

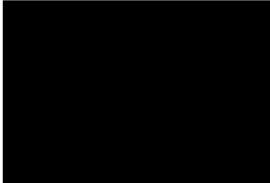
NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

KEVIN MARK WEAVER
(CRD No. 2845934),



Respondent.

Disciplinary Proceeding
No. C06040034

Hearing Officer – AWH

DEFAULT DECISION

March 17, 2005

Formerly registered representative barred from association with any NASD member firm in any capacity for (1) fraudulently misrepresenting and omitting material facts in connection with the sale of securities, in violation of Section 17(a) of the Securities Act, 10(b) and 10b-5 of the Exchange Act, and NASD Conduct Rules 2120 and 2110; and (2) failing to respond to NASD Staff requests for testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Respondent also ordered to make restitution to 23 customers in the total amount of \$547,468, plus interest.

Appearances

Karen E. Whitaker, Esq., for the Department of Enforcement.

No appearance by or for Kevin Mark Weaver.

DECISION

Background

On October 21, 2004, the Department of Enforcement (“Enforcement”) issued the two-cause Complaint in this proceeding alleging that Kevin Mark Weaver (“Respondent” or “Weaver”): (1) fraudulently misrepresented and omitted material information in connection with

the sale of securities, in violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”), and NASD Conduct Rules 2120 and 2110; and (2) failed to appear and provide testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Weaver failed to file an Answer to the Complaint. He also failed to respond to the Complaint and Second Notice of Complaint that Enforcement issued on November 19, 2004. As a result, on January 14, 2005, Enforcement filed a Motion for Entry of Default Decision. Weaver did not respond to that Motion. Pursuant to NASD Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this Decision, will be deemed admitted.

Findings of Fact¹

Respondent

Between November 1999 and April 2000, the period relevant to this proceeding, Weaver was registered with NASD through former member firm Shelman Securities Corporation (“Shelman”). Weaver was last registered with NASD through member firm Salomon Grey Financial Corporation until November 1, 2004, when the firm filed a Form U-5 on his behalf, terminating his registration.

Intertrade IV

Between November 1999 and April 2000, Weaver participated in the offer and sale of unregistered limited partnership interests in an entity called Intertrade IV (“Intertrade”), raising \$557,100 from at least 23 investors. Intertrade was a Texas-based limited partnership that engaged in securities trading through a brokerage account. Weaver was vice-president of Prism

¹ All findings of fact are based on the admitted allegations in the Complaint, Karen E. Whitaker’s Declaration Supporting a Motion for Entry of Default Decision, and the exhibits attached thereto.

Independent Consulting, Inc. ("Prism"), the general partner of Intertrade, and controlled Intertrade's trading activity and the disbursement of its funds. In addition, Weaver was vice-president of Shelman, the exclusive underwriter of the Intertrade offering.

Weaver and Shelman offered the Intertrade interests through a Private Placement Memorandum ("PPM") that misrepresented and omitted various facts. The PPM falsely stated that the funds invested in Intertrade IV would not be commingled with funds invested in other Intertrade limited partnerships.² However, between March 29, 1999, and October 4, 2000, Weaver authorized at least 24 transfers of funds between Intertrade IV's brokerage account and the accounts of the other Intertrade entities. Further, the PPM stated that a maximum of 12.5% of the funds raised through the offering would be paid to Prism and Shelman, representing selling commissions and due diligence fees. Because the offering raised \$557,100, at most, Prism and Shelman should jointly have received \$69,625 in compensation. However, Weaver transferred \$138,642.37 of the invested funds to Prism and Shelman, and \$41,750 to himself, amounts that in total represented nearly 33% of the total funds invested in Intertrade.

The PPM also stated that the investment objective of Intertrade IV was to trade stock on the major exchanges, taking both long and short positions, and make profits on the trades. Intertrade would then distribute the profits to investors on a quarterly basis. However, neither the PPM nor Weaver disclosed: (1) that Intertrade IV engaged in an electronic day trading strategy; (2) the risks associated with electronic day trading; (3) that Intertrade IV would trade on margin; (4) the risks associated with trading on margin; (5) that Weaver himself would be directing Intertrade IV's trading activity; and (6) that he had no day trading experience.

