

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANTHONY WHITTER  
(CRD No. 2733252),

Respondent.

Disciplinary Proceeding  
No. C07050029

Hearing Officer—Andrew H. Perkins

**DEFAULT DECISION**

November 14, 2006

**The Respondent failed to disclose material financial information concerning a speculative stock he recommended to three customers, and made unreasonable price predictions for the stock, all in violation of Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and NASD Rules 2120 and 2110. For these violations, the Respondent is barred.**

**Appearances**

Joel R. Beck, Regional Counsel, Atlanta, GA, and Sean W. Firley, Senior Regional Attorney, Boca Raton, FL (Rory C. Flynn, NASD Chief Litigation Counsel, Washington, DC, Of Counsel) for the Department of Enforcement.

No appearance by or for the Respondent.

**DECISION**

The Complaint charges that Anthony Whitter, while associated with Clark Street Capital, Inc. ("Clark Street"), made baseless price predictions for Sequiam Corporation ("Sequiam"); failed to disclose Sequiam's financial condition and the risks associated with investing in Sequiam stock; failed to disclose the relationship between Sequiam and Clark Street, including the fact that Clark Street had entered into a consulting contract with Sequiam; and failed to disclose that Clark Street was selling Sequiam stock from its own account at the same time that

Whitter recommended that his customers purchase the stock.<sup>1</sup> The Complaint charges that Whitter violated Exchange Act Section 10(b), Exchange Act Rule 10b-5, and NASD Conduct Rule 2120, which prohibit fraudulent and deceptive practices in connection with the offer, purchase, or sale of a security. In addition, the Complaint charges that by violating Conduct Rule 2120, he also violated Conduct Rule 2110.

Enforcement properly served Whitter with a copy of the Complaint, Notice of Complaint, and Second Notice of Complaint. Enforcement served Whitter with the Complaint and Notice of Complaint on April 15, 2005, by first-class certified mail sent to Whitter's residential address recorded in the Central Registration Depository ("CRD"). Whitter did not file an Answer within the time specified in the Notice of Complaint. Enforcement then served Whitter with a copy of the Complaint and Second Notice of Complaint on May 16, 2006, by first-class certified mail sent to his CRD address. Whitter failed to file an Answer to the Complaint. Whitter also failed to appear for the Initial Pre-Hearing Conference on June 23, 2005.<sup>2</sup> Accordingly, the Hearing Officer entered an order finding Whitter in default.

On September 22, 2006, Enforcement filed a Motion for Entry of Default Decision. The motion is supported by the Declaration of Joel R. Beck and three exhibits.

For the reasons discussed below, the Hearing Officer finds that Whitter violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

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<sup>1</sup> Enforcement filed the Complaint on April 18, 2005. The Complaint also named Anthony Cipriano as a respondent. A hearing was held on the charges against him on March 14 and 15, 2006.

<sup>2</sup> On June 14, 2005, the Office of Hearing Officers sent Whitter notice of the Initial Pre-Hearing Conference by FedEx and first-class mail at his CRD address.

## **I. FINDINGS OF FACT**

The following findings of fact are based on the allegations in the attached Complaint and the declaration and exhibits filed with Enforcement's Motion for Entry of Default.<sup>3</sup>

### **A. Anthony Whitter**

Whitter entered the securities industry in May 1997 and thereafter worked at several firms before he joined Clark Street in May 2001. Whitter was associated with Clark Street from May 2001 until September 24, 2004. Whitter is no longer associated with an NASD member firm.<sup>4</sup>

### **B. Sequiam Corporation**

Sequiam was formed through a reverse merger in April 1, 2002, between Wedge Net Experts, Inc. ("Wedge Net") and Sequiam, Inc., two developmental stage companies.<sup>5</sup>

Prior to the merger, Sequiam, Inc. was a privately held corporation. Its financial statements for the year ending December 31, 2001, showed that the company had total assets of \$69,796, none of which was cash.<sup>6</sup> The company had no net sales, and it had losses from operations totaling \$730,688. Its auditors noted in connection with the company's financial statements that they had a substantial concern about whether the company could continue as a going concern.<sup>7</sup>

Prior to the merger with Sequiam, Inc., Wedge Net was a public company. At the time of the merger, it had an accumulated operating net loss. For the year ended December 31, 2001,

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<sup>3</sup> The exhibits are referenced as "CX- \_\_\_\_". The factual allegations in the Complaint are deemed admitted due to Whitter's default pursuant to NASD Code of Procedure Rule 9215(f).

