking representative, municipal securities principal, and options principal.

FIRST CAUSE OF ACTION

(Respondent [REDACTED])

Willful Failure to Disclose Felony Charge and Guilty Plea on Form U4
NASD By-Laws Article V, Section 2, FINRA By-Laws Article V, Section 2,
IM-1000-1, and NASD Conduct Rule 2110

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.

Failure to Disclose Felony Charge

11. On April 20, 2005, [REDACTED] was charged in St Louis County, Missouri with a felony for non-payment of child support.

12. [REDACTED] was not associated with a FINRA broker-dealer when he was charged with this felony.

13. On May 9, 2005, [REDACTED] completed and signed a Uniform Application for Securities Industry Registration or Transfer (Form U4) to become associated with Forsyth. [REDACTED] did not disclose the April 20, 2005 felony charge against him on this Form U4.

14. Under Article V, Section 2 of the NASD By-Laws, [REDACTED] was required to amend his Form U4 to disclose this felony charge within 30 days, or by May 20, 2005. [REDACTED] did not amend his Form U4 by May 20, 2005 to disclose this felony charge.

15. In May 2005, FINRA conducted a routine background check on [REDACTED] as a result of his application to become associated with Forsyth. Through this background check, FINRA learned that [REDACTED] had recently been arrested in St. Louis County, Missouri.

16. On May 26, 2005, FINRA requested further information about [REDACTED] recent arrest from [REDACTED] who was Forsyth's president and [REDACTED] supervisor. FINRA also requested

that [REDACTED] ensure that [REDACTED] Form U4 was amended to disclose any criminal charges, if necessary. [REDACTED] shared these FINRA requests with [REDACTED] and directed [REDACTED] to respond to these requests.

17. On October 12, 2005, [REDACTED] provided some information about the criminal charge against him to FINRA. However, this information was incomplete and did not indicate the nature of the charge against him.

18. That same day, FINRA requested further information from [REDACTED] about [REDACTED] recent arrest and requested that [REDACTED] ensure that [REDACTED] Form U4 was amended to disclose any criminal charges, if necessary. [REDACTED] again shared these FINRA requests with [REDACTED] and directed [REDACTED] to respond to these requests.

19. [REDACTED] amended his Form U4 on February 1, 2006. In this amendment, [REDACTED] finally disclosed the felony charge against him for non-payment of child support. This disclosure was over eight months late, and long after FINRA had instructed [REDACTED] and [REDACTED] to disclose a criminal charge on [REDACTED] Form U4.

20. [REDACTED] failure to disclose the felony charge on his Form U4 in a timely manner was willful.

21. Through this conduct, [REDACTED] willfully violated Article V, Section 2 of the NASD By-Laws, IM-1000-1, and NASD Conduct Rule 2110 from May 20, 2005 through February 1, 2006.

Failure to Disclose Guilty Plea

22. On April 10, 2006, [REDACTED] pleaded guilty in St. Louis County, Missouri to a felony for non-payment of child support.

23. [REDACTED] was associated with Forsyth at the time of his guilty plea to the felony.

24. Under Article V, Section 2 of the NASD By-Laws, [REDACTED] was required to amend his Form U4 to disclose this guilty plea within ten days, or by April 20, 2006, because this guilty plea subjected him to statutory disqualification under Section 3(a)(39) and Section 15(b)(4) of the Securities Exchange Act of 1934. [REDACTED] did not amend his Form U4 by April 20, 2006 to disclose this guilty plea.

25. Based on documentation that [REDACTED] provided related to the felony charge against him, FINRA was aware that a trial on the felony charge against [REDACTED] had been scheduled for April 10, 2006.

26. On September 13, 2006, FINRA requested information from [REDACTED] about the final disposition of the felony charge against [REDACTED] at the April 10, 2006 hearing. After receiving no information, FINRA reiterated its request to [REDACTED] on April 17, 2007, June 21, 2007, July 27, 2007, and August 31, 2007. [REDACTED] shared these FINRA requests with [REDACTED] and directed him to respond to the requests.

27. [REDACTED] did not provide sufficient information to FINRA in response to these requests. FINRA repeatedly requested court documents to show the final disposition of the felony charge against [REDACTED]

28. On July 7, 2008, almost two years after FINRA's first request, [REDACTED] provided FINRA with court documents that showed he had pleaded guilty to the felony charge on April 10, 2006.

29. That same day, FINRA instructed [REDACTED] to ensure that [REDACTED] U4 was amended to disclose his guilty plea to the felony charge. Again, [REDACTED] shared this instruction from FINRA with [REDACTED] and directed him to respond to FINRA.

