

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Dennis Marlow,
(CRD No. 600767)

Respondent.

**Disciplinary Proceeding
No. CAF040071**

Hearing Officer Alan W. Heifetz

ORDER ACCEPTING OFFER OF SETTLEMENT

Date: April 8, 2005

INTRODUCTION

Disciplinary Proceeding No. CAF040071 was filed on September 29, 2004, by the Department of Enforcement of NASD ("Complainant"). Respondent Dennis Marlow ("Marlow") submitted an Offer of Settlement ("Offer") to Complainant on March 18, 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

Marlow, age 63, first entered the securities industry in 1962. He was most recently registered as an investment company and variable contracts products representative with NASD member firm Intervest International Equities Corporation ("Intervest") where he began working in August 2004. On March 18, 2005, Marlow was terminated from Intervest. Prior to joining Intervest, Marlow was registered as an investment company and variable contracts products representative with NASD member firm Legacy Financial Services, Inc. ("Legacy") beginning in February 1998 until July 2004.

While registered with Legacy, Marlow did business through his own company, Marlow and Company, Inc., and worked out of an office in Monument, Colorado. He sold a variety of products including life insurance, mutual funds, fixed annuities, and variable annuities. During a period that spanned from January 2000 through March 2003, Marlow's business was largely comprised of selling variable annuities, from which he earned a significant portion of his commissions.

Beginning in approximately the mid to late 1970's, Marlow also sold commodity futures contracts. Throughout his career in the securities and commodities industries, Marlow has been disciplined multiple times by both NASD and the National Futures Association ("NFA"), a self-regulatory organization for the futures industry. NASD and the NFA have taken the following disciplinary actions against Marlow:

- a. In December 1976, NASD suspended Marlow for five years in any principal capacity, suspended him for three years from selling mutual funds, and suspended him for 90 days from associating with any NASD member firm. NASD sanctioned Marlow after finding that he, along with others, caused customers to purchase, liquidate, and reinvest in mutual fund shares depriving them of reduced load charges, failed to take advantage of applicable breakpoints, distributed materially misleading written communications, and made unsuitable recommendations.
- b. In 1989, after finding that he distributed false and deceptive promotional material and failed to submit promotional material promptly after first use, the NFA prohibited Marlow from accepting or soliciting new customers and from using promotional material until he could demonstrate compliance with the NFA's requirements for use of promotional material.
- c. In 1992, NFA required Marlow to resign as an officer/director of his firm, prohibited him from operating a commodities firm for two years, and among other things, required him to submit all promotional materials prior to use. The NFA imposed these sanctions after finding that Marlow had distributed misleading and unbalanced promotional materials, distributed disclosure documents that did not comply with CFTC requirements, and improperly employed an unregistered individual.
- d. In January 1996, Marlow agreed to withdraw as an NFA associate and not reapply for membership for a period of two years, not to act in any capacity requiring NFA membership or associate membership, not to act as a principal of an NFA member, and to pay a fine of \$25,000. These actions were predicated upon the

NFA's findings that Marlow made false and deceptive representations to customers, exercised discretion over customer accounts without written authority, and failed to observe high standards of commercial honor and equitable principles of trade.

- e. In March 1997, after he began his association with Legacy, NASD determined that, based upon his 1996 settlement with the NFA, Marlow was statutorily disqualified. Consequently, NASD revoked Marlow's registration with Legacy for the remainder of the two-year suspension period that the NFA had imposed.

FINDINGS AND CONCLUSIONS

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

Relevant Facts

OVERVIEW

1. During the period January 2000 through May 2003, Marlow, an investment company and variable contracts representative with member firm Legacy Financial Services, Inc., created and distributed approximately 190 pieces of sales literature and advertisements in which he made exaggerated, unwarranted, or misleading statements or claims or did not disclose material facts regarding the investment products and strategies he promoted, or both. In addition, Marlow did not obtain approval from a registered principal for numerous pieces of sales literature and advertisements prior to use, and did not maintain or cause to be maintained copies of the sales literature and advertisements reflecting written approval.

