

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Nas Adel Allan (CRD No. 4562149),

Gregory J. Anastos (CRD No. 5800831),

and

Windsor Street Capital, LP, f/k/a Meyers
Associates, L.P. (BD No. 34171),

Respondents.

DISCIPLINARY PROCEEDING
No. 2015046971701

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondents Nas Adel Allan (CRD No. 4562149) and Gregory J. Anastos (CRD No. 5800831) enriched themselves at the expense of elderly husband-and-wife customers IR and DR at Respondent firm Windsor Street Capital, LP (which was known as Meyers Associates, L.P. until December 2016) (BD No. 34171)) (“Windsor Street” or the “Firm”). They did so by repeatedly recommending, over a 16-month period, that IR and DR engage in short-term trading of a single security that they had held for over 36 years, resulting in significant losses and capital gains tax liability for IR and DR and generating over \$98,000 in commissions, markups and markdowns for Respondents.

2. In September 2014, Respondent Allan first recommended to IR and DR that their trust (the "Trust") liquidate its position in Huntington Bancshares, Inc. ("HBAN") stock, worth approximately \$191,000 at the time of sale. This initial liquidation resulted in a capital gains tax liability of approximately \$15,000 for them. Approximately one week later, Allan recommended that the Trust repurchase a large position in HBAN stock. In October 2014, Allan again recommended that the Trust sell all of its HBAN shares at a price lower than it had paid to repurchase those shares in September 2014. Nearly two weeks after incurring this loss, Allan again recommended that the Trust repurchase those HBAN shares – again at a higher price than what the Trust had recently sold those shares for. Respondent Allan's recommendations were unsuitable in light of customers IR and DR's investment profile, lacked an economic rationale, and resulted in unwarranted losses and tax liabilities for IR and DR. But Allan's short-term trading recommendations were advantageous for him, as Allan charged more than \$22,000 in markups and markdowns on just four transactions. As a result, Allan violated FINRA Rules 2111 and 2101.
3. After Allan left Windsor Street in November 2014, Respondent Anastos became the broker for the Trust account. From December 2014 to December 2015, Anastos continued to recommend short-term, in-and-out trading of large positions of HBAN shares, as well as making recommendations for purchasing and selling HBAN call options and at times using margin in the Trust account for HBAN transactions. Anastos excessively traded the Trust account, recommending a total of 26 transactions (24 of which involved HBAN or HBAN options), which resulted in over

\$69,622 in losses to IR and DR. Anastos recommended all of the transactions in the Trust account, exercised control over the account and charged IR and DR more than \$76,000 in commissions, markups and markdowns. Anastos's excessive trading of the Trust account violated FINRA Rules 2111 and 2010.

4. Anastos also exercised discretionary power in the Trust account where he did not have written authority to exercise discretion. As a result, Anastos violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.
5. During the period September 2014 through December 2015, Windsor Street failed to establish, maintain and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA's suitability rules. As a result, Windsor Street violated NASD Conduct Rule 3010 (for conduct prior to December 1, 2014), and FINRA Rules 3110 (for conduct from December 1, 2014 through December 2015) and 2010.
6. During the period September 2014 through December 2015, Windsor Street failed to reasonably supervise Allan and Anastos. Windsor Street ignored "red flag" warnings of potential unsuitable and excessive trading in the Trust account. As a result, Windsor Street violated NASD Conduct Rule 3010 (for conduct prior to December 1, 2014), and FINRA Rules 3110 (for conduct from December 1, 2014 through December 2015) and 2010.

RESPONDENTS AND JURISDICTION

Allan

7. Allan first became registered with FINRA as a General Securities Representative ("GSR") through a former member firm on July 23, 2002. Beginning August 2011,

Allan also became registered as a General Securities Principal ("GSP") through a former member firm.

8. From the time he first became registered with FINRA in July 2002 to the present date, Allan has been registered through fifteen different member or former member firms. One of those firms was Broker-Dealer A, where Allan was registered as a GSR from September 6, 2011 to June 10, 2013.
9. Allan was registered through Windsor Street on two different occasions. He was registered as a GSR through Windsor Street from June 20, 2007 to February 5, 2009. He was then registered as a GSR and GSP through Windsor Street from August 16, 2013 to November 19, 2014.
10. Allan is currently registered as a GSR and a GSP through a member firm.
11. Allan is subject to FINRA jurisdiction because he is currently registered through a member firm.