30. [REDACTED] amended his Form U4 on September 17, 2008. In this amendment, [REDACTED] finally disclosed his April 10, 2006 guilty plea to the felony charge for non-payment of child support. This disclosure was over 29 months late, and again, long after FINRA had notified both [REDACTED] and [REDACTED] that disclosure on his Form U4 may be necessary.

31. [REDACTED] failure to disclose his guilty plea on his Form U4 in a timely manner was willful.

32. Through this conduct, [REDACTED] willfully violated Article V, Section 2 of the NASD By-Laws, IM 1000-1, and NASD Conduct Rule 2110 from April 20, 2006 through July 29, 2007; and Article V, Section 2 of the FINRA By-Laws, IM-1000-1, and NASD Conduct Rule 2110 from July 30, 2007 through September 17, 2008.

SECOND CAUSE OF ACTION

(Respondent [REDACTED])

Willful Failure to Disclose Felony Charge on Form U4
FINRA By-Laws Article V, Section 2, IM-1000-1,
NASD Conduct Rule 2110 and FINRA Rule 2010

33. The Department realleges and incorporates by reference paragraphs 1 through 9 above.

34. On May 18, 2008, [REDACTED] was charged in Pike County, Missouri with a felony for driving while intoxicated.

35. [REDACTED] was associated with Forsyth when he was charged with this felony.

36. Under Article V, Section 2 of the FINRA By-Laws, [REDACTED] was required to amend his Form U4 to disclose this felony charge within 30 days, or by June 17, 2008. [REDACTED] did not amend his Form U4 by June 17, 2008 to disclose this felony charge.

37. [REDACTED] amended his Form U4 on January 21, 2009. In this amendment, [REDACTED] finally disclosed the May 18, 2008 felony charge against him for driving while intoxicated. This disclosure was over seven months late.

38. [REDACTED] failure to disclose this felony charge on his Form U4 in a timely manner was willful.

39. Through this conduct, [REDACTED] willfully violated Article V, Section 2 of the FINRA By-Laws, IM-1000-1, and NASD Conduct Rule 2110 from June 17, 2008 through December 14, 2008; and Article V, Section 2 of the FINRA By-Laws, IM-1000-1, and FINRA Rule 2010 from December 15, 2008 through January 21, 2009.

THIRD CAUSE OF ACTION

(Respondent Macke)

Excessive Trading in the Accounts of Customers A.K. and N.&C.H. NASD Conduct Rules 2310 and 2110

40. The Department realleges and incorporates by reference paragraphs 1 through 9 above.

Excessive Trading in Customer A.K.'s Account

41. Customer A.K. opened a brokerage account at Forsyth on August 6, 2007. Macke was the broker of record for this account. A.K. was 85 years old and living in a nursing home.

42. The initial account balance was \$390,558.15. A.K. used money from the account to pay health care and living expenses. A.K. withdrew \$55,923.74 from August 6, 2007 through June 30, 2008 to pay these expenses. Macke was aware of the customer's use of the account and these withdrawals.

43. According to A.K.'s 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. A.K.'s risk tolerance

was noted as moderate, and the investment objectives of the account were growth and income, and trading and speculation.

44. When opening the account on August 6, 2007, A.K. requested and received approval for the use of margin on the account.

45. Also when opening the account on August 6, 2007, A.K. gave Macke discretionary authority over the account in writing. In the written authorization, A.K. 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. A.K. also authorized Macke to sell any positions at any time. This written discretionary authority was approved by [REDACTED]

46. [REDACTED] revoked the approval for Macke's written discretionary authority for A.K.'s account on May 23, 2008 because he was uncomfortable with the losses in this account.

47. Beyond holding discretionary authority over A.K.'s account from August 6, 2007 through May 23, 2008, Macke actually controlled the trading in A.K.'s account from August 6, 2007 through June 30, 2008. A.K. was unable to evaluate Macke's recommendations and trading strategy, did not understand the use of margin, and was unable to exercise independent judgment concerning the transactions in the account. A.K. trusted Macke completely to make and execute recommendations in the account.

48. From August 6, 2007 through June 30, 2008, while controlling A.K.'s 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.

49. The account lost \$108,828.95 in value during this time period, with the customer paying \$50,117.18 of margin interest, commissions and fees.

50. 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%.

51. In light of A.K.'s experience, investment objectives, risk tolerance, and financial resources, this volume of trading was excessive and unsuitable for A.K.

52. 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

53. 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.

54. 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.

55. 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.

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

57. 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 [REDACTED]

58. [REDACTED] revoked the approval for Macke's written discretionary authority for N.&C.H.'s account on May 23, 2008 because he was uncomfortable with the losses in this account.

