

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

JAMES BRENDAN HANLEY
(CRD No. 1438024),

Respondent.

Disciplinary Proceeding
No. C11050013

Hearing Officer – DMF

DEFAULT DECISION

August 3, 2005

Summary

Respondent engaged in excessive trading in customer accounts, in violation of Rules 2310 and 2110 and IM-2310-2, and exercised discretion in customer accounts without written authorization, in violation of Rules 2510(b) and 2110. For these violations, he is suspended from associating with any NASD member in any capacity for a total period of 17 months, fined a total of \$42,500 and ordered to pay restitution.

Appearances

Paul D. Taberner., Esq., Boston, MA (Rory C. Flynn, Esq., Washington, DC, and John M. D'Amico, Esq., Boston, MA, Of Counsel), for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint, which (except for the Exhibits to the Complaint) is attached to this Decision as Exhibit A, on April 25, 2005. The Complaint alleges that Respondent James Brendan Hanley engaged in excessive trading in two customer accounts, in violation of Rules 2310 and 2110 and IM-2310-2, and

exercised discretion in several customer accounts without written authorization, in violation of Rules 2510(b) and 2110. Respondent did not file an Answer to the Complaint. On June 23, 2005, Enforcement filed a motion for a default decision, supported by the declaration of Paul D. Taberner and four exhibits. Respondent did not file any response to the motion.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent at his most current residential address as reflected in the Central Registration Depository (CRD address) on April 21, 2005, by first class regular and certified mail, and received a delivery receipt for the certified mailing that appears to be signed "Jim Hanley."

Enforcement sent the Complaint and Second Notice of Complaint to Respondent at his CRD address on May 20, 2005, by first class regular and certified mail. Respondent did not file an Answer to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding, and it appears that he also had actual notice. By failing to respond, he defaulted. Pursuant to Rule 9215(f), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered as a general securities representative with NASD member Federal Street Investments, Inc. from August 2002 until September 2003. He was most recently registered with NASD member Chicago Investment Group, LLC until

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the additional materials filed by Enforcement with its motion.

January 25, 2005. Respondent has not been associated with any NASD member since then, but he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of NASD's By-Laws, because (1) the Complaint was filed within two years after the termination of his most recent registration, and (2) the Complaint charges him with misconduct while he was associated with Federal Street.

IV. Violations

The first cause of the Complaint alleges that in or about August 2002, JB, who had been a customer of Respondent at his prior firm, opened an account at Federal Street. Her new account form listed her investment objectives as speculation and trading, her investment knowledge as extensive, her net worth (including her home) as \$500,000, her liquid net worth as \$50,000 and her income as \$50,000 per year.

At the time she opened her account, JB was a real estate agent in her early 50's who had recently lost approximately \$100,000 in investments made by another broker. During the time JB maintained her account at Federal Street, her elderly parents moved in with her, requiring JB to stop working for a period of time. This, combined with her prior investment losses, age and net worth made it unsuitable for JB to incur significant risk in her Federal Street account.

During the period January through August, 2003, Respondent, while exercising effective control over JB's Federal Street account, effected or caused to be effected approximately 29 securities purchases in the account totaling approximately \$375,000. During this period, the average monthly equity in the account was approximately \$14,000. JB incurred a loss of approximately \$1,000 from Respondent's trading, which generated gross commissions of more than \$20,000, of which Respondent received more

than \$12,000. Respondent's trading represented a turnover ratio of 26.08 for the period January through August 2003, or an annualized turnover ratio of 39.12, and a commission to equity ratio, converted to a percentage, of 143%.

These facts, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent engaged in excessive trading in JB's account, in violation of Rules 2310 and 2110 and IM-2310-2.

The second cause of the Complaint alleges that in or about April 2003 TS, who had been a customer of Respondent for approximately four years, opened an account with Respondent at Federal Street. TS's new account application listed his investment objective as speculation and his investment knowledge as moderate, his liquid net worth as between \$100,000 and \$249,999, and his annual income as between \$75,000 and \$99,999. At the time he opened the account, TS was 65 years old, had lost money in investments during the prior few years and was interested in trying to recoup his losses through Respondent. Given his age and recent losses, however, he was not in a position to incur significant risk in his Federal Street account.