Anastos

12. Anastos first became registered with FINRA as a GSR through a former member firm on June 8, 2010. Anastos was registered through that firm until August 20, 2010. From September 6, 2011 to June 10, 2013, Anastos was registered as a GSR through Broker-Dealer A, starting on the same day as Allan.
13. Since April 2, 2013, Anastos has been registered as GSR with Windsor Street.
14. Anastos is subject to FINRA jurisdiction because he is currently registered through a member firm.

Windsor Street

15. Windsor Street has been a member of FINRA since June 16, 1994. Its principal place of business is in New York, New York.
16. Until December 2016, Windsor Street was known as Meyers Associates, L.P.
17. Windsor Street is engaged in a general securities business. As of July 2017, the Firm operated from four branch offices and employed 51 registered representatives.
18. Windsor Street is subject to FINRA jurisdiction because it is a member firm.

BACKGROUND

Background of Customers

19. Customer IR, who is 90 years old, is a retired pharmacist living in Morgantown, West Virginia. IR's wife DR passed away in June 2016 at 85 years old.
20. In 2010, IR and DR established the Trust, for which both IR and DR were trustees. The Trust was established for IR and DR's benefit during their lifetimes. It provides that following the death of the last surviving spouse, the Trust's assets are to be distributed to IR and DR's then-living children, grandchildren and great-grandchildren.
21. In or about 1978, IR had inherited shares of an HBAN-predecessor company. IR subsequently added to his inherited shares by purchasing more HBAN shares. In 2012, IR contributed 19,868 shares of HBAN stock to the Trust.

Respondent Allan's Unsuitable Trading in the Account

22. Allan first came to work with customers IR and DR when he began to handle a small account that IR opened at Broker-Dealer A (a firm where both Allan and Anastos worked prior to Windsor Street). IR's Broker-Dealer A account transferred to

Windsor Street in May 2013 when the Broker-Dealer A branch office where Allan and Anastos worked became a Windsor Street branch office.

23. In September 2014, after being solicited by Allan, customers IR and DR opened a Windsor Street brokerage account for the Trust. Allan recommended that IR and DR transfer to Windsor Street the HBAN shares held by the Trust in a brokerage account at another firm and that they then sell covered calls on the HBAN shares to generate income for the Trust.
24. IR and DR agreed to transfer the HBAN shares and cash to Windsor Street as Allan recommended. On September 10, 2014, the Trust's 19,868 HBAN shares and \$11,252.84 in cash transferred from an account at another brokerage firm to the Trust account at Windsor Street.
25. According to the new account form for the Trust account, the "investment profile" for the account was "moderate." An account form for options trading listed the primary account objectives as "dividend and premium income" and "hedging," and the least important objectives as "trading profits" and speculation."
26. Instead of writing covered calls on the HBAN shares, on September 16, 2014, following Allan's recommendation, the Trust sold the entire position of 19,868 HBAN shares at \$9.62 per share. The solicited transaction resulted in net proceeds of \$191,101. Allan charged a \$0.38 per share markdown for the sale, which amounted to \$7,550.
27. The sale of the HBAN shares resulted in a capital gains tax liability for IR and DR of approximately \$15,000. At that time, Allan knew that the sale would result in a

significant tax event, but he failed to take into account in his recommendation the tax implications of the sale.

28. Over the next six weeks, Allan recommended the following additional transactions in HBAN:

- a. On September 24, 2014, little more than a week after the initial HBAN sale, Allan recommended that the Trust account repurchase 20,000 HBAN shares at a price of \$10.00 per share for a net amount of \$200,025. Allan charged a markup of \$0.13 per share, which amounted to \$2,600 of the net purchase price. The price of HBAN was \$0.38 per share more than when Allan had recommended that the Trust sell the HBAN shares 10 days prior.
- b. Several weeks later, on October 16, 2014, Allan once again recommended that the Trust sell its entire position in HBAN shares. Allan sold the 20,000 HBAN shares at \$8.90 per share, resulting in net proceeds of \$177,971 – a loss of more than \$22,000. Allan charged a markdown of \$0.30 per share for this sale transaction, which amounted to \$6,000.
- c. Then, on October 28, 2014, less than two weeks later, Allan recommended that the Trust again repurchase HBAN shares, this time 18,068 shares at a price of \$10.00 per share and net purchase price of \$180,705.00. Allan charged a markup of \$0.35 per share which amounted to \$6,324 of the net purchase price. The price of HBAN was \$1.10 per share more than when Allan had recommended that the Trust sell the HBAN shares.

