

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

**PAUL J. LEAHY
(CRD No. 2581030)**



Respondent.

**Disciplinary Proceeding
No. C9B040092**

Hearing Officer – AWH

Default Decision

March 7, 2005

Formerly registered representative barred from association with any member firm in any capacity for effecting unsuitable transactions, in violation of NASD Conduct Rules 2310 and 2110 and IM-2310-2, and failing to respond to Staff requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Respondent also ordered to make restitution to customer in the total amount of \$67,179, plus interest.

Appearances:

David B. Klafter, Esq., for the Department of Enforcement

No appearance for Paul J. Leahy

DECISION

Background

On October 18, 2004, Enforcement filed the Complaint in this proceeding, alleging that Paul J. Leahy ("Leahy" or "Respondent") effected unsuitable transactions, in violation of NASD Conduct Rules 2310 and 2110 and IM-2310-2, and failed to respond to Staff requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Leahy failed to answer the Complaint. He also failed to file an Answer to the Second Notice of Complaint and Complaint that Enforcement filed on

November 16, 2004. As a result, on December 17, 2004, Enforcement filed a Motion for Entry of Default Decision. Leahy 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

The Respondent

From January 2001, until November 2002, Leahy was registered as a general securities representative with NASD member firm First Montauk Securities Corp. ("Montauk"). Respondent is not currently associated with any NASD member firm.

Unsuitability of the Transactions

In October 2001, CZ, a retired widower in his eighties, agreed to open a securities account at Montauk after receiving a telephone solicitation from Leahy. The account was opened with \$73,683, which CZ wanted to invest conservatively. From the time the account was opened through June 2002, Leahy exercised effective control over CZ's account, recommending and executing each transaction.

In that eight-month period, CZ's average monthly account equity was approximately \$26,910, yet Leahy executed more than 150 buy/sell transactions in the total amount of \$573,778.² This activity resulted in an annualized turnover ratio³ of 28.429, indicating that the securities in the account were replaced by new ones almost 29 times. The annualized cost-to-equity ratio⁴ in the account was approximately 107.95%.

¹ All findings of fact are based on the admitted allegations in the Complaint, the Declaration Supporting a Motion for Entry of Default Decision by David B. Klafter ("Declaration"), and the three exhibits attached thereto.

² Including fees, accrued interest, and commissions.

³ Total purchases divided by average monthly equity.

⁴ Total costs of trading divided by average monthly equity.

Accordingly, it would have been necessary for CZ to earn a rate of return of nearly 108% to break even on the investments on a projected annualized basis. Overall, CZ paid at least \$21,041 in commissions and sustained a loss of \$67,179.

Failure to Respond to Requests for Information

On December 1, 15, and 23, 2003, and January 6, 2004, the Staff sent to Leahy requests for certain documents and information. The requests were issued pursuant to Procedural Rule 8210 and were mailed to Leahy's Central Registration Depository ("CRD") residential address by first class and certified mail. The December 23, 2003, and January 6, 2004 mailings were also sent by first class and certified mail to an additional possible address.⁵ Leahy failed to respond to any of the requests for information.

Service of the Complaint

On October 18, 2004, Enforcement served the Complaint and Notice of Complaint on Leahy via first class and certified mail at his last known residential address listed in the CRD, as well as an additional possible address. On November 16, 2004, Enforcement served the Second Notice of Complaint and Complaint on Leahy in the same manner. Leahy never filed an Answer to the Complaint.

Discussions and Conclusions

NASD Jurisdiction Over Formerly Associated Persons

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a formerly associated person after the effective date of the individual's termination of association. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was

⁵ [REDACTED]

associated with a member firm, or based upon such person's failure to provide information requested pursuant to Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Enforcement filed its Complaint on October 18, 2004, within two years of the termination of Leahy's registration. Additionally, the Complaint is based upon conduct which occurred while he was registered with member firm Montauk, as well as failures to respond to requests for information during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Leahy by sending it via first class and certified mail to his CRD address and to the other possible address that it found.. Pursuant to NASD Procedural Rule 9134, the mailings sent to Leahy's most current CRD address establish that he had valid constructive notice of the Complaint. Because Leahy 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 Leahy are deemed admitted.

Effecting Quantitatively Unsuitable Transactions

A registered representative who exercises control over an account is deemed implicitly to have recommended the transactions that he executes in the account. *Clyde J. Bruff*, Exchange Act Release No. 40,583, 1998 SEC LEXIS 2266, **6-7 (Oct. 21, 1998). Those recommended transactions must be consistent with his customer's best interests. *Wendell D. Belden*, Exchange Act Release No. 47,859, 2003 SEC LEXIS 1154, at *11 (May 14, 2003) (citations omitted).