<sup>4</sup> CX-1.

<sup>5</sup> A development stage enterprise is defined by Statement of Financial Accounting Standards No. 7 as "a company that: [d]evotes substantially all of its efforts to establishing a new business and has not yet begun planned principal operations; or [h]as begun operations, but has not generated significant revenue." ACCOUNTING AND REPORTING BY DEVELOPMENT STAGE ENTERPRISES, Statement of Financial Accounting Standards No. 7 (Financial Accounting Standards Bd. 1975), available at <http://www.fasb.org/pdf/fn%207.pdf>.

<sup>6</sup> Compl. ¶ 7.

<sup>7</sup> *Id.*

Wedge Net's financial records reflect that it had \$20,552 in total current assets. In 2001, Wedge Net posted net sales of \$1,657.<sup>8</sup> Its auditors also noted their concern as of the end of 2001 that the company might not be able to continue as a going concern.

In June 2002, Clark Street entered into a consulting agreement with Sequiam that called for Clark Street to provide consulting services to Sequiam in exchange for warrants to purchase shares of its common stock. At approximately the same time, Clark Street brokers began selling Sequiam stock to their customers.

Sequiam was a penny stock listed on the NASDAQ OTC Bulletin Board. Sequiam's public filings reveal that, as of the end of the first quarter in 2002, the company had no assets and accumulated debt of \$127,740, and, as of the end of the second quarter, it had assets totaling \$355,093 and a net loss for the first six months of \$89,000.<sup>9</sup>

Between June 2002 and March 2003, Clark Street sold approximately 3.1 million shares of Sequiam stock to its customers at an average price of \$1.53 per share. During the same period, Clark Street received approximately 901,000 shares of Sequiam Stock, of which it sold approximately 448,500 shares.<sup>10</sup>

### **C. Whitter's Sales of Sequiam Corporation's Stock**

The Second Cause of Complaint alleges that Whitter recommended Sequiam stock to three of his customers between June 2002 and March 2003 notwithstanding the company's poor performance and financial condition.

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<sup>8</sup> *Id.* ¶6.

<sup>9</sup> *Id.* ¶ 8.

<sup>10</sup> *Id.* ¶¶ 3-5.

### **1. Customer WC**

According to the Complaint, in June 2002, Whitter recommended that WC purchase shares of Sequiam stock. Whitter told WC that Sequiam was involved in the publishing business and that it had a contractual relationship with the Olympics. Whitter further told WC that Sequiam was about to be listed on the American Stock Exchange and that the price of its stock was going to increase in value by four or five fold within one year.<sup>11</sup> Whitter did not advise WC of Sequiam's poor financial condition or of any of the risks associated with Sequiam stock. Nor did Whitter tell WC that Clark Street had a consulting agreement with the company.

Based on Whitter's recommendation, WC purchased 2400 shares of Sequiam stock on June 17, 2002, for \$2,520.<sup>12</sup>

### **2. Customer JUB**

Beginning in June 2002, Whitter began recommending that JUB purchase shares of Sequiam stock for both his investment and his retirement account. Whitter told JUB that the company had a printing contract with the Olympic Committee for the next Olympics and that the company maintained an Internet site for the Olympics. According to Whitter, Sequiam was entitled to between 25% and 30% of all sales made through the Olympic Internet site.<sup>13</sup> Whitter also told JUB that Sequiam was in good financial condition and that it would soon be listed on the American Stock Exchange. Whitter predicted that the price of Sequiam stock would increase to \$3.00 per share in the short term and to as much as \$4.00 per share in the long term.<sup>14</sup>

Whitter did not advise JUB of any of the risks associated with Sequiam stock, nor did Whitter tell JUB that Clark Street was selling its shares of Sequiam stock.

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<sup>11</sup> *Id.* ¶ 33.

<sup>12</sup> *Id.* ¶ 35.