² Weaver and Shelman were contemporaneously offering limited partnership interests in entities named Intertrade, Ltd., Intertrade II, and Intertrade III.

The Intratrade limited partnership was liquidated on March 13, 2001. Investors recouped a total of \$9,632, losing \$547,468 on their investments.

Failure to Provide Testimony

On June 12, 2003, pursuant to Rule 8210, Enforcement sent Weaver a request to appear and provide testimony pertaining to the Intertrade offering and related transactions. This request was sent by both regular and certified mail to Weaver's then-current business address, as reflected in the Central Registration Depository ("CRD"), [REDACTED] ("the Lionshead Circle address"). A courtesy copy was also forwarded to Weaver's attorney of record.

On June 24, 2003, NASD staff received a letter from Weaver's attorney, acknowledging receipt of the June 12 request, but stating that neither he nor Weaver could appear on the requested date. Weaver was sent a copy of the letter. However, on June 27, 2003, the attorney advised NASD staff that he no longer represented Weaver, and that either Weaver or his new attorney would be in contact shortly.

On July 1, 2003, NASD again sent a request, pursuant to Rule 8210, that Weaver appear and provide testimony. The request was sent by both regular and certified mail to Weaver's two CRD residential addresses, [REDACTED] ("the Elk Lane address"), and [REDACTED] ("the Colorow Road address"). Weaver also used the Colorow Road address as his business address. He did not respond to the request.

On July 17, 2003, NASD staff again requested that Weaver appear and provide testimony, mailing the request to the two residential addresses noted above by both regular and certified mail. Weaver did not reply to these mailings, and never appeared for the requested testimony.

Service of the Complaint

On October 21, 2004, Enforcement served the Complaint and Notice of Complaint on Weaver by both regular and certified mail, sent to his most recent CRD residential addresses: the Colorow Road address and a new address, [REDACTED] ("the P.O. Box address").³ Weaver did not respond to the Complaint.

On November 19, 2004, Enforcement served the Complaint and Second Notice of Complaint on Respondent, again using both regular and certified mail. Enforcement sent the documents to the Colorow Road and P.O. Box addresses, as well as a third address that was not posted on the CRD until after the First Notice of Complaint was issued. The CRD lists this address as [REDACTED] ("the Martel address"). Weaver again failed to file an Answer or respond to the Complaint in any manner.

Discussion and Conclusions

Jurisdiction

Weaver was registered with NASD until November 1, 2004. Because the Complaint in this proceeding was filed on October 21, 2004, while Weaver was still registered, the NASD has jurisdiction over him for purposes of this disciplinary proceeding.

Respondent's Default

Enforcement properly served the Complaint on Weaver by sending it via regular and certified mail to his CRD addresses. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding. Because Weaver failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against him. Accordingly, the allegations in the Complaint against Weaver are deemed admitted.

³ It is unclear when the CRD was amended to omit the Elk Lane address.

Fraud in the Sale of Securities

Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5 prohibit fraudulent and deceptive acts and practices in connection with the sale of a security. In proving a violation of Section 17(a)(2), Enforcement must show that Weaver misrepresented or omitted material facts in connection with the offer or sale of a security; scienter is not required.⁴ In order to establish a violation of Section 10(b) of the Exchange Act and Rule 10b-5, Enforcement must show that the Weaver made material misrepresentations or omissions in connection with the purchase or sale of a security, and that he acted with scienter.⁵ NASD Conduct Rule 2120, NASD's anti-fraud provision, parallels Rule 10b-5.⁶ Both are designed to "ensure that sales representatives fulfill their obligation to their customers to be accurate when making statements about securities."⁷ A violation of NASD Conduct Rule 2120 is also a violation of Conduct Rule 2110.⁸

Here, the evidence shows, and Weaver admits by default, that the PPM he used to sell the Intertrade IV interests contained material misrepresentations and omissions. Whether information is material "depends on the significance the reasonable investor would place on the withheld or misrepresented information."⁹ An omitted or misstated fact is material if it would have been viewed by a reasonable investor as significantly altering the "total mix" of information available.¹⁰ Here, a reasonable investor would want to know that nearly 33% of the funds invested in Intertrade would ultimately be transferred to Prism, Shelman, and Weaver. Also, an

⁴ *Aaron v. SEC*, 446 U.S. 680 (1980).