NASD Conduct Rule 2310(a) requires members when "recommending to a customer the purchase, sale or exchange of any security, ... [to] have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."⁶ Moreover, NASD Conduct Rule 2310 and IM-2310-2 encompass a "fundamental responsibility for fair dealing" that a registered representative has to his customers.⁷

The suitability requirement of Conduct Rule 2310 is violated when the representative's recommendations are quantitatively unsuitable, i.e., when the recommendations generate excessive trading in the account in light of the customer's investment objectives and needs. *Daniel Richard Howard*, Exchange Act Release No. 46,269, 2002 SEC LEXIS 1909, at *7 (July 26, 2002); *Dep't of Enforcement v. Stein*, No. C07000003, 2001 NASD Discip. LEXIS 38, at *9 (NAC Dec. 3, 2001). The Securities and Exchange Commission has held that "a turnover rate of 6 or a cost-to-equity ratio in excess of 20% generally indicates that excessive trading has occurred." *Daniel Richard Howard*, 2002 SEC LEXIS 1909, at *8.

Here, both the turnover rate and the cost-equity ratio far exceed those parameters. There is no evidence that would justify that quantity of trading, given the customer's age, retirement status, and conservative investment objective. Therefore, Leahy engaged in

⁶ Rule 2310 applies to associated persons pursuant to Rule 0115(a). See also *District Bus. Conduct Comm. v. Kunz*, No. C3A96009 1999 NASD Discip. LEXIS 20, at *62 (NAC July 7, 1999) ("Conduct Rule 2310 provides that a representative may make only such recommendations as would be consistent with a customer's financial situation and needs."), *aff'd*, *Kevin D. Kunz*, Exchange Act Release No. 45,290, 2002 SEC LEXIS 104 (Jan. 16, 2002).

⁷ *Klein*, Exchange Act Release No. 37,835, 1996 SEC LEXIS 2922, at **16-17 (Oct. 17, 1996) (citing *John M. Reynolds*, Exchange Act Release No. 30,036, 1991 SEC LEXIS 2725, at *10 n.13 (Dec. 4, 1991)).

excessive trading in CZ's account, in violation of Conduct Rules 2310 and 2110 and IM-2310-2.

Failure to Respond to NASD Requests for Information

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. *See, e.g., Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *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 the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information). When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted. *Joseph P. Hannan*, Exch. Act Rel. No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998). Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor." *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

Under Procedural Rule 8210, notice of a request for information is considered received if the request is mailed or otherwise transmitted to the person's last known CRD

address. Because Enforcement mailed the requests to Leahy's last known CRD address, he received valid constructive notice of the requests. Leahy's failure to respond in any way to those requests for information violated Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Enforcement seeks a bar for each charge in the Complaint, and an order of restitution for the unsuitable recommendations. It does not seek the imposition of a fine for the violations, should Leahy be barred.

For unsuitable recommendations, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$75,000, and a lengthy suspension or bar for egregious violations of Conduct Rules 2110 and 2310. NASD SANCTION GUIDELINES, p. 97 (2004 ed.). Without question, Leahy's misconduct was egregious: over the course of eight months, he churned a retired, elderly customer's account for his own personal benefit, causing significant loss to the customer. Accordingly, a bar is the appropriate sanction for this violation.

For failing to respond in any way to requests for information made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is the standard. *Id.* at 37. Again, there are no mitigating circumstances that would warrant a lesser sanction. Accordingly, Leahy will be barred in all capacities for failing to respond to requests for information made pursuant to Rule 8210.

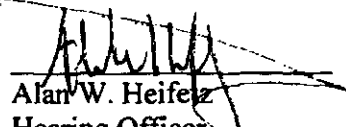
Finally, restitution is appropriate in this case as well. CZ unjustly suffered a quantifiable loss as a result of Leahy's misconduct for which he remains uncompensated.⁸

Conclusion

Paul J. Leahy is barred from association with any member firm in any capacity for effecting unsuitable transactions, in violation of NASD Conduct Rules 2310 and 2110 and IM-2310-2, and for failing to respond to Staff requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. He is also ordered to make restitution to customer CZ in the total amount of \$67,179, plus interest calculated pursuant to 26 U.S.C. § 6621(2)(2) from June 18, 2002, the date of the last transaction, to the date of payment.

These sanctions shall become effective on a date determined by NASD, but not sooner than 30 days from the date this Decision becomes the final disciplinary action of NASD; except that, if this Decision becomes the final disciplinary action of NASD, the bars shall become effective immediately.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

⁸ The Guidelines generally recognize that, in cases where an identified individual has suffered a quantifiable loss because of a respondent's misconduct, it is fitting to order the respondent to pay restitution. *See id.* at 6. *See also* Notice to Members 99-86 (providing that NASD generally will require the payment of restitution in sales practice cases where there has been significant and identifiable customer harm).

Copies to:
Via First Class Mail & Overnight Courier
Paul J. Leahy

Via First Class Mail & Facsimile
David B. Klafter, Esq.
Rory C. Flynn, Esq.