<sup>13</sup> *Id.* ¶ 36.

<sup>14</sup> *Id.*

Based on Whitter's recommendations, JUB purchased 16,475 shares of Sequiam stock at prices ranging from \$0.49 to \$1.86 per share. JUB's total investment was \$21,491.

### **3. Customer JAB**

Beginning in July 2002, Whitter recommended that JAB purchase shares of Sequiam common stock. Whitter told JAB that Sequiam was a good company, with a 12-year contract with the Olympic Committee that was worth \$10 billion.<sup>15</sup> Whitter predicted that the price of the company's stock would rise from \$1.75 to \$3.00 per share. Whitter did not advise JAB of any of the risks associated with Sequiam stock or that Clark Street was selling its shares of Sequiam stock.

Based on Whitter's recommendation, JAB purchased 3100 shares of Sequiam stock for \$5,070.

Whitter lacked a reasonable basis for his predictions that the per share price of Sequiam stock would increase to \$3.00 or more per share.

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdiction**

Article V, Section 4 of NASD's By-Laws provides that NASD may bring a disciplinary proceeding against a formerly registered person for two years after his registration terminated. Whitter's last NASD registration terminated on September 24, 2004, and Enforcement filed the Complaint in April 2005. In addition, the Complaint alleges misconduct that occurred while Whitter was associated with Clark Street. Accordingly, NASD has jurisdiction of this proceeding.

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<sup>15</sup> *Id.* ¶ 39.

## B. Fraudulent Misrepresentations and Omissions

“The [SEC’s] and NASD’s anti-fraud rules are designed to ensure that members of the securities industry fulfill their obligation to the public to be complete and accurate when making statements about securities.”<sup>16</sup> A finding of a violation requires a showing that persons acting with scienter misrepresented or omitted material facts in connection with securities transactions.<sup>17</sup> A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available.<sup>18</sup> Scienter is the “intent to deceive, manipulate or defraud.”<sup>19</sup> Scienter may be established by a showing of recklessness that involves an “extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers and sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.”<sup>20</sup>

The allegations in the Complaint are sufficient to show that Whitter misrepresented and omitted material facts in connection with the sale of Sequiam stock to WC, JUB, and JAB. According to the Complaint, Whitter predicted that the price of Sequiam stock would rise significantly although he lacked a reasonable basis for the predictions. Sequiam’s public financial statements contradicted Whitter’s representations regarding its prospects. Thus, the price

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<sup>16</sup> *Department of Enforcement v. Donner Corp. Int’l*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at \*50 (N.A.C. Mar. 9, 2006) (quoting *District Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at \*16-17 (N.B.C.C. July 28, 1997)).

<sup>17</sup> *Department of Enforcement v. Donner Corp. Int’l*, 2006 NASD Discip. LEXIS 4, at \*50. In addition, violations of Section 10(b) and Exchange Act Rule 10b-5 must involve the use of any means or instrumentalities of transportation or communication in interstate commerce, or the mails, or any facility of any national securities exchange. *See, e.g., SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992). In this case, the requirement of interstate commerce is satisfied, *inter alia*, because Cipriano sold Sequiam Corporation through interstate telephone calls.

<sup>18</sup> *Basic v. Levinson*, 485 U.S. 224, 231-32 (1988).

<sup>19</sup> *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

<sup>20</sup> *The Rockies Fund, Inc. v. SEC*, No. 04-1255 (D.C. Cir. Nov. 15, 2005), 2005 U.S. App. LEXIS 24521, at \*12 (citing *Steadman v. SEC*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1044-45 (7<sup>th</sup> Cir. 1977))).

predictions were false and misleading.<sup>21</sup> Moreover, in the case of a speculative security such as Sequiam, it is unlikely that there can be a reasonable basis for such price predictions.<sup>22</sup> Sequiam's financial statements showed that it was little more than a shell corporation. It had a history of operating losses and no cash reserves. It was not generating significant revenue and its auditors had expressed concerns about its ability to continue as a going concern. In addition, the Hearing Officer finds that Whitter misled WC, JUB, and JAB by failing to disclose Sequiam's negative financial condition and performance, which information was material to the customers' investment decisions.<sup>23</sup>

The Complaint further alleges facts sufficient to show that Whitter acted with scienter. He acted recklessly by withholding information concerning Sequiam's precarious financial condition. Whitter knew or should have known that his failure to disclose this information presented a danger of misleading his customers.<sup>24</sup> Whitter also made reckless price predictions. None of the information available to Whitter supported the predictions he gave his customers. In short, Whitter abdicated his responsibilities as a securities professional.<sup>25</sup>

Accordingly, the Hearing Officer finds that Whitter violated Section 10(b), Exchange Act Rule 10b-5, and Conduct Rules 2120 and 2110.