29. On November 19, 2014, Allan was terminated from Windsor Street.

30. During the two-month period of September 2014 through November 2014, that Allan solicited transactions in the Trust account, he charged a total of \$22,474 in markups and markdowns for the four short-term HBAN transactions. By the end of November 2014, the Trust account value was \$25,285 less than when it transferred to Windsor Street.
31. Allan's recommendations that the Trust sell the HBAN shares in order to engage in short-term trades of HBAN were unsuitable in light of customers IR and DR's investment profile.

Anastos's Churning and Excessive Trading

32. After Allan left Windsor Street, the Trust account remained at the Firm and Anastos took over responsibility. From December 2014 through December 2015, Anastos was the broker who dealt exclusively with customers IR and DR and who recommended all of the transactions in the Trust account (with the exception of a final liquidating transaction).
33. Anastos, like Allan before him, recommended that the Trust account repeatedly repurchase and then sell large positions of HBAN shares in short-term trading.
34. For example, on December 18, 2014, Anastos recommended the sale of all 18,068 shares of HBAN in the Trust account at \$10.03 per share, for total proceeds of \$181,193. Anastos charged a \$0.36 per share markdown for this sale that amounted to \$6,504.
35. Then, just six days later, on December 24, 2014, Anastos recommended that the Trust purchase 16,600 shares of HBAN at \$10.92 per share (i.e., a per-share price 8.9% higher than what IR and DR had sold it for just six days earlier). Through this

transaction, IR and DR acquired 2,468 fewer shares of HBAN than they had just sold, at a net cost to them of \$181,330, including a \$0.37 per share markup charged by Anastos which amounted to \$6,142.

36. Beginning with the December 24, 2014 purchase of HBAN shares, Anastos effected seven round-trip transactions, repurchasing and then selling positions of HBAN shares, and charging commissions, markups and markdowns that often exceeded \$5,000 for each transaction.
37. Anastos also exercised discretionary power in the Trust account even though there was no written authorization permitting him to do so. In 18 out of the total 26 transactions that he effected in the Trust account, Anastos effected the transactions without speaking to either IR or DR prior to the transactions on the dates of the transactions.
38. For the period December 2014 through December 2015, during the 13 months when Anastos recommended transactions to IR and DR, the Trust paid a total of \$76,158 in commissions, markups and markdowns, \$1,492 in margin interest and fees (for total costs of \$77,602) and incurred losses of \$69,623. The annualized commission-to-equity ratio was 58.06, the annualized cost-to-equity ratio was 59.16 and the annualized turnover ratio was 9.41.
39. From September 2014 to December 2015, the entire period that the Trust account existed at Windsor Street, which includes both Allan's and Anastos's recommendations, the account incurred losses totaling \$94,908. The total commissions, markups or markdowns charged by Allan and Anastos was \$98,632,

and the customers were charged an additional \$1,492 in margin and other fees, resulting in total costs of \$100,076.

40. Based on the level of trading and commissions charged first by Allan, and then by Anastos, there was little to no possibility that the Trust account would break even, let alone make a profit.

**FIRST CAUSE OF ACTION
(Respondent Allan)
Unsuitable Transactions
(FINRA Rules 2111 and 2010)**

41. The Department realleges and incorporates by reference paragraphs 1 through 40 above.
42. FINRA Rule 2111 requires a registered representative to “have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile.”
43. Rule 2111 includes a non-exhaustive list of factors which determine a customer’s investment profile, including “the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, [and] risk tolerance and any other information the customer may disclose to the member or associated person in connection with such recommendation.”
44. FINRA Rule 2010 provides that an associated person, “in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.”