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

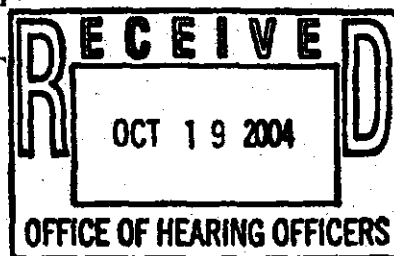
**PAUL J. LEAHY,
(CRD No. 2581030)**

Respondent.

Disciplinary Proceeding
No. C9B040092

Hearing Officer -

COMPLAINT



Upon information and belief, Complainant alleges the following:

1. Respondent Paul J. Leahy ("Leahy") became registered with NASD as a Series 7 general securities representative on or about March 4, 1995. Subsequently, Leahy obtained a Series 63 licenses.
2. From on or about January 29, 2001, through on or about November 4, 2002, Leahy was associated with First Montauk Securities Corp. ("First Montauk"), an NASD member firm.
3. On or about November 11, 2002, First Montauk filed a Form U-5 on behalf of Leahy voluntarily terminating his employment as of November 4, 2002.
4. Leahy is not currently registered with any NASD member firm, but is still within the jurisdiction of NASD pursuant to Article V, Section 4, of NASD's By-Laws. NASD retains jurisdiction over Leahy until at least November 3, 2004, which is two years after the date that he was last associated with an NASD member firm.

FIRST CAUSE OF ACTION

LEAHY'S EXCESSIVE TRADING/SUITABILITY VIOLATIONS Violation of IM-2310-2 and NASD Conduct Rules 2110 and 2310

5. Paragraphs 1 through 4 are realleged and are incorporated by reference herein.
6. In or about October 2001, Customer CZ after receiving a telephone call from Leahy agreed to open a securities brokerage account (#[REDACTED]) at First Montauk.
7. Leahy served as CZ's account executive from inception.
8. At the time CZ opened his account at First Montauk, he was in his eighties, retired and a widower.
9. CZ funded this account with several cash deposits totaling approximately \$73,683.
10. When CZ opened this account he was interested in conservative investments that would not expose his assets to excessive risk.
11. While Leahy served as his account executive, CZ trusted Leahy to make appropriate investment decisions in CZ's account.
12. From in or about October 2001 through in or about June 2002, Leahy, while exercising effective control over customer CZ's account, effected or caused to be effected numerous and excessive purchase and sale transactions in CZ's account, as more fully detailed in Schedule A attached to this Complaint and incorporated herein by reference, without having reasonable grounds for believing that such transactions were suitable for CZ in view of the size and frequency of the transactions, the nature of the account and CZ's financial situation, investment objectives and needs.

13. The transactions referred to in paragraph 12 above were excessive, costing a total of approximately \$573,778, while the average monthly equity in the account was approximately \$26,910.

14. Leahy's trading activity in CZ account from in or about October 2001 through in or about June 2002 generated an annualized Cost-to-Equity Ratio (converted to a percentage) of 107.95 and an annualized Turnover Ratio of 28.429. Accordingly, CZ's account would have had to earn nearly a 108% return just to break even.

15. Between October 2001 and June 2002, customer CZ paid at least approximately \$21,041 in commissions, while sustaining losses of approximately \$67,179.

16. By reason of the foregoing, Leahy violated IM-2310-2 and NASD Conduct Rules 2110 and 2310.

SECOND CAUSE OF ACTION

FAILURE TO RESPOND VIOLATIONS

Violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110

17. Paragraphs 1 through 16 are realleged and are incorporated by reference herein.

18. On or about December 1, 2003, NASD staff sent Leahy a written request, pursuant to NASD Procedural Rule 8210, requiring him to provide, among other things: (1) a signed, detailed written statement addressing allegations asserted against him in an Arbitration Statement of Claim filed by CZ; and (2) copies of any notes or documentation regarding any conversation(s) he had with CZ (hereinafter the "December 1st Request"). The response date of the December 1st Request was December 15, 2003.

19. The December 1st Request was sent by first class and certified mail to Leahy at his CRD residential address of record, [REDACTED]

20. On December 22, 2003, the first class and certified mailings were returned by the United States Postal Service to the District Office and marked, "FORWARD TIME EXP RTN TO SENDER." Each of these returned mailings also contained a reference to an additional possible address for Leahy, namely, [REDACTED] (hereinafter the "Cordelia Avenue Address").

21. By December 15, 2003, NASD staff had not received any response from Leahy to the December 1st Request and, as of that date, neither of the mailings had been returned. Accordingly, on December 15, 2003, the staff sent Leahy a second request for documents and information letter, pursuant to NASD Procedural Rule 8210, notifying Leahy that he failed to respond to the staff's previous letter and again requested that he provide the documents and information which were the subject of the staff's December 1, 2003 request letter (hereinafter the "December 15th Request"). In addition, the December 15th Request advised Leahy that his failure to provide the requested documents and information could result in disciplinary action.

22. The response date of the December 15th Request was December 30, 2003.

23. The December 15th Request was sent by first class and certified mail to Leahy at his CRD residential address of record, [REDACTED]

24. On December 22, 2003, the December 15th Request sent by certified mail was returned to the District Office by the United States Postal Service and marked, "ATTEMPTED NOT KNOWN."

