

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

Carole G. Ferraro, Respondent
General Securities Representative
[CRD No. 1174904]

Respondent.

Disciplinary Proceeding
No. C05050005

Hearing Officer: _____

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Carole G. Ferraro entered the securities industry on September 21, 1983, as a General Securities Representative of Herzog, Heine, Geduld, LLC, a member of NASD. Carole G. Ferraro, during all periods mentioned herein, was associated with member firm Wachovia Securities, LLC, ("Wachovia" or the "Firm") and was registered with NASD under Article V of the By-Laws as a General Securities Representative, which registration remains currently in effect.

CAUSE OF COMPLAINT

**NASD Conduct Rules 2110 and 2310, Unsuitable Recommendation of Variable Annuities,
Against Respondent Ferraro**

2. On or about January 10, 2001, Carole G. Ferraro recommended and effected the purchase of several investments, including a Putnam Hartford Capital Manager Variable Annuity and an Evergreen Ultra Advantage Plus Variable Annuity, each in the amount of \$100,000, by public customers FC and AC.

3. FC and AC were married, ages 76 and 77, and sought to invest proceeds from the sale of their home. FC and AC had initially invested the proceeds in a money market account with a favorable introductory rate.
4. FC was a retired grocery store and restaurant owner. He and his wife relied on social security and the income from the money market account (approximately \$1,700.00 per month) to pay living expenses. FC and AC wished to continue to receive the same level of income they had received from the money market account and wished to maintain the safety of their principal.
5. Based upon the recommendation of Ferraro, FC and AC invested over half of their liquid net worth in market-based sub-accounts of the Putnam Hartford Capital Manager Variable Annuity and the Evergreen Ultra Advantage Plus Variable Annuity, products not designed to produce income.¹
6. After following the advice of Ferraro, the customers' investment income was reduced from approximately \$1,700 per month to approximately \$600 per month.
7. Additionally, the customers owned life insurance policies totaling \$285,000 and were in the 15% tax bracket. The customers were satisfied with the level of life insurance and did not indicate a need for estate planning for their son and daughter.
8. Expenses were associated with the death benefit, tax-deferral, and sub-account choices offered by the variable annuities. Each variable annuity carried annual mortality and expense charges of 1.25% of the net asset value and administrative

¹ Both variable annuity applications indicate that AC was the contemplated owner and annuitant, and FC was the beneficiary; however, some of the contract documentation shows joint ownership by AC and FC with FC as the beneficiary.

charges of 0.15% of net asset value. In addition, both variable annuities had annual fees associated with the sub-accounts chosen by the customers, ranging from .53% to 1.5%.

9. Furthermore, the variable annuity investments had a variety of restrictions to accessing the funds. Both variable annuities charged surrender fees for withdrawals over a certain percentage. The Putnam Variable Annuity charged a 7% surrender fee for withdrawals in excess of 15% annually. The Evergreen Variable Annuity charged a 6% surrender fee for withdrawals in excess of 10% annually. The charges declined over time until year 2008 when the customers could withdraw the funds penalty-free. Since FC and AC purchased the variable annuity contracts in January 2001 when they were 76 and 77, respectively, they would not have penalty-free access to their funds until 2008 when they would be 83 and 84 years old.
10. The approval by Wachovia of the variable annuity transactions was based, in part, on misleading or incomplete information. Ferraro completed a financial profile for the FC and AC that stated an annual income of \$39,000. The \$39,000 figure stated as annual income was misleading because it included the interest that FC and AC had been receiving as part of a promotional money market investment. The Firm was unaware of the source of the income or that approximately \$13,200 in annual income would disappear immediately upon execution of the transactions recommended by Ferraro.
11. Carole G. Ferraro earned a \$2,409.00 net commission on the variable annuity sales to FC and AC.

12. Given the limited benefit available to the customers from either the death benefit or the tax deferral features of the variable annuities, the costs associated with the products, the limited liquidity, and the failure of the variable annuities to satisfy the customers' goals of income and safety, Ferraro did not have a reasonable basis for recommending that FC and AC invest in the Putnam Hartford Capital Manager Variable Annuity or the Evergreen Ultra Advantage Plus Variable Annuity.
13. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2310(a) by Carole G. Ferraro.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

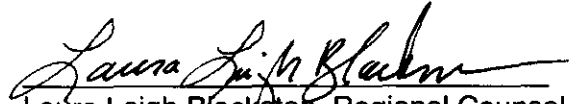
- A. Findings of fact and conclusions of law that the Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order requiring the Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

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June 7, 2005
Date



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