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<sup>21</sup> See *Hanley v. SEC*, 415 F.2d 589 (2d Cir. 1969) ("A securities dealer occupies a special relationship to a buyer of securities in that by his position he implicitly represents [that] he has an adequate basis for the opinions he renders"); *SEC v. Hasho*, 784 F. Supp. at 1109 ("Guarantees and predictions of substantial price rises with respect to securities are actionable absent a reasonable basis for the prediction. ... The fraud is not ameliorated where the positive prediction about the future performance of securities is cast as an opinion or possibility rather than as a guarantee.").

<sup>22</sup> See *Department of Enforcement v. Reynolds*, No. CAF990018, 2001 NASD Discip. LEXIS 17, at \*26-27 (N.A.C. June 22, 2001), and cases cited therein.

<sup>23</sup> See *SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980) (finding information relating to financial condition, solvency, and profitability material); *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653, at \*24-25 (Mar. 19, 2003) (finding misrepresentations and omissions related to undisclosed financial commitments material); *Hasho*, 784 F. Supp. 1059, 1106, 1109 (finding that failure to disclose negative financial and performance information violated the antifraud provisions).

<sup>24</sup> See *Rockies Fund v. SEC*, 2005 U.S. App. LEXIS 24521, at \*12.

<sup>25</sup> See *Dan King Brainard*, Exchange Act Release No. 20408, 1983 SEC LEXIS 293, at \*13 (Nov. 22, 1983) (footnotes omitted).

### III. SANCTIONS

For misrepresentations or material omissions of fact, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days for negligent misconduct. For intentional or reckless misconduct, they recommend a fine of \$10,000 to \$100,000 and a suspension of 10 business days to two years, or in egregious cases a bar. The fine amount may be increased to take into consideration the respondent's financial benefit from the misconduct.<sup>26</sup> The Guidelines do not include specific principal considerations for those violations; rather, they direct attention to the general Principal Considerations for Determining Sanctions.<sup>27</sup>

The Hearing Officer finds this to be an egregious case that warrants a bar despite Enforcement's recommendation for a two-year suspension and a \$30,000 fine. As discussed above, Whitter made unsupported price predictions to his customers and withheld material information about Sequiam's financial condition. Whitter knew or should have known that Sequiam's financial statements contradicted the rosy picture he painted of Sequiam's short-term prospects. Accordingly, the Hearing Officer will bar Whitter from associating with any member firm in any capacity.<sup>28</sup>

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<sup>26</sup> NASD SANCTION GUIDELINES at 95 (2006 ed.).

<sup>27</sup> *Id.*

<sup>28</sup> Enforcement did not request restitution because it does not appear that the customers suffered an identifiable loss. *See Mot.* at 5.

#### IV. ORDER

For the reasons set forth above, Anthony Whitter is barred from associating with any member in any capacity. The bar shall become effective immediately if this Default Decision becomes NASD's final disciplinary action in this proceeding.

A handwritten signature in black ink, appearing to read 'A. Perkins', written over a horizontal line.

Andrew H. Perkins  
Hearing Officer

Copies to:

Anthony Whitter (overnight delivery and first-class mail)  
Joel R. Beck, Esq. (electronic and first-class mail)  
Mark P. Dauer, Esq. (electronic and first-class mail)  
Rory C. Flynn, Esq. (electronic and first-class mail)

## NASD OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Anthony Cipriano  
General Securities Representative  
CRD No. 2998665,

and

Anthony Whitter  
General Securities Representative  
CRD No. 2733252,

Respondents.

