

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Gary Gossett
General Securities Representative
CRD No. 1939514

DISCIPLINARY PROCEEDING
No. 2010025132201

and

[REDACTED]

and

[REDACTED]

and

[REDACTED]

Respondents.

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In 2009 and 2010, Gary Gossett, a registered representative subject to heightened supervision at [REDACTED] (the firm), engaged in a series of unsuitable penny stock trades in the retirement account of a customer of limited means. In addition, Gossett exercised discretion in the customer's account without obtaining written permission from the customer or the firm. He also falsely marked order memoranda for solicited transactions as unsolicited, causing the firm's books and records to be inaccurate.

2. After the customer complained of Gossett's conduct, the firm, acting through [REDACTED], a principal at the firm, settled with the customer under an agreement containing impermissible guarantees against loss and an undertaking not to file a complaint with FINRA.

3. During the same time period of 2009-2010, [REDACTED] maintained an unstructured, deficient system for the supervision of its registered representatives. [REDACTED], President and co-owner of [REDACTED] was responsible for the supervisory system as well as for the supervision of Gossett and [REDACTED]. The supervisory system was so inadequate that [REDACTED] was unable to provide a consistent or coherent description of it during his investigative testimony. His testimony, under oath, was at times both evasive and contradictory, thus highlighting the system's inadequacies. At best, [REDACTED] system of supervision consisted of [REDACTED] periodic review of a trade blotter, which [REDACTED] knew was inadequate for evaluating suitability of recommendations. [REDACTED] deficient supervision enabled the unsuitable penny stock trades to continue until the customer complained of losses in his account, and allowed the firm to enter into an agreement containing impermissible guarantees against loss and an undertaking not to file a complaint with FINRA.

4. The firm and [REDACTED], who was designated as [REDACTED] supervisor, failed to supervise [REDACTED] by failing to ensure that [REDACTED] was supervising Gossett's activities. The firm and [REDACTED] also failed to timely and accurately report the complaint lodged by Gossett's customer. The firm also operated a securities business while below its minimum required net capital after the settlement caused a net capital deficiency.

RESPONDENTS AND JURISDICTION

5. Gary Gossett entered the securities industry in 1989 as a General Securities Representative with a member of FINRA. In January 2008, he became associated with [REDACTED] where he remained until December 10, 2010. Although he is not currently registered, FINRA retains jurisdiction over Gossett because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

6. [REDACTED] has been a FINRA member since February 1989. The firm conducts a general securities business and is headquartered in Brookfield, Wisconsin. The firm has approximately 30 registered representatives associated with it.

7. [REDACTED] entered the securities industry in 1996 as a General Securities Representative and a General Securities Principal of [REDACTED] where she remains registered and is the firm's Vice President/Secretary, its Chief Compliance Officer and its FINOP.

8. [REDACTED] entered the securities industry in 1985 as a General Securities Representative and a General Securities Principal with a member of FINRA. In October 2002, [REDACTED] became registered with [REDACTED] where he currently serves as

President. He also maintains an approximate 50% ownership interest in [REDACTED] which wholly owns [REDACTED] [REDACTED] is also registered as a General Securities Principal and a General Securities Representative at KCD Financial (BD No. 127473) and EZ Stocks, Inc. (BD No. 103866).

**FIRST CAUSE OF ACTION
RECOMMENDING UNSUITABLE TRANSACTIONS
NASD Rule 2310 and FINRA Rule 2010
Gary Gossett**

9. The Department realleges and incorporates by reference paragraphs 1-8 above.
10. Gary Gossett was a registered representative of [REDACTED] who operated out of his residence in Spokane, Washington. Because of prior customer complaints and the concerns of a state regulator, the firm placed Gossett on heightened supervision when he became associated in 2008.
11. In August 2009, customer JT opened an Individual Retirement Account (IRA) with Gossett at the firm. The IRA was funded with approximately \$80,000 from a retirement plan rollover.
12. JT's new account form identified him as a laborer, approximately 40 years old, with very limited investment experience, and with an income of less than \$50,000 and a liquid net worth of less than \$50,000. The new account form listed growth as his primary investment objective, with speculation as his secondary objective.
13. Between August 2009 and February 18, 2010 (the relevant period), Gossett made approximately 47 trades in JT's account, with 28 of those trades involving purchases of unsuitable penny stocks.