During the period April through August 2003, while Respondent exercised effective control over TS's account, Respondent effected or caused to be effected approximately 32 securities purchases in the account totaling more than \$320,000, while the average monthly equity in the account was approximately \$39,000. TS lost approximately \$6,000 as a result of Respondent's trading, which generated gross commissions of more than \$26,000, of which Respondent received more than \$15,000. The trading represented a turnover ratio of 8.29 for the April through August 2003 period,

or an annualized turnover ratio of 19.90, and a commission to equity ratio, converted to a percentage, of approximately 68%.

These facts, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent engaged in excessive trading in TS's account, in violation of Rules 2310 and 2110 and IM-2310-2.

The third cause of the Complaint alleges that during his tenure with Federal Street Respondent regularly exercised discretion in the accounts of at least 11 customers, including JB and TS. These customers did not give Respondent written authorization to exercise discretion in their accounts, and Federal Street did not accept the accounts as discretionary accounts. These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision, that Respondent violated Rules 2510(b) and 2110.

V. Sanctions

For excessive trading, the Guidelines recommend a fine of \$5,000 to \$75,000, which may be increased by the amount of the respondent's financial benefit, and a suspension for 10 business days to one year. In egregious cases, the Guidelines suggest a longer suspension of up to two years or a bar. NASD Sanction Guidelines at 82 (2005 ed.). For the first cause, Enforcement recommends that Respondent be suspended in all capacities for eight months, fined \$15,000 (which includes Respondent's financial benefit of \$12,358.82 in net commissions) and ordered to pay restitution to customer JB in the amount of \$1,095, plus interest from September 1, 2003. For the second cause, Enforcement recommends that Respondent be suspended in all capacities for eight months, fined \$17,500 (which includes Respondent's financial gain of \$15,685.20 in net

commissions), and ordered to pay restitution to customer TS in the amount of \$6,269.48, plus interest from September 1, 2003.

In support of this recommendation, Enforcement points out that the proposed sanctions comport with the Guidelines and are consistent with prior cases, and that they are supported by the facts of this case. Specifically, Enforcement notes that Respondent knew the customers and was aware of their circumstances, and so should have recognized that the trading was unsuitable for them; that he exercised effective control over the accounts; that the excessive trading continued over a period of months; and that the trading resulted in losses for the customers but substantial gains, in the form of commissions, for Respondent. The Hearing Officer agrees with Enforcement's assessment and will impose the sanctions Enforcement recommends.

For exercising discretion in a customer's account without written authorization, the Guidelines recommend a fine of \$2,500 to \$10,000 and, in egregious cases, a suspension of 10 to 30 business days. In determining sanctions, the Guidelines direct Adjudicators to consider whether the customer's grant of discretion was express or implied and whether the firm's policies prohibited discretionary trading. Guidelines at 90.

Enforcement recommends that Respondent be suspended in all capacities for 30 business days and fined \$10,000 for this violation. In support, Enforcement points out that the recommended sanctions are within the Guidelines and consistent with prior cases, and that Respondent's misconduct involved at least 11 customer accounts over an extended period. In addition, according to Enforcement's declaration, the investigative file includes the sworn on-the-record testimony of Federal Street's two general securities

principals that Federal Street did not permit discretionary accounts. Although the record does not establish whether the customers gave Respondent express oral authority to exercise discretion in their accounts, the Hearing Officer concludes that, even if they did, the sanctions recommended by Enforcement are appropriate, except that for ease of administration in light of the other suspensions, the suspension will be for one month, rather than 30 business days.

VI. Conclusion

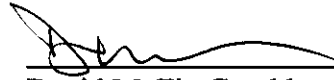
Respondent James Brendan Hanley engaged in excessive trading in customer accounts, in violation of Rules 2310 and 2110 and IM-2310-2, and exercised discretion in customer accounts without written authorization, in violation of Rules 2510(b) and 2110. For these violations, he is suspended from associating with any NASD member in any capacity for a total period of 17 months and fined a total of \$42,500. In addition, Respondent is ordered to pay restitution to customer JB in the amount of \$1,095 and to customer TS in the amount of \$6,269.48, together with interest (as to both JB and TS) calculated at the rate set forth in 26 U.S.C. §6621(a)(2) from September 1, 2003 until the date of payment.²

If this decision becomes NASD's final disciplinary action in this proceeding, Respondent's suspension shall begin at the opening of business on Tuesday, September 6, 2005 and end at the close of business on February 5, 2007. The remaining sanctions shall

² JB and TS are identified in the Exhibits to the Complaint in this proceeding.

become effective on a date set by NASD, but not earlier than 30 days after this decision becomes NASD's final disciplinary action.