Disciplinary Proceeding  
No. C07050029

Hearing Officer -

**COMPLAINT**

Upon information and belief, Complainant alleges as follows:

1. Respondent Anthony Cipriano entered the securities industry in about January 1998 and was first registered as a general securities representative in September 1998. He was registered with Clark Street Capital, Inc. from about June 2001 to June 2003, and is currently registered with another NASD member. He remains subject to NASD's jurisdiction for this proceeding pursuant to the NASD By-Laws.
2. Respondent Anthony Whitter entered the securities industry in about May 1997 and was first registered with an NASD member in October 1998. He was registered with Clark Street Capital, Inc. from about May 2001 to June 2001, and again from November 2001 to September 2004. Whitter is not currently registered with an NASD member, but remains subject to NASD's jurisdiction for this proceeding pursuant to Article V, § 4 of the NASD Bylaws.

### FACTS COMMON TO BOTH CAUSES OF COMPLAINT

3. In June 2002, Clark Street Capital entered into a consulting agreement with Sequiam Corp. that called for Clark Street to provide Sequiam with consulting services in exchange for warrants to purchase shares of Sequiam pursuant to a vesting schedule.
4. In about June 2002, representatives of Clark Street Capital began selling stock of Sequiam Corp. to customers. At that time, Sequiam stock was a penny stock that traded on the OTCBB.
5. From about June 2002 through March 2003, Clark Street sold approximately 3,152,000 shares of Sequiam Corp. stock to its customers at an average price of \$1.53 per share. During this same period, the firm received approximately 901,000 shares of Sequiam stock pursuant to its consulting agreement, and sold approximately 448,528 of these shares.
6. Sequiam, Inc. acquired Wedge Net Experts, Inc., a public company, in a reverse merger in the first quarter of 2002 and then changed its name to Sequiam Corp. As of the end of 2001, Wedge Net Experts was a developmental stage company with a limited operating history and operated with a net loss. As of December 31, 2001, it had just \$20,552 in total current assets, and had just \$1,657 in net sales for the year. Its auditors noted that there was a substantial concern that the company could not continue as a going concern.
7. Prior to the reverse merger, Sequiam, Inc. was a private company. Its financial statements for the year ended December 31, 2001, showed that it had total assets of just \$69,796, none of which was cash. The company had no net sales, and had a loss from operations of (\$730,688). Its auditors noted that there was a substantial concern that the company could not continue as a going concern.

8. According to a Form 10-QSB filed with the Securities and Exchange Commission on May 20, 2002, for the quarter ended March 31, 2002, Sequiam Corp. had \$0 in assets and accumulated debt of \$127,740. Pursuant to the 10-QSB filed on August 14, 2002, for the quarter ended June 30, 2002, Sequiam had assets totaling \$355,093, with current assets of \$138,539. The firm had a quarterly loss of (\$27,000) and a six-month loss of (\$89,000). Sequiam had never had a profitable quarter.

**FOR A FIRST CAUSE OF COMPLAINT  
Misrepresentations and Omissions of Material Facts  
Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder,  
and NASD Conduct Rules 2120 and 2110  
Respondent Cipriano**

9. Paragraphs one through eight are realleged and incorporated herein by reference.

Customer BH

10. In September 2002, Respondent Cipriano recommended that customer BH purchase shares of Sequiam Corp. stock. Cipriano told BH that Sequiam was a software company that had an affiliation with the Olympics, and was getting other large contracts. Cipriano told him that the stock was poised to make a "big move" soon and would be over \$6 per share in 60 to 90 days.
11. Based on Cipriano's recommendation, BH purchased 2,400 shares of Sequiam Corp. stock at \$1.49 per share on September 6, 2002, for a total of approximately \$3,598.
12. A few weeks later, Cipriano contacted BH recommending that he sell the stock and he could make a small profit. BH sold his shares at prices between \$1.75 and \$1.85 per share.
13. In early October 2002, Cipriano contacted BH and recommended that he again purchase shares of Sequiam stock. Cipriano told BH that he still expected a big price move in the stock and that "now" was the time to get in. Based on his recommendation, BH purchased 1,750 shares of Sequiam stock on October 10, 2002, at \$1.70 per share.