59. 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. were unable to evaluate Macke's recommendations and trading strategy, did not understand the use of margin, and were unable to exercise independent judgment concerning the transactions in the account. N.&C.H. trusted Macke completely to make and execute recommendations in the account.

60. 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.

61. The account lost \$31,681.26 in value during this time period, with the customers paying \$32,403.32 of margin interest, commissions and fees.

62. 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%.

63. In light of N.&C.H.'s experience, investment objectives, risk tolerance, and financial resources, this volume of trading was excessive and unsuitable for the customers.

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

FOURTH CAUSE OF ACTION
(Respondent ██████)
Failure to Supervise ██████ Reilly and Macke
NASD Conduct Rules 3010 and 2110 and FINRA Rule 2010

65. The Department realleges and incorporates by reference paragraphs 1 through 64 above.

Failure to Supervise ██████

66. ██████ was ██████ supervisor at Forsyth and was responsible for ensuring that ██████ properly updated his Form U4.

67. FINRA notified ██████ on May 26, 2005 that ██████ had been arrested in St. Louis County, Missouri and that ██████ may have to disclose criminal charges on his Form U4.

68. ██████ therefore knew or should have known of the April 20, 2005 felony charge against ██████ for non-payment of child support. Yet, ██████ failed to ensure that ██████ timely amended his Form U4 to disclose this felony charge. ██████ eventual disclosure of this felony charge on his Form U4 on February 1, 2006 was over eight months late.

69. FINRA notified ██████ on September 13, 2006 that a trial on the felony charge against ██████ had been scheduled for April 10, 2006.

70. ██████ therefore knew or should have known of ██████ April 10, 2006 guilty plea to the felony charge. Yet, ██████ failed to ensure that ██████ timely amended his Form U4 to disclose this guilty plea. ██████ eventual disclosure of this guilty plea on his Form U4 on September 17, 2008 was nearly two and a half years late.

71. Through this conduct, ██████ violated NASD Conduct Rules 3010 and 2110 from May 20, 2005 through February 1, 2006; and again from April 20, 2006 through September 17, 2008.

Failure to Supervise [REDACTED]

72. [REDACTED] was [REDACTED] supervisor at Forsyth and was responsible for ensuring that [REDACTED] properly updated his Form U4.

73. On May 19, 2008, [REDACTED] contacted [REDACTED] to inform him that he had been arrested and charged with driving while intoxicated and to request assistance from [REDACTED]

74. [REDACTED] therefore knew or should have known of [REDACTED] May 18, 2008 felony charge for driving while intoxicated. Yet, [REDACTED] failed to ensure that [REDACTED] timely amended his Form U4 to disclose this felony charge. [REDACTED] eventual disclosure of this felony charge on his Form U4 on January 21, 2009 was over seven months late.

75. Through this conduct, [REDACTED] violated NASD Conduct Rules 3010 and 2110 from June 17, 2008 through December 14, 2008; and NASD Conduct Rule 3010 and FINRA Rule 2010 from December 15, 2008 through January 21, 2009.

Failure to Supervise Macke

76. [REDACTED] was Macke's supervisor at Forsyth and was responsible for reviewing Macke's recommendations to customers to ensure that these recommendations were suitable for the customers.

77. From February 1, 2007 through June 30, 2008, while exercising control over brokerage accounts for customers A.K. and N.&C.H., Macke recommended and effected numerous stock transactions in these accounts. This volume of trading was excessive and unsuitable for the customers.

78. [REDACTED] was aware of Macke's control over these accounts, as he had approved the discretionary authority that the customers had granted to Macke in writing. [REDACTED] was also

aware of the high volume of trading in these accounts, as he reviewed the account statements on a regular basis as part of his supervisory duties.

79. Despite having this knowledge, [REDACTED] failed to prevent Macke's excessive trading in these accounts from February 1, 2007 through June 30, 2008.

80. Through this conduct, [REDACTED] violated NASD Conduct Rules 3010 and 2110 from February 1, 2007 through June 30, 2008.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Hearing Panel:

A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed against the Respondents, including that Respondent Macke be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

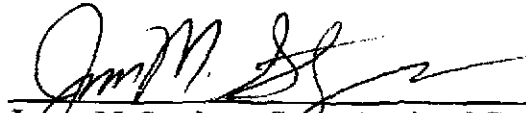
B. order that the Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;

C. make specific findings that Respondent [REDACTED] conduct, as alleged in the First Cause of Action, was willful; the omitted information was material; and the omission to state material facts was on a Form U4 application; and

D. make specific findings that Respondent [REDACTED] conduct, as alleged in the Second Cause of Action, was willful; the omitted information was material; and the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: June 21, 2011



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