⁵ *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450 (2d Cir. 1996).

⁶ *Dep't of Enforcement v. Justin E. Apgar*, 2004 NASD Discip. LEXIS 9 at *11 (NAC May 18, 2004).

⁷ *DBCC v. Euripides*, 1997 NASD Disip. LEXIS 45 at *16-17 (July 28, 1997).

⁸ *Id.* at 19.

⁹ *Basic, Inc. v. Levinson*, 485 U.S. 224, 240 (1988).

¹⁰ *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *See also SEC v. Rogers*, 790 F.2d 1450, 1458 (9th Cir. 1986) (information is material if "there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision").

investor would want to know whether his or her funds might be transferred into accounts controlled by a different entity, perhaps with a different investment strategy or objective. The omissions in this case are clearly material. An investor would undoubtedly want to know that Intertrade engaged in a risky day trading strategy that included purchases on margin, and that Weaver, a man with no experience in day trading, controlled the account.

Further, Weaver acted with the requisite scienter. The Supreme Court has defined scienter for purposes of securities fraud cases as “a mental state embracing intent to deceive, manipulate, or defraud.”¹¹ Here, Weaver clearly intended to misrepresent the terms and risks of the Intertrade IV limited partnership in order to encourage investment, and to then defraud the investors through substantial transfers of funds to himself and his affiliated companies. As a result, Weaver violated Section 17(a) of the Securities Act, Section 10(b) and Rule 10b-5 of the Exchange Act, and NASD Conduct Rules 2120 and 2110.

Failure to Appear and Provide Testimony

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD’s oversight function and allows NASD to carry out its regulatory functions without subpoena power.¹² When an individual fails to respond to information requests, NASD’s ability to perform its regulatory responsibilities is subverted.¹³ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.¹⁴

¹¹ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976).

¹² See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep’t of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) (“Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD’s self-regulatory function.”).

¹³ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

¹⁴ *Dep’t of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

Here, pursuant to Procedural Rule 8210(d), the mailings sent to Weaver's CRD addresses constitute effective constructive notice of the Staff's requests for information. Further, Weaver's attorney at the time acknowledged his actual receipt of the requests. Accordingly, Weaver's failures to respond to those requests for information violated Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Fraudulent Misrepresentations and Omissions

For intentional or reckless misrepresentation or omission of a material fact, NASD Sanction Guidelines recommend a suspension ranging from ten business days to two years, and, in egregious cases, counsels that the Hearing Officer consider a bar.¹⁵ Here, Weaver's conduct was quantitatively egregious, given the number of customers defrauded and the large sums involved.¹⁶ In addition, his conduct was qualitatively egregious, exemplified by his flagrant disregard for the express terms of the Intertrade PPM in transferring excessive funds to his own account and those of his affiliated companies.¹⁷ Accordingly, Weaver will be barred from association with any NASD member firm in any capacity for fraudulently misrepresenting and omitting material facts in connection with the sale of securities.

Weaver will also be ordered to pay restitution to the 23 Intertrade investors in the amount of \$547,468, plus interest calculated pursuant to 26 U.S.C. §6621(a)(2) from the date of the occurrence of the violative activity that gave rise to the loss.¹⁸ That amount reflects the amount of the customers' losses after the liquidation of the Intertrade limited partnership and subsequent

¹⁵ NASD SANCTION GUIDELINES, p. 94 (2004 ed.).

¹⁶ This analysis is analogous to the determination of egregiousness in the context of unauthorized trading, where misconduct may be qualitatively egregious because of the sheer number of trades. *DBCC v. Daniel Hellen*, 1999 NASD Discip. LEXIS 22 (Jun. 15, 1999); *Dep't of Enforcement v. Ragofsky*, 2001 NASD Discip. LEXIS 19 (OHO Jan. 31, 2001) (ten transactions found to be quantitatively egregious).

¹⁷ Again analogizing to the context of unauthorized trading, misconduct may be qualitatively egregious because it is intentional and for personal pecuniary gain. *Hellen*, 1999 NASD Discip. LEXIS 22.

