

NASD

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

MAX J. SILBERMAN
Registered Representative,
(CRD No. 423803)

Respondent.

**Disciplinary Proceeding
No. C8A040028**

Hearing Officer Dana R. Pisanelli

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: January 4, 2005

INTRODUCTION

Disciplinary Proceeding No. C8A040028 was filed on May 4, 2004, by the Department of Enforcement of NASD ("Complainant"). Respondent Max J. Silberman submitted an Offer of Settlement ("Offer") to Complainant on December 14, 2004. 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, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of

findings 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.

BACKGROUND

Respondent entered the securities industry in 1948 as a General Securities Representative of a former member of NASD. From October 18, 1999 to June 4, 2002, he was registered in such capacity with First Union Securities, Inc. ("Member"), a member of NASD. He is currently registered with another member of NASD in the same capacity and he has no history of disciplinary action.

FINDINGS AND CONCLUSIONS

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

1. During all times mentioned herein, GT was a member of the public who maintained an account with the Member and who died on September 28, 2001. Respondent was responsible for servicing said account.
2. From on or about October 16, 2001, until on or about March 20, 2002, Respondent exercised discretion in the account of GT by placing 11 securities transactions, after GT had died, without having obtained prior written authorization from GT and prior written acceptance of the account as discretionary by the Member.
3. On or about April 10, 2002, the Member and Respondent were informed that GT had died in September 2001.
4. Despite knowing that GT had died, on or about April 26, 2002, Respondent sold or caused to be sold 4 option call contracts for Chesapeake Energy at a \$10 strike price, which were set to expire on October 19, 2002 at \$45 per option contract for the total principal amount

of \$180, and a net amount of \$167.49. The sale was made without the knowledge or consent of the executor of GT's estate and in the absence of written or oral authorization to Respondent to exercise discretion in said account.

Based on the foregoing, Respondent violated NASD Conduct Rule 2110 and 2510.

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 Respondent be fined \$5,100 and suspended from association with any member of NASD in any capacity for five (5) business days.

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

SO ORDERED.

NASD

By 

Carlotta A. Romano
Senior Vice President and Regional Director
on behalf of the Director of ODA, pursuant to
delegated authority