

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Westor Capital Group, Inc.
(CRD No. 103823),

and

Richard Hans Bach
(CRD No. 1011097),

Respondents.

DISCIPLINARY PROCEEDING
No. 2012031479601

Hearing Officer -

REQUEST FOR EXPEDITED HEARING

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

Summary

1. This case involves ongoing conversion or misuse of customer funds, misuse of customer securities, as well as failure to maintain possession or control of fully paid securities, by Westor Capital Group, Inc., (Westor or the Firm) and Richard Hans Bach (Bach), Westor's President, Financial and Operations Principal (FINOP) and Chief Compliance Officer.
2. From in or about August 2012 through in or about October 2012, the firm, as directed by Bach, misused the customers' fully-paid securities by using shares to cover short sales in other accounts without the customers' knowledge.

From in or about September 2012 through the present, the Firm has withheld approximately \$97,000 in customer funds by failing to honor customer requests for withdrawal of free credit balances, and from September 2012 until December 2012, the Firm also failed to honor a customer's request for the delivery of securities. Westor and Bach were able to conduct this activity by acting as an unauthorized self-clearing firm after Westor's former clearing firm became uncomfortable with the volume of penny stock liquidations and ended its clearing relationship. By this conduct, Westor and Bach violated NASD Conduct Rule 2330(b), FINRA Rules 2150 and 2010, and Westor additionally willfully violated Section 15 of the Securities Exchange Act of 1934 (Exchange Act) and Rule 15c3-3(b) thereunder.

Respondents and Jurisdiction

3. **Respondent Westor Capital Group, Inc.** has been a member of FINRA since September 27, 2000. Bach is the Firm's President, Chief Compliance Officer and FINOP. Since approximately May 2012, Bach has shared his FINOP responsibilities with other Firm employees. The Firm is owned by a holding company controlled by Bach. Westor employs approximately eight registered persons.
4. Westor is currently operating as a registered firm. The violations alleged herein occurred while Westor was a FINRA-registered firm. FINRA has jurisdiction to file this complaint against Westor pursuant to Article IV, Section 1 of FINRA's By-Laws.
5. During the last twelve months, FINRA has initiated four Non-Summary Suspension proceedings against Westor and Bach under FINRA Rule 9552 based on, among other things, their failure to respond, or respond timely, to FINRA information requests issued under FINRA Rule 8210. Each of these proceedings was concluded

prior to hearing after the Respondents provided an information response or took an action required by the suspension notice. As further described in paragraph eleven below, the Respondents are also the subject of an ongoing disciplinary proceeding. On December 28, 2012, FINRA instituted a FINRA Rule 9557 proceeding against Westor. With this notice, FINRA, pursuant to its authority under FINRA Rule 4120(c)(2), directed Westor to reduce its business activities out of concern of risk to customers because, among other things, Westor has been unable to demonstrate compliance with Exchange Act Rule 15c3-3 (Customer Protection-Reserve and Custody of Securities). On January 9, 2013, FINRA withdrew this action based on several changes that Westor instituted (and additional changes they have represented they will implement) in its back-office systems subsequent to the issuance of the 9557 Notice. Notwithstanding the withdrawal of the 9557 action, Westor still has significant ongoing operational deficiencies, described below, which have not been corrected.

6. **Respondent Richard Hans Bach** entered the securities industry in July 1995 through registered firm Alexander, Wescott, & Co., Inc. Bach holds Series 7, 24, 27, and 63 licenses. Until December 2012, Bach was the Firm's sole general securities principal.
7. The violations alleged herein occurred while Bach was associated with Westor. FINRA has jurisdiction to file this complaint against Bach pursuant to Article V, Section 2 of FINRA's By-Laws.

Westor Is Conducting an Unapproved Self-Clearing Business and Conceals the Improper Use of Securities

8. Westor's primary securities activity is the unsolicited purchase and sale of microcap securities traded on the OTC Markets including those categorized as OTC Pink. The trading activity is conducted in accounts maintained by Westor in its name at several

brokerage firms, but these accounts are not used to hold custody of customer securities.