25. On December 29, 2003, the December 15th Request sent by first class mail was returned to the District Office by the United States Postal Service and marked, "Moved" and "FORWARD TIME EXP RTN TO SENDER." This returned mailing also contained a reference to the Cordelia Avenue Address.

26. On December 23, 2003, a day after the December 1st Requests were returned to the District Office containing references to the Cordelia Avenue Address, the staff sent Leahy another formal request for documents and information, pursuant to NASD Procedural Rule 8210, requesting that he provide, among other things: (1) a signed, detailed written statement addressing allegations asserted against him in an Arbitration Statement of Claim filed by CZ; and (2) copies of any notes or documentation regarding any conversation(s) he had with CZ (hereinafter the "December 23rd Request").

27. The response date of the December 23rd Request was January 6, 2004.

28. The December 23rd Request was sent by first class and certified mail to Leahy at two addresses: (1) his CRD residential address of record, [REDACTED]; and (2) the Cordelia Avenue Address.

29. The December 23rd Requests sent by first class and certified mail to Leahy at the Cordelia Avenue Address have not been returned to the District Office. In addition, the certified mailing return receipt card has not been returned by the United States Postal Service to the District Office.

30. On January 5, 2004, the first class mailing to Leahy at his CRD residential address was returned to the District Office by the United States Postal Service and marked "FORWARD TIME EXP RTN TO SENDER."

31. On January 26, 2004 the certified mailing to Leahy at his CRD residential address was returned to the District Office by the United States Postal Service and marked "UNCLAIMED."

32. As Leahy had still not responded to any of the staff's requests, on January 6, 2004, the staff sent Leahy another formal request letter for documents and information, pursuant to NASD Procedural Rule 8210 (hereinafter the "January 6th Request").

33. The January 6th Request notified Leahy that he failed to respond to the staff's previous letters and again requested that he provide the documents and information which were the subject of the staff's prior letters. In addition, the January 6th Request advised Leahy that his failure to provide the requested documents and information could result in disciplinary action.

34. The response date of the January 6th Request was January 20, 2004.

35. The December 23rd Request was sent by first class and certified mail to Leahy at two addresses: (1) his CRD residential address of record, [REDACTED] and (2) the Cordelia Avenue Address.

36. On January 20, 2004, the first class mailing of the January 6th Request to Leahy at his CRD residential address was returned to the District Office by the United States Postal Service and marked "NOT DELIVERABLE AS ADDRESSED," "UNABLE TO FORWARD" and "RETURN TO SENDER."

37. The certified mailing of the January 6th Request to Leahy at his CRD residential address was not returned to the District Office. In addition, the certified mailing return receipt card has not been returned by the United States Postal Service to the District Office.

38. On January 29, 2004 the certified mailing of the January 6th Request to Leahy at the Cordelia Avenue Address was returned to the District Office by the United States Postal Service and marked "UNCLAIMED."

39. The first class mailing of the January 6th Request to Leahy at the Cordelia Avenue Address has not been returned to the District Office.

40. To date, Leahy has failed to respond to any of the staff's requests for documents and information.

41. By reason of the foregoing, Leahy has violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

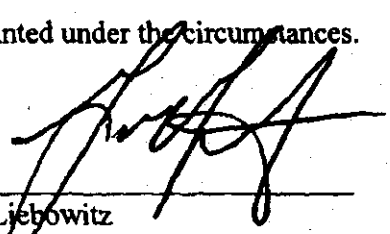
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Leahy committed the violations charged and alleged herein;**
- B. An order imposing appropriate sanctions upon Respondent Leahy in accordance with NASD Procedural Rule 8310;**
- C. An order requiring Respondent Leahy 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: October 18, 2004



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**SCHEDULE A - TRADES IN CZ'S ACCOUNT
OCTOBER 2001 THROUGH JUNE 2002**