¹⁸ *Id.* at 12.

dispersal of the \$9,632 remaining in its account.¹⁹ Each investor's name and his or her exact amount of loss are set out in the Exhibit attached to this Decision.

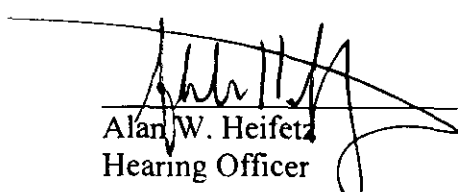
Failure to Appear and Provide Testimony

For failure to respond to requests for information made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is the standard sanction where, as here, the individual did not respond in any way.²⁰ There are no mitigating circumstances that would warrant a sanction less than a bar. Accordingly, Weaver will be barred in all capacities for failing to respond in any manner to requests for information made pursuant to Rule 8210.

Conclusion

Kevin Mark Weaver is barred from association with any NASD member firm in any capacity for fraudulently misrepresenting and omitting material facts in connection with the sale of securities, in violation of Section 17(a) of the Securities Act, 10(b) and Rule 10b-5 of the Exchange Act, and NASD Conduct Rules 2120 and 2110, and is also ordered to pay restitution to the Intertrade investors in the amount of \$547,468, plus interest. Weaver is also barred for failing to respond to staff requests for testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Alan W. Heifetz
Hearing Officer

¹⁹ Pursuant to the Sanction Guidelines General Principles, "[w]here appropriate to remediate misconduct, Adjudicators should order restitution...." Adjudicators may order restitution where an identifiable person has suffered a quantifiable loss as a result of respondent's misconduct. *Id.* at 6.

²⁰ *Id.* at 37.

Copies to:

Via First Class Mail & Overnight Courier

Kevin Mark Weaver

Via First Class & Electronic Mail

Karen E. Whitaker, Esq.

Rory C. Flynn, Esq.

Exhibit A

Schedule of Restitution Due to Intertrade IV Investors

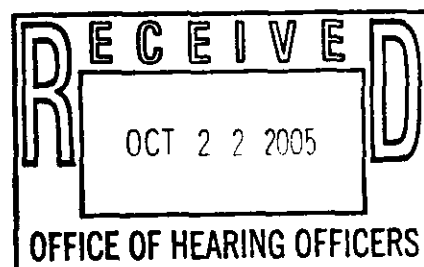
	CUSTOMER INITIALS	CUSTOMER NAME	Restitution Amount
1	RA		\$29,481.00
2	RB		\$19,654.00
3	JB & BH		\$9,827.00
4	WB		\$9,827.00
5	HC		\$19,654.00
6	BC		\$39,308.00
7	RD		\$19,654.00
8	TD		\$78,621.83
9	KF		\$37,342.60
10	EG		\$19,654.00
11	FH		\$19,654.00
12	MM		\$19,654.00
13	SP		\$19,654.00
14	MP		\$9,827.00
15	ER		\$18,769.57
16	JR		\$39,308.00
17	DR		\$39,308.00
18	PR		\$19,654.00
19	JS		\$19,654.00
20	RV		\$19,654.00
21	BW		\$19,654.00
22	GW		\$19,654.00

Exhibit A

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9	KF		\$37,342.60
10	EG		\$19,654.00
11	FH		\$19,654.00
12	MM		\$19,654.00
13	SP		\$19,654.00
14	MP		\$9,827.00
15	ER		\$18,769.57
16	JR		\$39,308.00
17	DR		\$39,308.00
18	PR		\$19,654.00
19	JS		\$19,654.00
20	RV		\$19,654.00
21	BW		\$19,654.00
22	GW		\$19,654.00

NASD
OFFICE OF HEARING OFFICERS



Department of Enforcement,
Complainant

v.