9. Westor maintains custodial accounts to hold customer securities and clear trades at Bank A and Bank B (collectively "Custodial Accounts"). Westor holds customer funds in a reserve account at Bank A. Bach controls all of these accounts.
10. Pursuant to its Membership Agreement with FINRA dated November 2005, Westor is not permitted to hold customer funds or securities.
11. In or about May 2011, Westor's then clearing firm terminated its clearing relationship with the Firm based on concerns that Westor was only using the clearing firm "to dematerialize [sic] certificates and deal in penny stocks." Westor was unsuccessful in establishing and maintaining a new clearing arrangement with another firm. In contravention of its FINRA Membership Agreement, Westor then began holding customer funds and securities in its name at other banks and brokerage firms. The Firm has also been operating as a self-clearing firm since early 2012. This activity resulted in violations of, *inter alia*, Section 15(c) of the Exchange Act, Rule 15c3-1 thereunder (Net Capital Requirements for Brokers and Dealers), and Rule 15c3-3 (Customer Protection-Reserves and Custody of Securities), which violations are the subject of another pending disciplinary proceeding, *viz.*, *Department of Enforcement v. Westor Capital Group, Inc. and Richard Hans Bach*, (2011025506901), which is awaiting hearing.
12. Bach is the architect of Westor's self-clearing business. As the Firm's President, Chief Compliance Officer and FINOP, he directs and supervises all of the firm's

activities, including the handling of customer funds and securities. He also designed and oversees the Firm's back-office operations.

13. Bach operates Westor's self-clearing business without adequate controls or transparency. For example, although Westor handles and clears millions of shares of customer stock, to date, the Firm has not implemented effective measures to record, track or reconcile these positions. These conditions allow Bach to use customer securities and funds for improper purposes, while making it difficult for customers and others to detect irregularities.
14. Westor's back-office systems are an ineffective means for verifying that customer assets are properly accounted for.
15. Bach has authority and control over the information that Westor manually enters into each customer's account records on a daily basis.
16. The securities information that Westor maintains in its back-office systems reflecting customer securities transactions and holdings is not automatically linked to or reconciled with the actual transaction and inventory records of the Custodial Accounts where the securities are actually held. As a result, Westor's records do not always accurately reflect customer asset positions.
17. Westor does not utilize any automated systems to prevent short sales in customer accounts.
18. Westor does not provide customers with account statements or confirmations. Customers can only review their account and account activity by logging onto one of Westor's back-office systems.

FIRST CAUSE OF ACTION
Improper Use of Customer Securities
FINRA Rules 2150 and 2010, against Westor and Bach

19. The Department realleges and incorporates by reference paragraphs 1 through 18, above.
20. From August 2012 through October 2012, Westor, acting through Bach, misused customers' fully-paid TNI common stock to effect and cover short sales by customer WW.
21. Westor did not have authority to use customer shares for this purpose because it had not entered into written agreements with customers as required by Exchange Act Rule 15c3-3(b)(3).
22. In or about May 2012, customer JS opened a cash account at Westor.
23. Shortly after opening the account, JS delivered to a Westor branch office a stock certificate for 65,000 shares of TNI common stock. Westor accepted the certificate and recorded a long position of 65,000 shares in JS's cash account with the Firm.
24. As of the end of June 2012, Westor's Custodial Account at Bank A held 312,000 shares of TNI, which should have included the 65,000 shares deposited by JS as well as shares held for two additional Westor customers. Westor reported no other TNI shares at any other possession or control location.
25. As of the end of July 2012, Westor's Custodial Account at Bank A held 313,000 shares of TNI, which should have included the 65,000 shares deposited by JS and shares held for two other customers. Westor reported no other TNI shares at any other possession or control location.

26. As of the end of August 2012, Westor's records reflected that the Firm should have maintained possession or control of 324,662 shares of TNI representing long positions in the accounts of JS and customers TT, GIM and LMC. Westor, however, actually maintained possession or control of only 300,512 shares of TNI in its Custodial Account at Bank A. The shortfall of 24,150 shares was attributable to the delivery of that number of shares covering a short sale for the account of Westor customer WW.
27. From on or about July 30, 2012 through on or about September 10, 2012, Westor effected the sale of approximately 63,000 TNI shares on 19 trade dates, upon WW's instructions. Because WW did not own these shares, these were in fact short sales. These sales generated approximately \$81,000.
28. On or about September 13, 2012, JS requested that Westor deliver to him his 65,000 shares of TNI. Shortly thereafter, JL, Westor's General Counsel, informed JS that this request may result in the assessment of some additional fees, to which JS agreed.
29. As of the end of September 2012, Westor's records reflected that the Firm should have maintained possession or control of 161,732 shares of TNI, representing long positions in the accounts of JS, customer TT, and the Firm itself which had a long position of 15,000 shares. Nevertheless, Westor's Custodial Account at Bank A again reported holdings of only 98,732 shares.
30. The shortfall of 63,000 shares was equal to WW's corresponding short position in TNI.
31. Westor's records reflected that as of October 12, 2012, JS account was long 65,000 shares of TNI.