10/18/2001	CYBERONICS INC	BUY	500	\$16.44	\$8,219.63	\$8,349.13	\$100.00
11/27/2001	AUSPEX SYSTEMS INC	BUY	5000	\$1.75	\$8,750.00	\$8,779.50	\$300.00
11/30/2001	CYBERONICS INC	SELL	500	\$23.00	\$11,500.00	\$11,071.11	\$399.00
11/30/2001	VERITY INC	BUY	500	\$16.13	\$8,065.00	\$8,486.50	\$392.00
11/30/2001	AUSPEX SYSTEMS INC	BUY	1000	\$1.79	\$1,785.00	\$1,847.90	\$62.90
11/30/2001	AUSPEX SYSTEMS INC	BUY	1200	\$1.79	\$2,148.00	\$2,223.48	\$75.48
11/30/2001	AUSPEX SYSTEMS INC	BUY	1000	\$1.79	\$1,790.00	\$1,852.90	\$62.90
11/30/2001	AUSPEX SYSTEMS INC	BUY	4700	\$1.79	\$8,413.00	\$8,708.63	\$295.63
11/30/2001	AUSPEX SYSTEMS INC	BUY	1000	\$1.79	\$1,790.00	\$1,852.90	\$62.90
11/30/2001	AUSPEX SYSTEMS INC	BUY	1000	\$1.79	\$1,790.00	\$1,852.90	\$62.90
11/30/2001	AUSPEX SYSTEMS INC	BUY	100	\$1.79	\$179.00	\$185.29	\$6.29
12/11/2001	RAINBOW TECHNOLOGIES INC	BUY	900	\$6.28	\$5,652.00	\$5,831.20	\$149.70
12/11/2001	RAINBOW TECHNOLOGIES INC	BUY	2100	\$6.28	\$13,188.00	\$13,537.30	\$349.30
12/12/2001	ADVANCED MICRO DEVICES INC	BUY	400	\$18.21	\$7,284.00	\$7,473.10	\$159.60
12/12/2001	ADVANCED MICRO DEVICES INC	BUY	300	\$18.25	\$5,475.00	\$5,594.70	\$119.70
12/12/2001	ADVANCED MICRO DEVICES INC	BUY	300	\$18.25	\$5,475.00	\$5,594.70	\$119.70
12/13/2001	VERITY INC	BUY	600	\$16.75	\$10,050.00	\$10,318.90	\$239.40
12/13/2001	VERITY INC	BUY	400	\$16.75	\$6,700.00	\$6,859.60	\$159.60
12/17/2001	VERITY INC	SELL	1500	\$18.00	\$27,000.00	\$26,270.60	\$699.00
12/18/2001	ADVANCED MICRO DEVICES INC	SELL	1000	\$17.07	\$17,070.00	\$16,939.93	\$100.00
12/18/2001	PUMATECH INC	BUY	1000	\$3.16	\$3,160.00	\$3,229.30	\$39.80
12/18/2001	PUMATECH INC	BUY	100	\$3.17	\$317.00	\$320.98	\$3.98
12/18/2001	PUMATECH INC	BUY	1900	\$3.17	\$6,023.00	\$6,098.62	\$75.62
12/18/2001	PUMATECH INC	BUY	2000	\$3.20	\$6,400.00	\$6,479.60	\$79.60
12/21/2001	RAINBOW TECHNOLOGIES INC	BUY	2000	\$6.83	\$13,660.00	\$13,689.50	\$520.00
12/24/2001	RAINBOW TECHNOLOGIES INC	SELL	1000	\$7.20	\$7,200.00	\$7,037.26	\$133.00
12/24/2001	RAINBOW TECHNOLOGIES INC	SELL	1600	\$7.20	\$11,520.00	\$11,306.81	\$212.80
12/24/2001	RAINBOW TECHNOLOGIES INC	SELL	400	\$7.20	\$2,880.00	\$2,826.70	\$53.20
12/26/2001	OTG SOFTWARE INC	BUY	2000	\$8.60	\$17,200.00	\$17,711.50	\$482.00
12/28/2001	RAINBOW TECHNOLOGIES INC	SELL	1000	\$7.52	\$7,520.00	\$7,266.24	\$224.00
12/28/2001	RAINBOW TECHNOLOGIES INC	SELL	1000	\$7.52	\$7,520.00	\$7,295.74	\$224.00
12/28/2001	OTG SOFTWARE INC	SELL	2000	\$9.55	\$19,100.00	\$18,580.86	\$489.00
12/28/2001	E M C CORP MASS	BUY	200	\$13.43	\$2,686.00	\$2,795.30	\$79.80
12/28/2001	E M C CORP MASS	BUY	800	\$13.44	\$10,752.00	\$11,071.20	\$319.20
12/28/2001	SUN MICROSYSTEMS INC	BUY	1000	\$11.91	\$11,905.00	\$12,333.50	\$399.00
12/28/2001	SIRIUS SATELLITE RADIO INC	BUY	1000	\$9.70	\$9,700.00	\$10,049.50	\$320.00
12/31/2001	SUN MICROSYSTEMS INC	BUY	900	\$12.19	\$10,971.00	\$11,320.50	\$320.00
12/31/2001	SIRIUS SATELLITE RADIO INC	SELL	400	\$11.20	\$4,480.00	\$4,282.35	\$168.00
12/31/2001	SIRIUS SATELLITE RADIO INC	SELL	600	\$11.20	\$6,720.00	\$6,467.77	\$252.00
1/2/2002	PUMATECH INC	BUY	4000	\$2.65	\$10,600.00	\$10,892.70	\$263.20
1/8/2002	OTG SOFTWARE INC	BUY	500	\$9.05	\$4,525.00	\$4,697.00	\$142.50
1/8/2002	SIRIUS SATELLITE RADIO INC	BUY	1000	\$9.88	\$9,880.00	\$10,207.50	\$270.00
1/8/2002	E M C CORP MASS	SELL	1000	\$16.10	\$16,100.00	\$15,580.25	\$490.00
1/8/2002	SIRIUS SATELLITE RADIO INC	BUY	1000	\$9.89	\$9,885.00	\$10,155.00	\$298.00