Kevin Mark Weaver
Registered Representative
CRD No. 2845934

Respondents

Disciplinary Proceeding
No. C06040034

Hearing Officer _____

COMPLAINT

Date: October 21 ,2004

Upon information and belief, Complainant alleges as follows:

1. Respondent Kevin Mark Weaver ("Weaver") entered the securities industry in January 1997, when he became associated with NASD member firm Pacific Cortez Securities, which later became known as La Jolla Capital Corporation. He obtained Series 7 and 63 securities licenses in February 1997. Weaver subsequently became associated with two other NASD member firms before registering with member firm Shelman Securities Corp. ("Shelman") in June 1999 through September 2000. Weaver registered with another member firm before returning to Shelman in May 2001. He remained at the firm until June 2003. Weaver obtained Series 24 and 65 securities licenses in January 2002 and April 2002, respectively. He became registered with his current member firm as a General Securities Representative and Principal in May 2003.
2. NASD has jurisdiction to file this complaint against Weaver pursuant to Article V, Section 2 of the NASD By-Laws.

BACKGROUND¹

3. During the period from approximately December 1998 to at least April 2000, Shelman Securities Corp and certain associated persons, including Weaver, engaged in the fraudulent offer and sale of unregistered securities in the form of limited partnership interests through four ostensibly separate offerings to at least 104 investors located throughout the United States. The offerings were conducted contemporaneously and raised over \$2 million from the investors. Shelman and an affiliated company, Prism Independent Consulting, Inc. ("Prism"), appropriated roughly twenty-one percent, or approximately \$440,625, of the investment proceeds for purported expenses and fees. Investors lost at least \$1.7 million of their \$2 million investment.
4. The offerings were made through four Texas-registered limited partnerships: Intertrade Ltd., Intertrade II, Intertrade III and Intertrade IV (collectively "the Intertrade offerings" or "the offerings"). Prism was the general partner to each Intertrade limited partnership, while Shelman was the exclusive underwriter for each Intertrade offering.
5. Each limited partnership had a brokerage account through which securities trading activity was conducted.
6. Each Intertrade offering was made pursuant to a Private Placement Memorandum ("PPM") that contained numerous misrepresentations and omitted to state several material facts.

¹ NASD brought a separate action against Shelman and its owner in connection with the conduct described herein. That action was resolved through settlement.

FIRST CAUSE OF COMPLAINT

Fraudulent Misrepresentations and Omissions
(Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and NASD Conduct Rules 2110 and 2120)

7. Paragraphs numbers 1 and 2 above are realleged and incorporated herein by reference.
8. During the period from approximately November 1999 through at least April 2000, Weaver participated in the fraudulent offer and sale of securities in the form of limited partnership interests in the Intertrade IV limited partnership offering.
9. During this period, the Intertrade IV offering raised approximately \$557,100 from at least 23 investors.
10. The Intertrade IV offering was conducted pursuant to a Private Placement Memorandum.
11. According to the PPM, Weaver served as vice-president of both Prism, the issuer of the Intertrade IV securities and general partner to the Intertrade IV limited partnership, and Shelman, the exclusive underwriter of the Intertrade IV offering.
12. The stated investment objective in the Intertrade IV PPM was to: purchase stock on the NASDAQ, NYSE and AMEX markets in both long and short positions; sell the stock for profit; and distribute profits to limited partners every three months.
13. Intertrade IV had a brokerage account through which the trading activities were conducted.
14. Weaver directed the trading activity in that account.
15. Weaver also controlled the disbursement of funds from Intertrade IV's securities account.
16. The Intertrade IV limited partnership was liquidated on March 13, 2001. Only \$9,632 was returned to Intertrade IV investors.
17. Accordingly, investors lost a total of at least \$547,468 in connection with their investment in the Intertrade IV offering.

18. Weaver omitted to state material facts in connection with his offers and sales of Intertrade IV securities.
19. Specifically, he failed to disclose that Intertrade IV would engage in an electronic daytrading investment strategy or the risks associated with electronic daytrading.
20. He also failed to disclose that Intertrade IV would trade on margin or the risks associated with margin trading.
21. Finally, Weaver failed to disclose to investors that he would personally be directing the trading in the Intertrade IV account and that he had no prior daytrading experience.
22. The PPM used by Weaver to market the Intertrade IV offering contained several misrepresentations.
23. For example, the PPM falsely represented that investor funds would not be commingled when, in fact, Intertrade IV funds were commingled with funds from the other Intertrade offerings.
24. Specifically, between March 29, 1999 and October 4, 2000, there were at least twenty-four separate movements of funds between Intertrade IV's brokerage account and the other limited partnership accounts.
25. Weaver authorized each of the transfers from Intertrade IV's account to the other partnership accounts.
26. Furthermore, the PPM misrepresented the use of investment funds raised in connection with the offerings.
27. The PPM contained a section entitled "Use of Proceeds," which states that a maximum of 12.5% of the offering proceeds can be paid to the general partner (Prism) and syndicator (Shelman) for selling commissions and due diligence expenses. Based on the amount raised in the offering (\$557,100), a maximum of \$69,625 should have been taken out in expenses. However, financial records for Intertrade IV reveal that Weaver caused a total of approximately

