

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Frank Anthony Passarella
CRD No. 2689136

Respondent.

Disciplinary Proceeding
No. C9B040106

Hearing Officer - AWH

Date: April 25, 2005

ORDER ACCEPTING OFFER OF SETTLEMENT

INTRODUCTION

Disciplinary Proceeding No. C9B040106 was filed on December 15, 2004, by the Department of Enforcement of NASD ("Complainant"). Respondent Frank Anthony Passarella submitted an Offer of Settlement ("Offer") to Complainant on April 4, 2005. 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 Frank Anthony Passarella ("Passarella") first became registered with the NASD as a General Securities Representative on or about December 27, 1995. From on or about March 15, 2002 through October 9, 2003, Passarella was registered as a General Securities Representative of Continental Broker-Dealer Corp. ("CBDC"), an NASD member firm. From on or about October 9, 2003 to on or about February 9, 2004, Passarella was registered as a General Securities Representative of NASD member firm GunnAllen Financial, Inc. ("GunnAllen"). Passarella was last registered with a NASD member firm on September 12, 2004.

FINDINGS AND CONCLUSIONS

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

CHURNING

1. On or about September 3, 2002, Passarella contacted customer JR and solicited him to open an account at CBDC. At the time of Passarella's solicitation, customer JR was retired and not in the financial position to incur significant risk in his securities accounts.
2. After speaking with Passarella, JR agreed to open an account at CBDC (Account # [REDACTED]) on or about September 5, 2002.

3. JR's new account form listed an annual income of between \$100,000 and \$149,999, liquid net worth of between \$150,000 and \$249,999, account objectives of speculation and growth, and 20 years investment experience. The new account form also indicated that JR averaged approximately two equities trades and two bond trades per year. The form also indicated that JR had not purchased securities on margin for over five years.
4. From approximately September 5, 2002 through October 1, 2002, JR made several deposits into his CBDC account totaling approximately \$110,388.00.
5. Passarella served as the account executive for JR's individual account from its inception. From the time the account was opened in September 2002 through the end of July 2003, Passarella, while exercising effective control over customer JR's account, effected or caused to be effected approximately 199 equities purchases in the account totaling \$2,720,579.822. Almost all of this activity was confined to the months of September through December, 2002.
6. The volume of transactions placed by Passarella in JR's account resulted in an annualized cost-to-equity ratio (converted to percentage) of approximately 594% and an annualized commission-to-equity ratio (converted to percentage) of approximately 586%. Accordingly, JR's account would have had to earn a 594% return just to break even.
7. As a result of Passarella's trading in JR's account from September 2002 through July 2003, JR paid approximately \$120,046.03 in commissions, fees and interest while sustaining a loss of approximately \$107,312.00.

8. On or about March 21, 2003, Passarella called DW and solicited him to open an account at CBDC. At the time of Passarella's solicitation, DW had approximately ten years investment experience, although he had never invested in options. At the time of Passarella's solicitation, DW was 44 years old and employed as a corporation's controller, where he had been employed for the past fifteen years.
9. On or about March 21, 2003, DW opened an individual account with Passarella at CBDC (Account # [REDACTED]). Passarella served as the account executive for DW's individual account from its inception.
10. From March 25, 2003 through April 16, 2003, DW deposited a total of \$29,350 into his CBDC account.
11. From in or about March 2003 through in or about July 2003, Passarella, while exercising effective control over customer DW's account, effected or caused to be effected approximately 18 purchases of equities in the account totaling \$531,507.65.
12. These transactions were excessive, resulting in an annualized cost-to-equity ratio (converted to percentage) of approximately 505% and an annualized commission-to-equity ratio (converted to percentage) of approximately 494%. Accordingly, DW's account would have had to earn a 505% return just to break even.
13. As a result of the trading in DW's account from in or about March 2003 through in or about July 2003, DW paid approximately \$20,481.91 in

commissions, fees and interest while sustaining a loss of approximately \$25,954.09.

14. As part of this course of conduct Passarella, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly used or employed, in connection with the purchase or sale of securities, manipulative or deceptive devices or contrivances; and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances.
15. By reason of the foregoing, Passarella violated Section 10(b) of the Exchange Act, Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2110 and 2120 and IM-2310-2.

UNSUITABLE TRANSACTIONS

16. From in or about September 2002 through in or about July 2003, Passarella, while exercising effective control over customer JR's account recommended numerous purchases and sale transactions in various securities including options, without having reasonable grounds for believing that such transactions were suitable for in light of the size and frequency of the transactions, the nature of the account and JR's financial situation and needs.
17. Many of the transactions were effected through the use of margin and resulted in JR incurring additional costs in the form of margin interest. In October 2002, the account had a margin debit balance of \$58,878.58, and in November 2002, it had a debit balance of \$79,649.26. At the end of these same months,

JR's account had average monthly equities totaling \$70,196.41 and \$70,456.74, respectively.