14. In connection with both purchase recommendations, Cipriano did not advise BH of any risks associated with Sequiam Corp. stock, and did not tell him about Clark Street's consulting agreement, or that Clark Street was selling shares of Sequiam stock from its account.

Customer DA

15. In September 2002, Cipriano recommended that customer DA purchase shares of Sequiam Corp. stock. Cipriano told him that the stock was going to go "way up" and that DA would be able to sell the stock for a big profit.
16. Cipriano did not advise DA of any risks associated with Sequiam Corp. stock, and did not tell him about Clark Street's consulting agreement with Sequiam, or that Clark Street was selling shares of Sequiam Corp. stock from its account.
17. Based on Cipriano's recommendation, DA purchased 350 shares of Sequiam Corp. stock at \$1.86 per share, for a total of \$723, on September 26, 2002.

Customer HC

18. In September 2002, Cipriano recommended that customer HC purchase shares of Sequiam Corp. stock. Cipriano told him that Sequiam was a technology company with great potential and that the stock price would more than double within a year.
19. Cipriano did not advise HC of any risks associated with Sequiam Corp. stock, and did not tell him about Clark Street's consulting agreement with Sequiam, or that Clark Street was selling shares of Sequiam Corp. stock from its account. Cipriano also failed to disclose Sequiam's financial condition to HC.
20. Based upon Cipriano's recommendation, HC purchased 1,500 shares of Sequiam Corp. stock at \$2.01 per share, for a total of \$3,015, on September 18, 2002.
21. On October 8, 2002, 700 shares of Sequiam stock were sold from HC's account at \$1.29 per share due to a margin call. HC realized a loss of \$504.

Customer JG

22. In September 2002, Cipriano recommended that customer JG purchase shares of Sequiam Corp. stock. Cipriano told him that the stock was going to go up in a short period of time.
23. Cipriano did not advise JG of any risks associated with Sequiam Corp. stock, and did not tell him about Clark Street's consulting agreement with Sequiam, or that Clark Street was selling shares of Sequiam Corp. stock from its account. Cipriano also failed to disclose Sequiam's financial condition to JG.
24. Based on Cipriano's recommendation, JG purchased 2,500 shares of Sequiam Corp. stock at \$1.69 per share, for a total of \$3,452, on September 11, 2002.

Cipriano Made Material Misrepresentations and Omissions

25. *Cipriano had no reasonable basis to tell customers that Sequiam Corp. stock was poised to make a "big move," that it was going to go "way up," that it would more than double in one year, or that it was going to go up in a short period of time.*
26. Clark Street's consulting agreement with Sequiam, and its receipt and sale of Sequiam stock were material facts that required disclosure to the customers.
27. Sequiam's financial condition, namely that it was unprofitable and had minimal assets, was a material fact that required disclosure to customers.
28. Cipriano acted either knowingly or recklessly in making the baseless price predictions and omissions of material fact to the customers.
29. Cipriano's baseless price predictions to customers BH, DA, HC, and JG violate Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.
30. Cipriano's omission of material facts concerning Clark Street's consulting agreement and sales of Sequiam shares to customers BH, DA, HC, and JG violate Section 10(b) of the

Securities Exchange Act and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

31. Cipriano's omission of material facts concerning Sequiam Corp.'s financial condition to customers HC and JG violate Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

**FOR A SECOND CAUSE OF COMPLAINT**  
**Misrepresentations and Omissions of Material Facts**  
**Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder,**  
**and NASD Conduct Rules 2120 and 2110**  
**Respondent Whitter**

32. The allegations in paragraphs one through eight are realleged and incorporated herein by reference.

Customer WC

33. In June 2002, Whitter recommended that customer WC purchase shares of Sequiam Corp. stock. Whitter told WC that Sequiam was involved in the publishing business and had the Olympic contract. Whitter told him that the stock was about to be listed on the American Stock Exchange and that the stock price was going to go up four or five times its value within a year.
34. Whitter did not advise WC of any risks associated with Sequiam stock and did not tell him that Clark Street was selling its Sequiam Corp. shares. Whitter also did not tell WC about Sequiam's financial condition.
35. Based on Cipriano's recommendation, WC purchased 2,400 shares of Sequiam Corp. stock for \$1.05 per share, for a total of \$2,520, on June 17, 2002.