**SCHEDULE A - TRADES IN CZ'S ACCOUNT
OCTOBER 2001 THROUGH JUNE 2002**

Date	Symbol	Side	Quantity	Price	Cost	Market	Unrealized Gain/Loss
1/8/2002	SUN MICROSYSTEMS INC	SELL	1000	\$13.40	\$13,400.00	\$13,017.29	\$382.71
1/9/2002	SUN MICROSYSTEMS INC	SELL	900	\$13.92	\$12,523.50	\$12,163.81	\$359.69
1/9/2002	AUSPEX SYSTEMS INC	SELL	5000	\$1.98	\$9,900.00	\$9,870.35	\$29.65
1/10/2002	SIRIUS SATELLITE RADIO INC	BUY	1000	\$9.00	\$9,000.00	\$9,279.50	-\$279.50
1/11/2002	OTG SOFTWARE INC	SELL	500	\$10.50	\$5,250.00	\$5,047.42	\$202.58
1/14/2002	SIRIUS SATELLITE RADIO INC	BUY	1000	\$8.84	\$8,840.00	\$9,149.50	-\$309.50
1/15/2002	SIRIUS SATELLITE RADIO INC	BUY	1000	\$8.08	\$8,080.00	\$8,209.25	-\$129.25
1/15/2002	SIRIUS SATELLITE RADIO INC	BUY	1000	\$8.08	\$8,080.00	\$8,179.75	-\$91.75
1/15/2002	SIRIUS SATELLITE RADIO INC	BUY	1000	\$8.08	\$8,080.00	\$8,179.75	-\$91.75
1/15/2002	SIRIUS SATELLITE RADIO INC	BUY	1000	\$8.08	\$8,080.00	\$8,179.75	-\$91.75
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	1000	\$7.10	\$7,100.00	\$7,020.51	\$79.49
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	200	\$7.08	\$1,416.00	\$1,406.00	\$10.00
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	2000	\$7.08	\$14,160.00	\$14,060.03	\$99.97
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	1000	\$7.08	\$7,080.00	\$7,030.02	\$49.98
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	200	\$7.08	\$1,416.00	\$1,405.99	\$10.01
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	400	\$7.07	\$2,828.00	\$2,808.00	\$20.00
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	600	\$7.07	\$4,242.00	\$4,212.00	\$30.00
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	200	\$7.07	\$1,414.00	\$1,404.00	\$10.00
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	1000	\$7.05	\$7,050.00	\$7,000.02	\$49.98
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	200	\$7.05	\$1,410.00	\$1,399.99	\$10.01
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	800	\$7.05	\$5,640.00	\$5,600.01	\$39.99
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	200	\$7.05	\$1,410.00	\$1,399.99	\$10.01
1/17/2002	SIRIUS SATELLITE RADIO INC	SELL	200	\$7.05	\$1,410.00	\$1,400.00	\$10.00
1/17/2002	OTG SOFTWARE INC	BUY	150	\$11.39	\$1,708.50	\$1,782.85	-\$74.35
1/17/2002	OTG SOFTWARE INC	BUY	100	\$11.39	\$1,139.00	\$1,168.90	-\$29.90
1/17/2002	OTG SOFTWARE INC	BUY	100	\$11.40	\$1,140.00	\$1,169.90	-\$29.90
1/17/2002	OTG SOFTWARE INC	BUY	100	\$11.39	\$1,139.00	\$1,168.90	-\$29.90
1/17/2002	OTG SOFTWARE INC	BUY	550	\$11.40	\$6,270.00	\$6,434.45	-\$164.45
1/18/2002	PUMATECH INC	SELL	1000	\$2.46	\$2,460.00	\$2,312.38	\$147.62
1/18/2002	PUMATECH INC	SELL	900	\$2.46	\$2,214.00	\$2,107.69	\$106.31
1/18/2002	PUMATECH INC	SELL	3600	\$2.46	\$8,856.00	\$8,411.05	\$444.95
1/18/2002	PUMATECH INC	SELL	1400	\$2.46	\$3,444.00	\$3,292.26	\$151.74
1/18/2002	PUMATECH INC	SELL	2100	\$2.46	\$5,166.00	\$4,949.58	\$216.42
1/18/2002	OTG SOFTWARE INC	BUY	300	\$11.84	\$3,552.00	\$3,701.53	-\$149.53
1/18/2002	OTG SOFTWARE INC	BUY	300	\$11.84	\$3,552.00	\$3,644.60	-\$92.60
1/18/2002	OTG SOFTWARE INC	BUY	200	\$11.85	\$2,370.00	\$2,428.08	-\$58.08
1/18/2002	OTG SOFTWARE INC	BUY	200	\$11.85	\$2,370.00	\$2,428.09	-\$58.09
1/23/2002	OTG SOFTWARE INC	BUY	1000	\$12.00	\$12,000.00	\$12,360.78	-\$360.78
1/25/2002	OTG SOFTWARE INC	BUY	1000	\$11.90	\$11,900.00	\$11,929.50	-\$29.50
1/28/2002	OTG SOFTWARE INC	BUY	500	\$12.00	\$6,000.00	\$6,214.32	-\$214.32
1/28/2002	AUSPEX SYSTEMS INC	SELL	3300	\$1.57	\$5,181.00	\$5,151.42	\$29.58
1/30/2002	AUSPEX SYSTEMS INC	SELL	6700	\$1.55	\$10,385.00	\$10,355.34	\$29.66
1/31/2002	OTG SOFTWARE INC	BUY	1000	\$12.16	\$12,160.00	\$12,488.50	-\$328.50
2/4/2002	WORLDCOM INC-WORLDCOM GROUP	BUY	1000	\$9.25	\$9,250.00	\$9,567.82	-\$317.82