SO ORDERED.



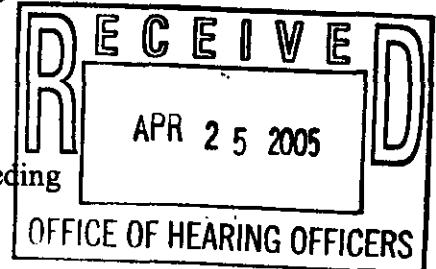
David M. FitzGerald
Deputy Chief Hearing Officer

Copies to: James Brendan Hanley (*via overnight courier and first class mail*)
Paul D. Taberner, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

EXHIBIT A

COPY

**NASD
OFFICE OF HEARING OFFICERS**



DEPARTMENT OF ENFORCEMENT,

Complainant,

V.

JAMES BRENDAN HANLEY
CRD No. 1438024

Respondent.

Disciplinary Proceeding
No. C11050013

Hearing Officer - _____

COMPLAINT

Upon information and belief, Complainant alleges the following:

1. Respondent James Brendan Hanley ("Hanley") first became registered with the NASD as a general securities representative in December 1985. During his career in the securities industry, Hanley has been registered with 18 NASD member firms. From August 19, 2002 to September 2, 2003, Hanley was registered as a General Securities Representative of Federal Street Investments, Inc. ("Federal Street"), a NASD member firm.
2. Hanley was last registered with a NASD member firm on January 25, 2005. Accordingly, NASD retains jurisdiction over Hanley pursuant to Article V, § 4 of the NASD By-Laws until at least January 24, 2007.

FIRST CAUSE OF ACTION

EXCESSIVE TRADING

Violation of NASD Conduct Rules 2110 and 2310 and IM-2310-2

3. Paragraphs 1 through 2 are realleged and are incorporated by reference herein.
4. In or about August 2002, customer JB opened an account with Hanley at Federal Street. At the time she opened the Federal Street account, JB had been a customer of Hanley's for about one year.
5. Customer JB's Federal Street new account form listed her account objectives as speculation and trading profits and her investment knowledge as extensive. The new account form also listed her net worth including her home as \$500,000, and her liquid net worth as only \$50,000 - the amount of her annual income.
6. At the time she opened the Federal Street account, JB was a real estate agent in her early 50's who had recently lost approximately \$100,000 in investments made by a broker prior to Hanley. Further, during the time JB maintained an account at Federal Street, her elderly parents moved in with her, requiring JB to stop working for a period of time. This fact, combined with her investment losses, age and small liquid net worth, made JB unable to incur significant risk in her Federal Street account.
7. During the period January through August 2003, Hanley, while exercising effective control over JB's Federal Street account, effected or caused to be effected approximately 29 securities purchases in the account totaling \$375,032.00, all as more fully detailed in the account statements attached to this Complaint as Exhibit A and incorporated herein by reference. During this same period, the average monthly equity in customer JB's account was \$14,381.00.

8. At the beginning of January 2003, JB's Federal Street account was worth \$19,257.95. Between February and May 2003, JB made three withdrawals from her account, totaling \$5,020.00. At the end of August 2003, JB's account balance stood at \$13,142.90, giving her a \$1,095.05 loss in her Federal Street account as a result of the transactions effected by Hanley. .

9. At the same time Hanley's trading was producing a loss for JB, it also generated approximately \$20,589.70 in commissions to Hanley and Federal Street. As he received 60% of the commissions he generated at Federal Street, his trading in JB's account during the period resulted in \$12,353.82 in income to Hanley.