32. As of the end of October 2012, Westor's records reflected that the Firm should have maintained possession or control of 95,000 shares of TNI, representing 65,000 shares for customer JS and 30,000 shares for customer TT. The Firm's Custodial Account at Bank A, however, held only 90,000 shares, which was, once again, less than the firm's records reflected.
33. As of the end of November 2012, Westor maintained possession or control of 65,000 shares of TNI in its Custodial Account at Bank A, after delivering 30,000 to customer TT and buying 5,000 shares to cover the difference discussed in the preceding paragraph.
34. Following JS's initial request for delivery of the TNI shares on or about September 13, 2012, he made further inquiries regarding the status of his shares in October and November, 2012. Westor did not fulfill JS's request until it completed delivery of 65,000 shares of TNI to him on or about December 4, 2012. Westor's current records incorrectly show that JS still holds TNI shares in his account.
35. During several weeks of the approximately 11-week period that Westor failed to deliver JS's TNI shares, Westor did not have possession or control of enough TNI shares to cover all of its customers' long TNI positions.
36. In October 2012, Westor bought back the shares to cover WW's TNI short position for approximately \$220,000, resulting in a loss of approximately \$140,000 for WW. As of January 4, 2013, WW's account at Westor still had a significant cash debit balance of approximately \$128,000.

37. By using customers' fully paid shares to effect and cover short sales and by refusing to deliver customer JS's fully paid TNI shares to him from September until December, 2012, Westor and Bach made improper use of customer securities, such conduct constituting separate and distinct violations of FINRA Rules 2150 and 2010, and a violation of Rule 2010, by virtue of their violation of Rule 2150.

SECOND CAUSE OF ACTION

**Failure to Maintain Physical Possession or Control of Securities
Section 15 of the Exchange Act and Rule 15c3-3(b) thereunder, against Westor,
NASD Conduct Rule 2330(b) and FINRA Rule 2010, against Westor and Bach**

38. The Department realleges and incorporates by reference paragraphs 1 through 37 above.

39. By failing to maintain physical possession or control of customers' fully paid TNI shares from August through October 2012, Westor willfully violated Section 15 of the Exchange Act and Rule 15c3-3(b) thereunder and Westor and Bach violated NASD Rule 2330(b) and FINRA Rule 2010.

THIRD CAUSE OF ACTION

**Conversion/Improper Use of Customer Funds
FINRA Rules 2150 and 2010, against Westor and Bach**

40. The Department realleges and incorporates by reference paragraphs 1 through 39 above.

41. In November 2011, customer TT opened a cash account at Westor through Bach.

42. TT agreed with Westor to maintain a cash balance in his account of \$25,000.

43. Over the course of the next 12 months, TT's account held various cash and securities positions.

44. In early October 2012, following the settlement of certain stock sale transactions, TT's account with Westor had a free credit balance of approximately \$105,000.

45. Between October 9, 2012 and October 11, 2012, TT made several requests to Bach and JL to withdraw \$80,000 of his free credit balance from his account through a cash transfer. TT needed these funds to make required payments to the IRS pursuant to a probation agreement. TT informed Bach and JL of his urgent need for the funds. In response to TT's request, Bach informed him that his account was "frozen."
46. On October 19, 2012, TT's counsel requested that Westor make an immediate wire transfer of \$44,114.85 to TT. In addition, TT's counsel requested that Westor transfer all securities held in TT's account to another brokerage firm.
47. On or about October 25, 2012, Westor wired \$8,287 to TT.
48. As of November 8, 2012, TT's Westor account had a cash balance of approximately \$97,000.
49. In late November 2012, Westor delivered to TT all of the securities held in his account.
50. To date, however, Westor has refused to return to TT his remaining free credit balance of approximately \$97,000, despite TT's repeated requests for his funds.
51. By holding customer TT's funds and refusing to pay them upon demand, Westor and Bach converted, or at a minimum, made improper use of customer funds, such conduct constituting separate and distinct violations of FINRA Rules 2150 and 2010, and a violation of Rule 2010, by virtue of their violation of Rule 2150.

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) be imposed, including that the Respondents 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 Westor Capital Group, Inc. willfully violated Exchange Act Section 15 and Rule 15c3-3(b)thereunder; and
- D. impose a permanent cease and desist order.

FINRA DEPARTMENT OF ENFORCEMENT

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