14. These transactions included purchases of SilverVerde May Mining, a company with no operations, and MIPSolutions, an entity attempting to commercialize, with little or no success at that time, an experimental polymer. At one point Silver Verde accounted for approximately 13% and MIPSolutions accounted for approximately 16% of JT's retirement account.

15. During the relevant period, penny stocks comprised more than 50 % of JT's account.

16. Gossett's recommendations to JT of the 28 penny stock transactions alleged in paragraph 13 above and set forth in Exhibit A were unsuitable for the customer on the basis of his financial situation and needs.

17. By virtue of such conduct, Gossett violated NASD Rule 2310 and FINRA Rule 2010.

**SECOND CAUSE OF ACTION
CAUSING FIRM'S BOOKS AND RECORDS TO BE INACCURATE
NASD RULE 3110 AND FINRA RULE 2010
Gary Gossett**

18. The Department realleges and incorporates by reference paragraphs 1-17 above.

19. When effecting the transactions described in paragraph 13, Gossett marked the order memoranda for 30 of the trades as unsolicited orders, although all of the orders were, in fact, solicited by Gossett.

20. By falsely marking the orders as unsolicited, Gossett caused the firm's books and records to be inaccurate and therefore not compliant with Exchange Act Rules 17a-3 and 17a-4.

21. By virtue of such conduct, Gossett violated NASD Rule 3110 and FINRA Rule 2010.

**THIRD CAUSE OF ACTION
EXERCISING DISCRETION WITHOUT WRITTEN AUTHORITY
NASD RULE 2510 AND FINRA RULE 2010
Gary Gossett**

22. The Department realleges and incorporates by reference paragraphs 1-21 above.
23. Gossett effected the 47 transactions described in paragraph 13 above on a discretionary basis, without JT's or the firm's prior written authorization.
24. As a result of the foregoing conduct, Gossett violated NASD Rule 2510 and FINRA Rule 2010.

**FOURTH CAUSE OF ACTION
GUARANTEEING A CUSTOMER AGAINST LOSS
FINRA RULES 2150 AND 2010
[REDACTED] and [REDACTED]**

25. The Department realleges and incorporates by reference paragraphs 1-24 above.
26. The firm received a complaint letter from JT on or about February 18, 2010. JT expressed concerns about losses in his account, which had dropped in value by at least \$10,000 between August 2009 and February 2010, the suitability of penny stock trades, the amount of commissions he was charged, and the concentration of his account in penny stocks, among other issues.
27. On April 12, [REDACTED] sent a letter to JT incorporating a formal settlement agreement under which if, after a period of 18 months, the losses sustained in the account were not recovered, the firm would pay JT the difference plus 5% interest. The letter included the statement:

In order to make your account whole, within a reasonable time frame given the fluctuation in stock prices, we propose to make your account whole within eighteen (18) months. If after 18 months you have not made back the original investment of \$75,323 (\$81,990 amount deposited minus \$6666.67 amount withdrawn), your account will be made

whole.

After eighteen months, if the difference has not been made up, the difference would be paid to you plus 5% interest.

28. The settlement agreement was signed, accepted and dated by JT on May 24, 2010, and accepted by [REDACTED] on behalf of the firm on May 31, 2010.

29. By virtue of such conduct, [REDACTED] and [REDACTED] violated FINRA Rules 2150 and 2010.

**FIFTH CAUSE OF ACTION
SETTLING WITH CUSTOMER
IN EXCHANGE FOR AGREEMENT NOT TO COMPLAIN TO FINRA
FINRA RULE 2010**

[REDACTED] and [REDACTED]

30. The Department realleges and incorporates by reference paragraphs 1-29 above.

31. In the same April 12, 2010 settlement agreement, [REDACTED] included a provision that conditioned the settlement on JT's not filing a complaint with FINRA:

In return you agree not to file a complaint with FINRA, unless we do not make your account whole by October 31, 2011.