45. During the period September 2014 through November 2014, Allan's recommendations to liquidate the shares of HBAN that IR and the Trust had held for four decades and engage in short-term trading of HBAN were unsuitable for the Trust. Allan did not have reasonable grounds or a reasonable basis to believe that the four HBAN transactions, for which he charged \$22,474 in commissions, were suitable for customers IR and DR in light of their investment profile, including their investment objectives, risk tolerance and financial situation.
46. Allan's recommendations also failed to take into account the tax status of customers IR, DR and the Trust. Specifically, the sale of the HBAN shares resulted in an approximate \$15,000 capital gains tax liability for IR and DR because they held the HBAN shares at a very low basis, compared to its then-current value.
47. There was no economic rationale for Allan to engage in short-term trading of HBAN shares, thereby exposing his customers to large capital gains tax liability, while Allan charged commissions that wiped out any gains that could have resulted from the round-trip transactions.
48. By reason of the foregoing, Allan violated FINRA Rules 2111 and 2010.

**SECOND CAUSE OF ACTION
(Respondent Anastos)
Excessive Trading
(FINRA Rules 2111 and 2010)**

49. The Department realleges and incorporates by reference paragraphs 1 through 48 above.
50. As stated above, FINRA Rule 2111 requires a registered representative to "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the

information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile."

51. Under the Suitability Rule, an associated person who has actual or *de facto* control over a customer account is required to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.
52. Anastos exercised control over the Trust account. During the time period December 2014 to December 2015 that he handled the account, he exercised discretionary power in the account without written authority. Anastos recommended the repeated sales and repurchases of HBAN shares and the purchase and sale of HBAN call options. Anastos recommended when and how much of the securities would be purchased and sold in the Trust account. Customers IR and DR routinely followed Anastos's recommendations.
53. Anastos's trading in the Trust account was excessive, as evidenced by the high turnover rates and high commission-to-equity and cost-to-equity ratios, and it was inconsistent with the investment profile of the Trust, IR and DR. The customers' investment profile was listed as "moderate."
54. Anastos did not have reasonable grounds or a reasonable basis to believe that the recommended transactions were suitable for the Trust in light of the customers' investment objectives, risk tolerance and financial situation.
55. By reason of the foregoing, Anastos violated FINRA Rules 2111 and 2010.

**THIRD CAUSE OF ACTION
(Respondent Anastos)
Exercising Discretion Without Written Authorization
(NASD Conduct Rule 2510(b) and 2010)**

56. The Department realleges and incorporates by reference paragraphs 1 through 55 above.
57. NASD Conduct Rule 2510(b) prohibits registered representatives from exercising any discretionary power in a customer's account unless such customer has given prior written authorization to the registered representative and the registered representative's member firm has provided prior written acceptance of the account as discretionary.
58. Anastos exercised discretionary power in the Trust account.
59. Neither IR nor DR, as trustees of the Trust, ever gave written discretionary authority to Anastos or Windsor Street. Windsor Street, further, never accepted the Trust account as a discretionary account.
60. During the time period of December 2014 to December 2015, Anastos effected 18 of 26 transactions in the Trust account without speaking to either IR or DR prior to the transactions on the dates of the transactions.
61. By reason of the foregoing, Anastos violated NASD Conduct Rule 2510(b) and FINRA Rule 2010.

**FOURTH CAUSE OF ACTION
(Respondent Windsor Street)
Unreasonable Supervisory Systems and Procedures
(FINRA Rules 3110 and 2010, and NASD Conduct Rule 3010)**

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

63. NASD Conduct Rule 3010(a) (in effect prior to December 1, 2014) and FINRA Rule 3110(a) (in effect beginning December 1, 2014) require each member firm to establish and maintain a system to supervise the activities of its registered and associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and NASD and FINRA Rules.
64. NASD Rule 3010(b) (in effect prior to December 1, 2014) and FINRA Rule 3110(b) (in effect beginning December 1, 2014) require each member firm to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages” and supervise the activities of its registered and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and NASD and FINRA Rules.
65. A violation of NASD Conduct Rule 3010 and FINRA Rule 3110 is also a violation of FINRA Rule 2010.
66. During the period September 2014 to December 2015, Windsor Street’s supervisory systems and procedures, including its written supervisory procedures (“WSPs”) to achieve compliance with FINRA’s suitability rules were unreasonable.
67. The WSPs for achieving compliance with FINRA’s suitability rules were unreasonable for multiple reasons. While the Firm’s WSPs stated that the Firm’s CEO or designee was responsible for reviewing customer transactions in daily trade blotters, the procedures did not include steps, procedures or criteria to detect and deter excessive trading and churning.
68. Also, while the WSPs stated that the Firm’s Compliance Department was responsible for conducting periodic reviews of account activity based on criteria “established by

Compliance,” the procedures did not identify the frequency of review, parameters by which accounts were to be selected for review, nature of the review; and manner in which such reviews were to be documented.