#### Customer JuB

36. Beginning in June 2002, Whitter recommended that customer JuB purchase shares of Sequiam Corp. stock in his regular brokerage account and his IRA account. Whitter told him that Sequiam had a contract with the Olympic committee to do all of the printing for the next Olympics, and that they maintained the internet site for the Olympics and stood to received 25-30% of all revenues for goods sold through this website. Whitter also told him that Sequiam was well funded and was in good financial condition. Whitter stated that Sequiam was making application to be listed on the American Stock Exchange and that approval would be forthcoming shortly. Finally, Whitter told JuB that he expected Sequiam's stock price to go to \$2-3 per share in the short-term and over \$4 per share in the long-term.
37. Whitter did not advise JuB of any risks associated with Sequiam stock and did not tell him that Clark Street was selling its Sequiam Corp. shares.
38. Based on Whitter's recommendations, JuB purchased shares of Sequiam in both of his accounts at various times from June 2002 to March 2003. In all, JuB purchased 16,475 shares of Sequiam for a total of \$21,491, at prices ranging from \$0.49 to \$1.86 per share.

#### Customer JaB

39. Beginning in July 2002, Whitter recommended that customer JaB purchase shares of Sequiam Corp. stock. Whitter told him that Sequiam was a good company, with a 12-year contract with the Olympic Committee that was worth \$10 billion dollars. Whitter told him that the stock was then trading at about \$1.75 per share, but that Whitter expected it to go up to \$3 per share.
40. Whitter did not advise JaB of any risks associated with Sequiam stock and did not tell him that Clark Street was selling its Sequiam Corp. shares.

41. Based on Whitter's recommendation, JaB purchased 3,100 shares of Sequiam stock from July 22 to September 18, 2002, for a total of \$5,070, at prices ranging from \$1.18 to \$2.01 per share.

Whitter Made Material Misrepresentations and Omissions

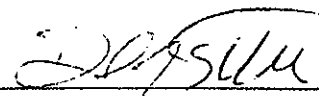
42. Whitter had no reasonable basis to tell customers that Sequiam Corp. stock was going to go up four or five times in value, or that it would go to \$3 per share or higher.
43. Clark Street's consulting agreement with Sequiam, and its receipt and sale of Sequiam stock were material facts that required disclosure to the customers.
44. Sequiam's financial condition, namely that it was not profitable and had minimal assets, was a material fact that required disclosure to the customers.
45. Whitter acted either knowingly or recklessly in making the baseless price predictions and misrepresentations and omissions of material fact to the customers.
46. Whitter's baseless price predictions to customers WC, JuB and JaB violate Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110
47. Whitter's misrepresentation of material facts to customers JuB and JaB, that Sequiam was well funded and in good financial condition, and had a 12-year contract with the Olympics worth \$10 billion dollars, respectively, and his omission of Sequiam's financial condition to customer WC violate Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.
48. Whitter's omission of material facts concerning Clark Street's consulting agreement and sales of Sequiam shares to customers WC, JuB and JaB violate Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

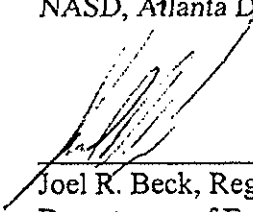
## PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that the 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 imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- D. An order imposing any other fitting sanction.

April 15, 2005.

  
\_\_\_\_\_  
Daniel J. Stefek, District Director  
NASD, Atlanta District Office

  
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Joel R. Beck, Regional Counsel  
Department of Enforcement  
NASD, Atlanta District Office  
3490 Piedmont Road, N.E., Suite 500  
Atlanta, GA 30305  
404-239-6153  
FAX (202) 721-6535

Rory C. Flynn, Of Counsel  
Department of Enforcement  
NASD  
1801 K Street, N.W., Suite 800  
Washington, D.C. 20006  
(202) 974-2874

Andrew A. Favret, Of Counsel  
Department of Enforcement  
NASD  
1100 Poydras Street, Suite 859  
New Orleans, LA 70163  
(504) 522-6527