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2/4/2002	VERITY INC	BUY	500	\$17.84	\$8,920.00	\$9,180.14	\$230.64
2/4/2002	NEXTEL COMMUNICATIONS INC CL A	BUY	1000	\$7.57	\$7,570.00	\$7,798.50	\$199.00
2/4/2002	WORLDCOM INC-WORLDCOM GROUP	BUY	1000	\$9.40	\$9,400.00	\$9,550.00	\$150.00
2/5/2002	OTG SOFTWARE INC	SELL	2000	\$10.65	\$21,304.00	\$21,274.18	\$770.00
2/5/2002	NEXTEL COMMUNICATIONS INC CL A	SELL	1000	\$8.00	\$8,000.00	\$7,870.37	\$100.00
2/5/2002	OTG SOFTWARE INC	SELL	1000	\$11.30	\$11,300.00	\$11,199.83	\$100.00
2/5/2002	WORLDCOM INC-WORLDCOM GROUP	SELL	600	\$10.00	\$6,000.00	\$5,910.40	\$60.00
2/5/2002	WORLDCOM INC-WORLDCOM GROUP	SELL	400	\$10.00	\$4,000.00	\$3,959.93	\$40.00
2/6/2002	WORLDCOM INC-WORLDCOM GROUP	SELL	1000	\$9.93	\$9,930.00	\$9,800.35	\$100.00
2/6/2002	SUN MICROSYSTEMS INC	BUY	1000	\$10.23	\$10,230.00	\$10,359.50	\$100.00
2/7/2002	VIEWPOINT CORP	BUY	700	\$7.18	\$5,026.00	\$5,108.00	\$52.50
2/7/2002	VIEWPOINT CORP	BUY	1000	\$7.18	\$7,180.00	\$7,255.00	\$75.00
2/7/2002	VIEWPOINT CORP	BUY	100	\$7.11	\$711.00	\$718.50	\$7.50
2/7/2002	VIEWPOINT CORP	BUY	200	\$7.06	\$1,412.00	\$1,427.00	\$15.00
2/8/2002	NEXTEL COMMUNICATIONS INC CL A	BUY	1000	\$5.03	\$5,025.00	\$5,154.50	\$100.00
2/8/2002	NEXTEL COMMUNICATIONS INC CL A	BUY	1000	\$5.00	\$5,000.00	\$5,100.00	\$100.00
2/8/2002	OTG SOFTWARE INC	SELL	500	\$11.40	\$5,700.00	\$5,637.08	\$33.33
2/8/2002	OTG SOFTWARE INC	SELL	100	\$11.40	\$1,140.00	\$1,133.31	\$6.67
2/8/2002	OTG SOFTWARE INC	SELL	100	\$11.40	\$1,140.00	\$1,133.31	\$6.67
2/8/2002	OTG SOFTWARE INC	SELL	100	\$11.40	\$1,140.00	\$1,133.31	\$6.67
2/8/2002	OTG SOFTWARE INC	SELL	100	\$11.40	\$1,140.00	\$1,133.31	\$6.67
2/8/2002	OTG SOFTWARE INC	SELL	300	\$11.40	\$3,420.00	\$3,399.94	\$19.99
2/8/2002	OTG SOFTWARE INC	SELL	300	\$11.40	\$3,420.00	\$3,399.95	\$20.00
2/8/2002	NEXTEL COMMUNICATIONS INC CL A	SELL	218	\$5.60	\$1,220.80	\$1,169.59	\$21.69
2/8/2002	NEXTEL COMMUNICATIONS INC CL A	SELL	300	\$5.60	\$1,680.00	\$1,650.12	\$29.85
2/8/2002	NEXTEL COMMUNICATIONS INC CL A	SELL	100	\$5.60	\$560.00	\$550.04	\$9.95
2/8/2002	NEXTEL COMMUNICATIONS INC CL A	SELL	500	\$5.60	\$2,800.00	\$2,750.20	\$49.75
2/8/2002	NEXTEL COMMUNICATIONS INC CL A	SELL	882	\$5.60	\$4,939.20	\$4,851.36	\$87.76
2/11/2002	VERITY INC	SELL	500	\$16.89	\$8,445.00	\$8,365.37	\$50.00
2/11/2002	AUSPEX SYSTEMS INC	BUY	10000	\$1.47	\$14,700.00	\$14,729.50	\$200.00
2/14/2002	AUSPEX SYSTEMS INC	SELL	1000	\$1.40	\$1,400.00	\$1,360.47	\$10.00
2/14/2002	AUSPEX SYSTEMS INC	SELL	1000	\$1.40	\$1,400.00	\$1,369.97	\$10.00
2/14/2002	SUN MICROSYSTEMS INC	SELL	1000	\$9.70	\$9,695.00	\$9,565.35	\$100.00
2/14/2002	OTG SOFTWARE INC	BUY	3000	\$11.00	\$33,000.00	\$33,029.50	\$0.00
2/15/2002	SUN MICROSYSTEMS INC	SELL	1000	\$9.70	\$9,695.00	\$9,565.35	
2/15/2002	VIEWPOINT CORP	SELL	700	\$6.84	\$4,788.00	\$4,723.42	\$35.00
2/15/2002	VIEWPOINT CORP	SELL	500	\$6.72	\$3,360.00	\$3,321.48	\$38.46
2/15/2002	VIEWPOINT CORP	SELL	100	\$6.72	\$672.00	\$664.29	\$7.69
2/15/2002	VIEWPOINT CORP	SELL	600	\$6.71	\$4,026.00	\$3,979.77	\$46.16
2/15/2002	VIEWPOINT CORP	SELL	100	\$6.71	\$671.00	\$663.29	\$7.69
2/15/2002	AUSPEX SYSTEMS INC	SELL	300	\$1.40	\$420.00	\$386.74	\$3.75
2/15/2002	OTG SOFTWARE INC	BUY	3700	\$10.70	\$39,590.00	\$39,619.50	\$0.00
2/15/2002	SUN MICROSYSTEMS INC	CANCEL	1000	\$9.70	\$9,695.00	\$9,565.35	
2/19/2002	AUSPEX SYSTEMS INC	SELL	7700	\$1.39	\$10,703.00	\$10,573.33	\$100.00