10. Hanley's transactions in customer JB's account were excessive and unsuitable. Specifically, Hanley turned over the equity in JB's Federal Street account 26.08 times during the period January through August 2003, or 39.12 times on an annualized basis. Moreover, the volume of transactions placed by Hanley in JB's account resulted in a commission-to-equity ratio (converted to a percentage) of approximately 143% for the period January through August 2003. Accordingly, JB's account would have had to earn a 143% return during this period just to pay for the cost of the commissions generated by Hanley's trading.

11. Based on the foregoing conduct, Hanley violated NASD Conduct Rules 2110 and 2310 and IM-2310-2.

SECOND CAUSE OF ACTION

EXCESSIVE TRADING

Violation of NASD Conduct Rules 2110 and 2310 and IM-2310-2

12. Paragraphs 1 through 11 are realleged and are incorporated by reference herein.

13. In or about April 2003, customer TS opened an account with Hanley at Federal Street. At the time he opened the Federal Street account, TS had been a customer of Hanley's for approximately four years.

14. Customer TS's Federal Street new account form listed his account objective as speculation and his investment knowledge as moderate. The new account form listed TS's liquid net worth as between \$100,000 and \$249,999 and his annual income as between \$75,000 and \$99,999. The new account form does not, however, provide a figure for TS's total net worth.

15. At the time he opened the Federal Street account TS was 65 years old. Like JB, TS had lost money on investments during the prior few years, and was interested in trying to recoup some of these losses with Hanley at Federal Street. Given TS's age and his recent investment losses, however, he was not in the position to incur significant risk in his Federal Street account.

16. During the period April through August 2003, Hanley, while exercising effective control over TS's Federal Street account, effected or caused to be effected approximately 32 securities purchases in the account totaling \$320,655.00, all as more fully detailed in the account statements attached to this Complaint as Exhibit B and incorporated herein by reference. During this same period, the average monthly equity in customer TS's account was \$38,655.00.

17. The value of TS's Federal Street account in April 2003 was approximately \$52,804.39. At the end of August 2003, the value of TS's account stood at \$46,534.91, giving him a loss of \$6,269.48 loss on his Federal Street account during the period April through August 2003 as a result of the transactions effected by Hanley.

18. At the same time Hanley's trading was producing a loss for TS, it also generated approximately \$26,142.00 in commissions to Hanley and Federal Street. As he received 60% of the commissions he generated at Federal Street, his trading in TS's account during the period resulted in \$15,685.20 in income to Hanley.

19. Hanley's transactions in customer TS's account were excessive and unsuitable. Specifically, Hanley turned over the equity in TS's Federal Street account 8.29 times during the period April through August 2003, or 19.90 times on an annualized basis. Moreover, the volume of transactions placed by Hanley in TS's account resulted in a commission-to-equity ratio (converted to a percentage) of approximately 68% for the period April through August 2003. Accordingly, TS's account would have had to earn a 68% return during this period just to pay for the cost of the commissions generated by Hanley's trading.

20. Based on the foregoing conduct, Hanley violated NASD Conduct Rules 2110 and 2310 and IM-2310-2.

THIRD CAUSE OF ACTION

EXERCISING DISCRETION IN CUSTOMER ACCOUNTS WITHOUT WRITTEN AUTHORITY

Violation of NASD Conduct Rules 2110 and 2510(b)

21. Paragraphs 1 through 20 are realleged and are incorporated by reference herein.

22. During his tenure with Federal Street, Hanley regularly exercised discretion in at least 11 customer accounts. In addition to the JB and TS accounts, Hanley exercised discretion in accounts owned by customers BJ, JH, MW, RP, PS, AC, PE and GP.

Hanley also exercised discretion in JB's IRA account.

23. None of Hanley's Federal Street customers ever provided him with written authorization to exercise discretion in their accounts. Further, none of Hanley's accounts was ever accepted as a discretionary account by Federal Street or its principals.

24. By reason of the foregoing, Hanley violated NASD Conduct Rules 2110 and 2510(b).

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Hanley committed the violations charged and alleged herein;
- B. An order imposing appropriate sanctions upon Hanley in accordance with NASD Procedural Rule 8310;
- C. An order requiring Hanley 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 Procedural Rule 8330; and
- E. An order granting all further relief that is warranted under the circumstances.

Dated: April 21, 2005


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