- \$138,642.37 to be paid to Prism (\$81,505.37) and Shelman (\$57,137) for purported expenses.
28. Additionally, Weaver caused approximately \$41,750 to be transferred to himself for an unknown purpose.
29. Such acts, practices, and conduct constitute separate and distinct violations of Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and NASD Conduct Rules 2110 and 2120 by Kevin Mark Weaver.

SECOND CAUSE OF COMPLAINT

Respondent Weaver Failed to Appear and Provide On-The-Record Testimony (Violation of NASD Conduct Rule 2110 and Procedural Rule 8210)

30. Paragraph numbers 1 and 2 and 7 through 29 above are realleged and incorporated herein by *reference*.
31. By letter dated June 12, 2003 ("June 12th letter"), NASD staff requested, pursuant to Rule 8210, that Respondent Weaver appear and provide on-the-record testimony on June 20, 2003, regarding his involvement with the Intertrade limited partnerships and related offerings. The June 12th letter was sent via regular and certified mail to Respondent Weaver at his CRD business address: [REDACTED] (the "Lionshead Circle address"). A courtesy copy was also forwarded to Weaver's attorney of record.
32. On June 24, 2003 ("June 24th letter"), Weaver's attorney of record responded on Weaver's behalf, acknowledging receipt of the June 12th letter. In the June 24th letter, Weaver's attorney stated that neither he nor Weaver would be available to appear for testimony on June 20, 2003. Weaver was copied on the letter.

Formal Complaint
C06040034 / Kevin Mark Weaver

33. On June 27, 2003 ("June 27th letter"), Weaver's attorney of record advised the staff the he would not be representing Weaver and that Weaver, or his new attorney, would contact the staff shortly. Weaver was copied on the letter.
34. By letter dated July 1, 2003 (the "July 1st letter"), NASD staff again requested, pursuant to Rule 8210, that Respondent Weaver appear and provide testimony on July 11, 2003. The July 1st letter was sent via regular and certified mail to Respondent Weaver at both of his CRD residential addresses of record: [REDACTED] (the "Elk LN address") and [REDACTED] (the "Colorow Road address."), which also served as his business address at that time.
35. By letter dated July 17, 2003 ("July 17th letter"), NASD staff again requested, pursuant to Rule 8210, that Respondent Weaver appear and provide testimony, this time on July 29, 2003. The July 17th letter was sent via regular and certified mail to Respondent Weaver at both the Elk LN and Colorow Road addresses.
36. The July 1st letter sent via certified mail to the Elk LN address was returned to the District Office and was marked "No Street Delivery Available." The letter sent via regular mail was not returned to the District Office. The July 1st letter sent via certified mail to the Colorow Road address was returned to the District Office and was marked "No Mail Receptacle." The letter sent via regular mail was not returned to the District Office.
37. The July 17th letter sent via certified mail to the Elk LN address was returned to the District Office and was marked "No Street Delivery Available." The letter sent via regular mail was not returned to the District Office. The July 17th letter sent via certified mail to the Colorow Road address was returned to the District Office and was marked, "No Mail Receptacle." The letter sent via regular mail was not returned to the District Office.
38. Respondent Weaver never appeared for on-the-record testimony.

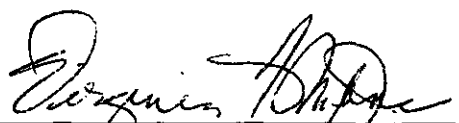
39. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Kevin Mark Weaver.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondents in accordance with NASD Rule 8310.
- C. An order requiring Respondents 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.

Date: October 21, 2004



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Formal Complaint
C06040034 / Kevin Mark Weaver

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