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2/22/2002	OTG SOFTWARE INC	BUY	300	\$10.24	\$3,072.00	\$3,214.33	\$112.83
3/4/2002	OTG SOFTWARE INC	BUY	1000	\$9.85	\$9,850.00	\$9,879.50	\$250.00
3/12/2002	OTG SOFTWARE INC	SELL	500	\$9.68	\$4,840.00	\$4,785.67	\$24.75
3/12/2002	OTG SOFTWARE INC	SELL	1500	\$9.68	\$14,520.00	\$14,445.53	\$74.25
3/14/2002	SUN MICROSYSTEMS INC	BUY	1000	\$10.14	\$10,140.00	\$10,269.50	\$100.00
3/14/2002	OTG SOFTWARE INC	SELL	2000	\$10.15	\$20,300.00	\$20,270.19	\$400.00
3/14/2002	SUN MICROSYSTEMS INC	BUY	1000	\$9.99	\$9,990.00	\$10,040.00	\$50.00
3/15/2002	OTG SOFTWARE INC	SELL	1000	\$10.40	\$10,400.00	\$10,320.34	\$50.00
3/21/2002	OTG SOFTWARE INC	BUY	1000	\$9.78	\$9,780.00	\$9,909.50	\$100.00
6/14/2002	LEGATO SYSTEMS INC	SELL	170	\$5.50	\$935.17	\$905.64	\$0.00
6/17/2002	LEGATO SYSTEMS INC	SELL	2500	\$5.28	\$13,200.00	\$12,941.37	\$228.73
6/17/2002	LEGATO SYSTEMS INC	SELL	400	\$5.28	\$2,112.00	\$2,075.33	\$36.60
6/17/2002	LEGATO SYSTEMS INC	SELL	100	\$5.28	\$528.00	\$518.83	\$9.15
6/17/2002	LEGATO SYSTEMS INC	SELL	268	\$5.27	\$1,412.36	\$1,387.79	\$24.52
6/17/2002	VERITAS SOFTWARE CORP	BUY	100	\$20.53	\$2,053.00	\$2,122.30	\$39.80
6/17/2002	VERITAS SOFTWARE CORP	BUY	400	\$20.53	\$8,212.00	\$8,371.20	\$159.20
6/17/2002	SUN MICROSYSTEMS INC	BUY	1000	\$6.31	\$6,310.00	\$6,438.50	\$99.00
6/18/2002	VERITAS SOFTWARE CORP	SELL	100	\$22.40	\$2,240.00	\$2,190.63	\$19.80
6/18/2002	VERITAS SOFTWARE CORP	SELL	400	\$22.40	\$8,960.00	\$8,880.53	\$79.20
6/18/2002	SUN MICROSYSTEMS INC	BUY	1000	\$6.22	\$6,220.00	\$6,348.50	\$99.00