THE SALES LITERATURE AND ADVERTISEMENTS

2. Marlow created and caused to be distributed sales literature and advertisements that omitted material facts and were misleading, unbalanced, and exaggerated. The sales literature

and advertisements can be put into three distinct categories: 1) customer proposal letters, 2) seminar announcements and advertisements, and 3) the book “The Retirees Complete Guide to the Secrets of a Secure and Peaceful Retirement!” (Third Edition).

Customer Proposal Letters

3. The customer proposal letters were written communications that Marlow created using a single template letter from which he produced and distributed multiple written communications. During a three and half year period, January 2000 through May 2003, Marlow created approximately 177 customer proposal letters (identified in Appendix A to the Complaint) that he distributed, or caused to be distributed, to approximately 172 current or prospective customers. These customer proposal letters constitute sales literature under NASD Conduct Rule 2210 (a)(2).

4. In the customer proposal letters, Marlow recommended a variety of investment products, including variable annuities offered by ING and Security Benefit Life Insurance Company and a fixed annuity offered by Transamerica Life Insurance & Annuity Company.

5. In the customer proposal letters, Marlow omitted material facts regarding the investment products and strategies he recommended, including, but not limited to, the following:

- a. An investment in a variable annuity is subject to investment risks, including possible loss of principal;
- b. An Investor who chooses certain bonus features or riders touted by Marlow, such as “Earnings Multipliers,” Enhanced Death Benefits,” or “Enhanced Earnings Death Benefits,” will have to pay higher fees, charges, and expenses than if the investor did not choose these additional features. In addition, the bonus features and riders come with restrictions and limitations; and

- c. The basis for interest rate assumptions that accompanied Marlow's presentation of the fixed annuity offered by Transamerica Life Insurance & Annuity Company.
6. In his customer proposal letters, Marlow made exaggerated, unwarranted, or misleading statements or claims, including, but not limited to, the following:
- a. "It is essential that safety of principal should be your primary priority, while also maximizing returns, planning tax strategies, and providing liquidity." (Emphasis in original).
 - b. "I will bonus you 7% . . ." or "I will give you a 4% bonus . . ."
 - c. "Since mutual funds have averaged better than 10% a year, over a long period of time the account could be worth more than the original principal."
 - d. "An investment like [the Transamerica Fixed Annuity] has absolutely no risk and grows everyday."
 - e. "No Sales Charges or Fee, ever . . .as well as many other features."
7. Marlow had no basis for the above-referenced statements in the customer proposal letters.

Seminar Announcements and Advertisements

8. The seminar announcements and advertisements consisted of 10 written communications, eight announcements (identified in Appendix B to the Complaint) and two advertisements, which Marlow created to promote his seminars. These seminars bore titles such as "Free Senior Financial & Tax Workshop," "Free Senior Seminar, "or "Money Management For Seniors," and were typically held at a restaurant or other venue where a complimentary lunch, dinner, or other refreshments were provided.

9. During 2000 through 2002, Marlow distributed, or caused to be distributed, approximately 3,000 to 5,000 copies of each seminar announcement to the public. These seminar announcements constitute sales literature.

10. Marlow caused the two advertisements to be distributed to the public via a newspaper, the Colorado Springs Gazette. One advertisement appeared in a May 2000 edition of the Colorado Springs Gazette, and the other appeared in a September 2002 edition of the newspaper.

11. In his seminar announcements and advertisements, Marlow made exaggerated, unwarranted, or misleading statements or claims and omitted material facts regarding investment strategies or products to which he referred. Marlow's statements included, but were not limited to, the following:

- a. "How to be in mutual funds with no risk."
- b. "How to make up your stock market losses . . . the quickest, most secure strategies. REMOVE THE FEAR AND THE RISK!" (capitals and ellipses in original).
- c. "Dennis can help you maintain a healthy and positive portfolio even during the huge market fluctuations we are currently experiencing."
- d. "Learn how you can protect yourself and make money in both up and down markets with low risk." (emphasis in original).
- e. Statement that Marlow was the author of "The Retiree's Complete Guide To The Secrets Of A Secure and Peaceful Retirement" when, in fact, he did not author the book.