32. By virtue of such conduct, [REDACTED] and [REDACTED] violated FINRA Rule 2010.

**SIXTH CAUSE OF ACTION
FAILURE TO SUPERVISE AND REVIEW
CONDUCT AND CORRESPONDENCE OF A FIRM PRINCIPAL
NASD Rule 3010 and FINRA Rule 2010**

[REDACTED] and [REDACTED]

33. The Department realleges and incorporates by reference paragraphs 1-32 above.

34. [REDACTED] was designated in the firm's written supervisory procedures (WSPs) as [REDACTED] supervisor during the relevant period. Accordingly, [REDACTED]

acting on behalf of the firm, was responsible for reviewing [REDACTED] activity, including her correspondence.

35. On or about March 4 and April 7, 2010, [REDACTED] on behalf of the firm, sent correspondence to JT responding to the February 18, 2010 complaint and proposing a settlement in general terms. As [REDACTED] knew, [REDACTED] is not an attorney and had no prior experience negotiating settlements.

36. Although [REDACTED] was aware that [REDACTED] was corresponding with JT concerning a settlement, he did not review either the March 4 or the April 7 letter.

37. In addition, on April 12, [REDACTED] sent a letter to JT incorporating the formal settlement agreement described above in the Fourth Cause of Complaint.

38. [REDACTED] did not review the April 12 letter which incorporated the settlement agreement, nor did he review another letter that [REDACTED] sent to JT on April 26, 2010, responding to additional questions that JT had posed.

39. On October 6, 2010, after being told by FINRA that the settlement agreement violated FINRA rules, [REDACTED] negotiated a revised agreement with JT which eliminated the violative provisions.

40. Despite knowing FINRA's objections to the first agreement, [REDACTED] allowed [REDACTED] to draft and sign the revised agreement, again without reviewing the document.

41. By virtue of the failure to review [REDACTED] correspondence and settlement negotiations, and to otherwise supervise [REDACTED] [REDACTED] and [REDACTED] violated NASD Rule 3010 and FINRA Rule 2010.

**SEVENTH CAUSE OF ACTION
FAILURE TO SUPERVISE REGISTERED REPRESENTATIVE AND
REVIEW TRANSACTIONS FOR SUITABILITY IN JT'S ACCOUNT
NASD Conduct Rules 3010 and FINRA Rule 2010**

[REDACTED] and [REDACTED]

42. The Department realleges and incorporates by reference paragraphs 1-41 above.

43. Because of prior customer complaints and the concerns of a state regulator, the firm placed Gossett on heightened supervision when he became associated in 2008. Under the terms of Gossett's heightened supervision plan, [REDACTED] was responsible for reviewing and supervising Gossett's activity, including conducting a daily review and approval of all of Gossett's transactions and new account documents.

44. Although he was Gossett's immediate supervisor, [REDACTED] did not review transactions in JT's account in relation to the customer's financial situation or investment objectives, made no customer-specific suitability analysis, and did not identify any transaction in JT's account as cause for heightened scrutiny. Nevertheless, during the investigation, [REDACTED] conceded to FINRA that SilverVerde May Mining and MIPSolutions were not suitable for an investor such as JT.

45. While Gosset was effecting trades in JT's account, [REDACTED] never questioned or documented any concerns about any transaction in JT's account.

46. By virtue of the failure to supervise Gossett, [REDACTED] and [REDACTED] violated NASD Rule 3010 and FINRA Rule 2010.

**EIGHTH CAUSE OF ACTION
FAILURE TO ESTABLISH AND MAINTAIN AN
ADEQUATE SUPERVISORY SYSTEM
NASD Conduct Rule 3010 and FINRA Rule 2010**

[REDACTED] and [REDACTED]

47. The Department realleges and incorporates by reference paragraphs 1-46 above.

48. During the relevant period, [REDACTED] acting through [REDACTED] failed to design and implement a system to reasonably supervise customer transactions effected by the firm's registered representatives.

