

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

James Glenn Tallant
[CRD No. 1726582],

Respondent.

DISCIPLINARY PROCEEDING
No. 2010024050501

Hearing Officer: DRS

**ORDER ACCEPTING
OFFER OF SETTLEMENT**

Date: August 5, 2013

INTRODUCTION

Disciplinary Proceeding No. 2010024050501 was filed on May 1, 2013, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Tallant submitted an Offer of Settlement (Offer) to Complainant dated August 1, 2013. 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 (as amended by the Offer of Settlement), 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 (as amended by the Offer of Settlement), 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. From January or February 2009 through March 2010, Respondent James Glenn Tallant exercised discretionary trading authority without written authorization in four securities accounts of customer SH, in violation of NASD Conduct Rule 2510(b) and FINRA Rule 2010. In addition, from January or February 2009 through March 2010, Tallant engaged in a course of trading in four securities accounts of customer SH that were excessive and quantitatively unsuitable, in violation of NASD Conduct Rule 2310 and IM-2310-2, and FINRA Rule 2010.
2. In 1989, Respondent Tallant became a registered representative of a FINRA member firm. Respondent Tallant, during all periods mentioned herein, was associated with member firm Morgan Stanley Smith Barney ("Morgan Stanley") and was registered with FINRA under Article V of the By-Laws as a registered representative. On July 29, 2013, Morgan Stanley filed a Form U5 terminating Tallant's association and registration as of July 19, 2013. Although Tallant is no longer registered or associated with a FINRA member, 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 on May 1, 2013, before the effective date of termination of Respondent's registration with Morgan Stanley, namely, July 19, 2013; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

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

3. At the time she opened the accounts discussed in the Complaint, Firm customer SH was 49 years old, divorced, with two children. While she attended college, she did not graduate. She owned and operated a women's boutique clothing store. Her annual income was approximately \$140,000, her estimated net worth was approximately \$300,000, and her estimated liquid net worth was approximately \$200,000.
4. Firm customer SH transferred her four accounts to Tallant at Morgan Stanley between the end of January and beginning of February, 2009. The four accounts consisted of SH's individual and IRA accounts and two custodial accounts for her children, WH and KH.¹
5. All four accounts were commission based.
6. SH had known Tallant since they were teenagers in high school or junior high school, and transferred the accounts to him, in part, due to their pre-existing friendship.
7. SH's new account form identified her individual and IRA account investment objectives as having a primary objective of capital appreciation and a secondary objective of aggressive income. SH's new account form listed her annual income as \$140,000, her estimated net worth as \$300,000, and her estimated liquid net worth as \$200,000.
8. SH's custodial account for her son, WH, had a primary investment objective of capital appreciation and a secondary investment objective of income. WH's new account form listed his annual income as \$5,000, estimated net worth as \$30,000, and estimated liquid net worth as \$30,000.

¹ Tallant interacted with SH directly with respect to both her individual and IRA account, as well as the two custodial accounts for her children, WH and KH. Tallant did not interact with the children with respect to their accounts. This Complaint treats SH as the customer for all four accounts because she administered the custodial accounts on her children's behalf.

9. SH's custodial account for her daughter, KH, had investment objectives of capital appreciation and income.² KH's new account form listed her annual income as \$8,000, estimated net worth as \$30,000, and estimated liquid net worth as \$30,000.
10. Between March 2009 and March 2010, Tallant executed 39 purchase and sale securities transactions in SH's individual account. Total purchases amounted to \$147,366.50. Total gross commissions equaled \$8,739.56. *See Appendix A*, attached to the Complaint and incorporated by reference.
11. Between March 2009 and March 2010, Tallant executed 33 purchase and sale securities transactions in SH's IRA account. Total purchases amounted to \$99,478.70. Total gross commissions equaled \$6,157.26. *See App. A*, attached to the Complaint and incorporated by reference.
12. Between February 2009 and March 2010, Tallant executed 56 purchase and sale securities transactions in WH's custodial account. Total purchases amounted to \$206,943.32. Total gross commissions equaled \$12,251.72. *See App. A*, attached to the Complaint and incorporated by reference.
13. Between February 2009 and March 2010, Tallant executed 63 purchase and sale securities transactions in KH's custodial account. Total purchases amounted to \$261,189.31. Total gross commissions equaled \$14,728.00. *See App. A*, attached and incorporated by reference.
14. All transactions in all four accounts were primarily in equity securities until December 2009. At that time, all accounts, except for KH's custodial account, were invested in ING Value Choice A mutual fund.