12. Marlow had no basis for the above-referenced statements, as well as other statements included, in the seminar announcements and advertisements.

The Book

13. On the front and back covers as well as inside the book “The Retiree’s Complete Guide To The Secrets Of A Secure And Peaceful Retirement!” (Third Edition), Marlow is identified as the author of the book.

14. Marlow did not write the book. Instead, he contributed only the “From the Author” and the “Meet The Author” sections of the book, each of which consisted of the same two paragraph statement describing Marlow’s experience in the securities industry.

15. Marlow caused copies of the book to be distributed to the public, and he caused copies of the back cover of the book, which included the “Meet The Author” section, to be distributed to approximately 200-300 current and prospective customers.

16. Marlow had no basis for claiming that he authored the book “The Retiree’s Complete Guide To The Secrets Of A Secure And Peaceful Retirement!.”

Marlow Made Misleading Statements & Omitted Material Facts in His Sales Literature and Advertisements

17. Marlow’s customer proposal letters and his seminar announcements and advertisements were not based on principles of fair dealing and good faith and did not provide a sound basis for evaluating facts regarding the investment products and strategies they promoted. In addition, they contained exaggerated, unwarranted or misleading statements or claims about investment products and strategies.

18. Marlow’s statements that he was the author of “The Retiree’s Complete Guide To The Secrets Of A Secure and Peaceful Retirement!,” in the “From the Author” and “Meet the Author” sections of the book, and elsewhere, were not based on principles of fair dealing and good faith and were exaggerated, unwarranted and misleading statements or claims.

Marlow Failed to Obtain a Registered Principal’s Written Approval for His Sales Literature and Advertisements Prior to First Use

19. Marlow failed to obtain written approval by a registered principal of Legacy for any of the customer proposal letters, the template letter upon which they were based, five of the seminar announcements, or one of the advertisements prior to using them with the public.¹

Marlow Failed to Maintain Final Versions of Sales Literature and Advertisements Reflecting Written Approval by a Registered Principal

20. Marlow failed to maintain final versions of any of the customer proposal letters, the template letter upon which they were based, five of the seminar announcements, or one of the advertisements reflecting approval by a registered principal of Legacy.²

Based on the foregoing, Marlow violated NASD Conduct Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(2)(M), IM-2210-2, 2210(b)(1), 2210(b)(2), and 2110.

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 Marlow be:

Barred from associating with any NASD member firm in any and all capacities.

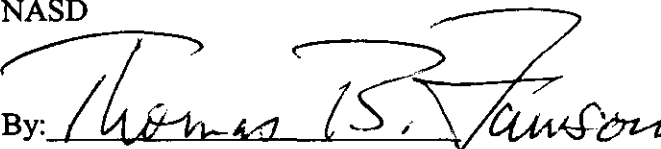
¹ The seminar announcements referenced are the following: 1) Special Invitation, Join Us For Lunch or Dinner on January 25, 2000, or February 2, 2000; 2) Free Senior Seminar, Join Us for Lunch or Dinner on October 17, 2000 or October 25, 2000; 3) FREE Senior Financial & Tax Workshop for January 31, 2001, and February 6, 2001; 4) FREE Senior Financial & Tax Workshop for February 21, 2001 and Thursday, February 22, 2001; and 5) FREE Senior Financial & Tax Workshop for March 28, 2001, and April 3, 2001. The advertisement referenced appeared in the Colorado Springs Gazette in May 2000.

² Id.

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

By: 

Thomas B. Lawson, Esq.

Chief Counsel, Department of Enforcement
on behalf of the Director of ODA, pursuant to
delegated authority