

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

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

Respondent.

Disciplinary Proceeding
No. C05050005

Hearing Officer: SW

**ORDER ACCEPTING
OFFER OF SETTLEMENT**

Date: July 21, 2006

INTRODUCTION

Disciplinary Proceeding No. [REDACTED] was filed on June 7, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Carole G. Ferraro submitted an Offer of Settlement ("Offer") to Complainant on June 30, 2006. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure 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 for the purpose of this proceeding only, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding in which NASD is a party, to the entry of findings of facts and violations consistent with the allegations of the Complaint, 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 NASD.

FINDINGS AND CONCLUSIONS

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

BACKGROUND

- 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.

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.

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 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 PC 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.

By virtue of such conduct, Carole G. Ferraro violated NASD Conduct Rule 2310(a) and 2110.

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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 NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that a censure and a monetary fine in the amount of \$10,000 be assessed against Carole G. Ferraro.

The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

NASD

Signed on behalf of the
Director of ODA, by delegated authority



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