² Aggressive income was also checked as an objective, but this appears to be in error.

15. Many of the trades across all four accounts evidenced hallmarks of “short term” or “in and out trading.” Many of the stocks were purchased one month, only to be sold the next. Numerous trades also had short hold times.
16. In 2009, Tallant’s total gross commissions were \$200,927.94, of which his net payout was 20%, or \$40,185.58. His 2009 gross commissions from SH’s four accounts were \$41,864.56, of which his net payout was 20%, or \$8,560.44. Tallant’s commissions from SH’s accounts comprised approximately 21% of his total commissions for 2009.
17. During the period from January or February 2009 through March 2010, Tallant exercised discretion in the four accounts of Firm customer SH without written authorization from SH or acceptance of the accounts as discretionary by the Firm.
18. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2510(b) and FINRA Rule 2010 by Respondent Tallant.
19. During the time period from January or February 2009 through March 2010, Respondent Tallant exercised actual control over SH’s four accounts by engaging in discretionary trading without written authorization. Tallant also exercised *de facto* control because SH routinely followed Tallant’s advice and was unable to evaluate Tallant’s recommendations and to exercise independent judgment.
20. Tallant’s trading was unsuitable and excessive in size and frequency in view of SH’s financial situation and needs.
21. As a result of Tallant’s unsuitable excessive trading, SH’s four accounts incurred the following resulting annualized and unannualized turnover ratios for the relevant time period:

<u>Account</u>	<u>Turnover Ratio (Unannualized)</u>	<u>Turnover Ratio (Annualized)</u>
SH Individual Account	11.36	9.74
SH IRA Account	7.23	6.19
WH Custodial Account	9.14	7.83
KH Custodial Account	15.46	13.25

In other words, the total funds of each account were invested, sold, and reinvested on an unannualized basis of between 6.19 and 13.25 and an annualized basis of between 7.23 and 15.46.

22. For the relevant time period, the four accounts also incurred the following commission-to-equity ratios:

<u>Account</u>	<u>Commission-to-Equity Ratio</u>
SH Individual Account	67.36%
SH IRA Account	44.73%
WH Custodial Account	54.09%
KH Custodial Account	87.18%

In other words, SH's four accounts would have had to achieve an investment return of between 44.73% and 87.18% simply to break even on their investment.

23. SH's four accounts incurred the following losses during the relevant time period:

<u>Account</u>	<u>Losses</u>
SH Individual Account	\$5,924.46
SH IRA Account	*** ³
WH Custodial Account	\$6,941.64
KH Custodial Account	\$17,067.94

24. For the foregoing reasons, Tallant's transactions in each of SH's four accounts constituted excessive trading and were quantitatively unsuitable.
25. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2310, IM-2310-2, and FINRA Rule 2010 by Respondent Tallant.

³ The SH IRA Account incurred a gain of \$2,624.78.

Based on the foregoing, Respondent violated NASD Conduct Rules 2510(b) and 2310, IM-2310-2, and FINRA Rule 2010.

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 James Glenn Tallant be suspended for three months in all capacities from association with any FINRA member, and fined \$15,000 (which includes the disgorgement of commissions received of \$8,560.44).

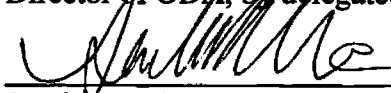
The fine shall be due and payable either immediately upon reassociation with a member firm following the three-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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



Sarah B. Belter, Esq.
Senior Regional Counsel
FINRA Department of Enforcement
Energy Centre
1100 Poydras Street, Suite 850
New Orleans, LA 70163-1108
Phone: 504-522-6527
Fax: 504-581-3699
sarah.belter@finra.org