18. The margin utilized by Passarella was unsuitable for JR in light of the size and nature of JR's account and his financial needs.
19. From in or about March 2003 through in or about July 2003, Passarella, while exercising effective control over customer DW's account, recommended numerous purchases and sale transactions in various securities including options, without having reasonable grounds for believing that such transactions were suitable for in light of the size and frequency of the transactions, the nature of the account and DW's financial situation and needs.
20. Many of the transactions were effected through the use of margin and resulted in DW incurring additional costs in the form of margin interest. In April 2003, the account had a margin debit balance of \$35,322.83, and in June 2003, it had a margin debit balance of \$414.99. At the end of these same months, DW's account had average monthly equities of \$42,792.17 and (\$443.94), respectively.
21. The margin utilized by Passarella was unsuitable for DW in light of the size and nature of DW's account and his financial needs.
22. By reason of the foregoing, Passarella violated NASD Conduct Rules 2110, 2310 and 2860(b)(19) and IM-2310-2.

UNAUTHORIZED TRADING

23. In or about October 2003, Passarella solicited DA to open an account with him at GunnAllen. DA informed Passarella that if he did open an account with

him, all monies would have to be returned to DA by January 23, 2004, as he was purchasing a property on that date.

24. Based upon Passarella's assurances that all monies would be returned by January 23, 2004, DA opened an account with Passarella at GunnAllen.
25. Between the time the account was opened in November 2003 and on or about January 15, 2004, customer DA sent five checks to GunnAllen totaling \$111,560 to fund his account.
26. Between the time the account was opened in November 2003 and January 15, 2004, Passarella routinely called DA to discuss proposed recommendations and trading strategies.
27. On or about January 15, 2004 was the last time customer DA and Passarella spoke regarding recommendations in the account.
28. Between on or about January 15, 2004 though on or about February 5, 2004, Passarella effected a total of 95 trades in DA's account without the prior knowledge, authorization or consent of DA. For these trades, DA was charged with gross commissions of \$8,259.01.
29. In or about early February 2004, customer DA was able to contact a supervisor at GunnAllen, at which point he explained that Passarella had traded in the account without consent or authorization. During this call, DA also closed his account, which had depreciated to only \$13,384.37.
30. In or about October 2003 Passarella called CR and solicited him to open an account at GunnAllen. On or about October 23, 2003, CR opened an individual account at GunnAllen with Passarella as the account executive.

31. During the period between November 3, 2003 and November 28, 2003, customer CR and sent seven checks to GunnAllen totaling \$53,299.20 to fund his account.
32. Between the time the account was opened in October 2003 and January 7, 2004, Passarella routinely called customer CR to discuss proposed transactions and trading strategies. During this time, CR and Passarella spoke often, approximately four to five times a week.
33. By month-end December 2003, CR's account was valued at \$71,249.40, indicating the value of the account had appreciated by \$17,950.20.
34. On or about January 7, 2004, Passarella contacted CR requesting an additional \$30,000 to cover the purchases of LML and Brocade, which had been purchased on margin and were over-extended in the account. CR informed Passarella that he might be only be able to provide \$25,000. CR then borrowed \$25,000 from his father and sent Passarella a check in that amount on or about January 14, 2004. It was understood between CR and Passarella that the money was borrowed and needed to be returned within one week.
35. Upon forwarding a check for \$25,000 to Passarella, it became difficult for CR to speak with Passarella to confirm receipt of the check. CR was able to obtain confirmation from Passarella's secretary that the check had been received.
36. CR was finally able to speak with Passarella on or about January 21, 2004. During this conversation, Passarella told CR that he was unaware if the check had been received.

37. During this conversation, Passarella informed CR that money had been lost on two trades, while gains were made on two other trades, resulting in the account breaking even for the week. Each of these trades was made without customer CR's consent. CR informed Passarella that he did not want him trading in the account without his consent and that no trades should be placed in the account until the \$25,000 had been returned.
38. Despite these instructions from CR, between on or about January 15 2004 through on or about February 5, 2004, Passarella placed a total of 89 trades in CR's GunnAllen account. For these trades, CR was charged with gross commissions of \$4,846.98.
39. When CR received his January 2004 account statement, he saw that the \$25,000 check had been deposited to his GunnAllen account on January 14, 2004. Due to Passarella's unauthorized transactions, and despite the \$25,000 deposit, CR's account value had depreciated to only \$25,412.79 by the end of January, 2004.
40. By reason of the foregoing, Passarella violated NASD Conduct Rule 2110 and IM-2310-2.

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.

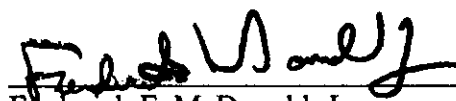
SANCTIONS

It is ordered that Respondent be permanently barred from associating with any NASD member firm in any capacity.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this Order by the NAC.

SO ORDERED.

NASD



Frederick F. McDonald, Jr.
District Director
NASD Boston District Office
on behalf of the Director of ODA,
pursuant to delegated authority