49. According to [REDACTED] during the relevant period, the firm supervised representatives' transactions primarily by means of [REDACTED] periodic review of a daily Order Activity Report supplied by [REDACTED] clearing firm.

50. The Order Activity Report listed transactions and related data such as the number of shares bought or sold and the price per share, but lacked customer-specific information needed for a suitability analysis.

51. [REDACTED] testified under oath during the investigation that his practice was to use the Order Activity Report to identify transactions he called "outliers," including transactions in stocks of companies unfamiliar to him, unusually large purchases, and trades away from the market.

52. [REDACTED] dealt with outlier transactions, if at all, in an ad hoc fashion, without documenting either the identified transactions or the resolution, if any, of his concerns.

53. [REDACTED] procedures specified neither the criteria for identification of outlier transactions, nor how they would be resolved or documented.

54. [REDACTED] supervisory system involved no regular review, by [REDACTED] or any other principal, of transactions in relation to a customer's financial status and investment objectives.

55. From its clearing firm, [REDACTED] could access at least one report that included customer-specific information that could assist a suitability analysis of penny stock transactions. This was the daily Penny Stock Transaction Report. Unlike the Order Activity

Report, the Penny Stock Transaction Report included the customer name and investment profile and whether the trade was solicited or unsolicited.

56. During the course of the investigation, [REDACTED] provided FINRA staff with differing versions of which reports he utilized during the relevant period. In his initial investigative testimony on October 22, 2010, [REDACTED] made no mention of the Penny Stock Transaction Report. Instead, he discussed his use of the Order Activity Report, stating that the absence of the customer name was a shortcoming of this report. When asked by FINRA staff how he could review trades for suitability without relevant customer information, [REDACTED] responded, "That is the flaw in the system that I am addressing now."

57. Following the first testimony [REDACTED] informed FINRA staff that he had used the Penny Stock Transaction Report as a tool in his review of outlier penny stock transactions during the relevant period.

58. In subsequent testimony on April 6, 2011, he elaborated on this assertion and stated that he had probably used the Penny Stock Transaction Report two or three times per week.

59. Clearing firm records obtained after the second testimony belie this claim and show that he failed to access the Penny Stock Transaction Report during the relevant period beginning in October 2009. These records reveal that no one at [REDACTED] accessed the Penny Stock Transaction Report until March 5, 2010, after the relevant period, and that [REDACTED] never accessed the report until nearly a year later, in February 2011.

60. On June 8, 2011, in a conversation with FINRA staff, when confronted with the clearing firm records, [REDACTED] contradicted his prior testimony and told FINRA staff that he must not have accessed the Penny Stock Transaction Report during the relevant period.

61. By virtue of the failures to establish and maintain an adequate supervisory system, [REDACTED] and [REDACTED] violated NASD Rule 3010 and FINRA Rule 2010.

**NINTH CAUSE OF ACTION
FAILURE TO SUPERVISE
NASD Rule 3010 and FINRA Rule 2010
[REDACTED] and [REDACTED]**

62. The Department realleges and incorporates by reference paragraphs 1-61 above.

63. [REDACTED] was designated in the firm's WSPs as [REDACTED] supervisor.

64. In her capacity as [REDACTED] supervisor, [REDACTED] was required by the firm's WSPs to supervise [REDACTED]. This included ensuring that [REDACTED] was properly supervising the registered representatives who reported to him. [REDACTED] failed to review [REDACTED] supervision of the firm's registered representatives, as required by the firm's WSPs. Specifically, [REDACTED] failed to determine if the trading activity in Gossett's customer accounts was properly supervised by [REDACTED]. [REDACTED] failure to review [REDACTED] supervision of Gossett contributed to the firm's failure to detect Gossett's unsuitable recommendations in the account of JT.