69. The WSPs did not direct supervisors to consider turnover ratios, commission-to-equity ratios and cost-to-equity ratios that might present red flags of excessive trading.
70. While one section of the WSPs directed readers to a purported section titled “Active Accounts,” in fact the WSPs contained no section titled, defining or addressing “Active Accounts.”
71. The WSPs did not contain any procedures addressing steps that should be taken if the firm had identified any accounts with “red flags” of potentially problematic trading. For example, there were no procedures requiring that the Firm contact customers through such means as a letter or a telephone call from a Windsor Street principal.
72. The Firm’s systems for detecting and preventing sales practice violations were also unreasonable. The Firm did not have systems to document reviews undertaken or steps that should be taken if potentially problematic trading was detected. There was also no system for contacting customers through such means as a letter or telephone call from a Windsor Street principal.
73. While Windsor Street received monthly exception reports titled “Monthly Active Account Reports” from its clearing firms that were intended to identify actively traded accounts based on criteria that included a certain dollar amount of commissions, number of trades, commission-to-equity ratio and/or percentage of

losses in the account during a month or quarter, the Firm had no system in place to ensure that the Firm reviewed the reports and responded to identified exceptions.

74. Further, daily trade blotters used by the firm did not contain a means to identify unsuitable excessive trading.
75. By reason of the foregoing, Windsor Street violated NASD Conduct Rule 3010 (for the period from September 2014 through November 30, 2014), FINRA Rules 3110 (for the period from December 1, 2014 through December 2015), and 2010.

**SIXTH CAUSE OF ACTION
(Respondent Windsor Street)
Failure to Supervise
(FINRA Rules 3110 and 2010, and NASD Conduct Rule 3010)**

76. The Department realleges and incorporates by reference paragraphs 1 through 74 above.
77. The duty of supervision under the federal securities laws and FINRA Rules includes the responsibility to investigate “red flags” that suggest misconduct may be occurring and to act upon the results of such investigation.
78. During the period September 2014 through December 2015, Windsor Street failed to reasonably supervise Allan and Anastos. Windsor Street failed to investigate and act upon “red flags” of unsuitable trading in the Trust account.
79. Specifically, the Trust account appeared on a Monthly Active Account Report received by Windsor Street at least seven times, for the months ending September 30, 2014, October 31, 2014, December 31, 2014, March 31, 2015, April 30, 2015, May 31, 2015 and June 30, 2015.

80. The Trust account appeared on the report because during each of those seven months the account exceeded monthly thresholds for the amount of commissions charged, commission-to-equity ratio and/or losses.
81. Windsor Street failed to take action in response to the Trust account's appearance on the Monthly Active Account Report, including failing to:
- a. review and investigate the account activity;
 - b. follow up and discuss Allan's and Anastos's handling of the account; and
 - c. contact customers IR and DR by letter or telephone to confirm that the customers were aware of and understood the trading activity in the Trust account, including the level of commissions charged and losses.
82. Windsor Street also failed to respond to "red flags" that should have been apparent from daily reviews of account activity. Specifically, reviews of daily trade blotters should have prompted concerns and further review as to why an account for elderly customers was engaging in short-term trades of large positions in a single stock. However, Windsor Street failed to identify these "red flags" in their reviews.
83. As a result of failing to identify, investigate and respond to the "red flags," Windsor Street failed to supervise Allan and Anastos in their handling of the Trust account.
84. By reason of the foregoing, Windsor Street violated NASD Conduct Rule 3010 (for the period from September 2014 through November 30, 2014), FINRA Rules 3110 (for the period from December 1, 2014 through November 2015), and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

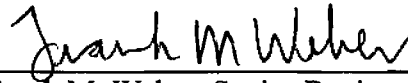
- A. make findings of fact and conclusions of law that Respondents committed the

violations charged and alleged herein;

- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 15, 2017



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