65. The above constitutes a violation of NASD Rule 3010 and FINRA Rule 2010 by [REDACTED] and [REDACTED].

**TENTH CAUSE OF ACTION
FAILURE TO PROPERLY REPORT RECEIPT OF COMPLAINT
AND SETTLEMENT
NASD Rule 3070 and FINRA Rule 2010
[REDACTED] and [REDACTED]**

66. The Department realleges and incorporates by reference paragraphs 1-65 above.

67. As discussed in paragraph 26 above, the firm received a written complaint from customer JT naming an individual representative, Gary Gossett.

68. The firm also entered into the April 12, 2010 settlement with customer JT for an amount that exceeded \$15,000 when it guaranteed that JT's account would be made whole, or retain its value of approximately \$75,323.

69. The firm, through [REDACTED] was required to disclose to FINRA the receipt of the complaint against the individual representative and the settlement within ten days.

70. The firm, through [REDACTED] failed to timely disclose the receipt of JT's written complaint and the settlement.

71. By virtue of such conduct, [REDACTED] and [REDACTED] violated NASD Rule 3070 and FINRA Rule 2010.

**ELEVENTH CAUSE OF ACTION
NET CAPITAL VIOLATIONS AND INACCURATE BOOKS AND RECORDS
SEC RULES 15c3-1, 17a-3, 17a-5, 17a-11
NASD Rule 3110 and FINRA Rule 2010**

[REDACTED]

72. The Department realleges and incorporates by reference paragraphs 1-71 above.

73. [REDACTED] failed to accrue the liability resulting from the loss guarantee it made to customer JT. The liability reduced the firm's net capital and resulted in its conducting a securities business without the required minimum net capital on May 28, 2010, June 30, 2010, July 30, 2010, and August 31, 2010. Additionally, the Firm's books and records and FOCUS filings were inaccurate, and the firm failed to provide timely notice of its net capital deficiency in filings to the SEC and FINRA.

74. By virtue of such conduct, [REDACTED] willfully violated SEC Rules 17a-3, 17a-5, 15c3-1 and 17a-11 and violated NASD Rules 3110 and 2010.

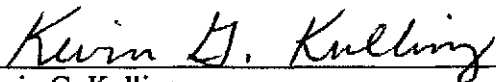
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- 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] willfully violated Rule 17a-3, 17a-5, 15c3-1 and 17a-11 of the Exchange Act.

FINRA DEPARTMENT OF ENFORCEMENT

Date: September 22, 2011



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EXHIBIT A

Penny Stock Purchases in JT's Account

<u>Date</u>	<u>Stock</u>	<u>Price</u>	<u>Shares</u>
8/21/09	Waytronx	0.21	50,000
8/25/09	Adamis Pharmaceuticals	0.24	20,000
8/25/09	Lifevantage Corp.	0.44	10,000
8/28/09	Waytronx	0.17	10,000
8/28/09	Far East Energy	0.39	20,000
9/8/09	Waytronx	0.17	6900
9/9/09	Waytronx	0.17	3100
9/9/09	Adamis Pharmaceuticals	0.33	20,000
9/14/09	Adamis Pharmaceuticals	0.33	10,000
09/16/09	Cel-Sci Corp.	1.05	2,000
09/18/09	Cel-Sci Corp.	1.05	3,000
09/22/09	Cel-Sci Corp.	1.85	5,000
10/06/09	Waytronx	0.11	5,000
10/07/09	Waytronx	0.15	25,000
10/27/09	Mipsolutions	0.06	20,000
11/05/09	Mipsolutions	0.07	5,000
11/05/09	Silver Verde May Mng	0.55	5,000
11/06/09	Mipsolutions	0.08	20,000
11/09/09	Cel-Sci Corp	1.36	2,000
11/19/09	Mipsolutions	0.10	14,500
12/11/09	Mipsolutions	0.05	5,000
12/15/09	Mipsolutions	0.05	5,000
12/17/09	Mipsolutions	0.05	100,000
12/18/09	Mipsolutions	0.05	20,000
01/04/10	Image Entertainment	0.32	25,000
01/12/10	Adamis Pharmaceuticals	0.48	12,900
01/13/10	Adamis Pharmaceuticals	0.48	12,100
02/04/10	Silver Verde May Mng	0.50	10,000