

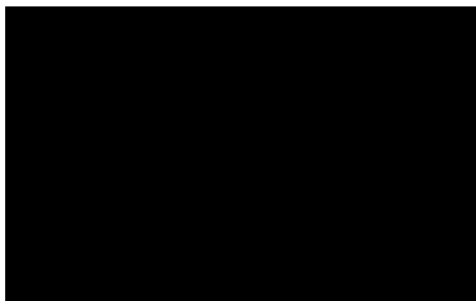
## NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EDWARD LINZER  
(CRD No. 1050490),



Respondent.

Disciplinary Proceeding  
No. CLI040027

Hearing Officer—Andrew H. Perkins

### **DEFAULT DECISION**

February 14, 2005

**Respondent made material misrepresentations to customers, in violation of NASD Conduct Rule 2110, misused customer funds, in violation of NASD Conduct Rule 2110, and failed to appear for an on-the-record interview as requested by NASD Staff, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The Respondent is barred from association with any member firm in any capacity for each violation. He is also ordered to pay \$187,636.91 in restitution, plus interest.**

### **Appearances**

Frank M. Weber, Regional Counsel, New York, NY (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance for Respondent Edward Linzer.

## **DECISION**

### **I. Introduction**

On September 29, 2004, the Department of Enforcement (“Enforcement”) filed the three-cause Complaint against the Respondent Edward Linzer (“Linzer” or the “Respondent”). In the first cause of action, the Complaint alleges that the Respondent violated NASD Conduct Rule 2110 by making material misrepresentations to customers in connection with investment solicitations and transactions. The second cause of action alleges that the Respondent violated NASD Conduct Rule 2110 by mishandling customer funds. Finally, the third cause of action alleges that the Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to appear for an on-the-record interview, as requested by NASD staff pursuant to NASD Procedural Rule 8210.

Linzer did not answer or otherwise respond to the Complaint. Consequently, on December 28, 2004, Enforcement filed a Motion for Entry of Default Decision (“Motion”). Enforcement’s Motion is supported by the Declaration of Frank M. Weber (“Decl.”) and 27 exhibits. Linzer did not respond to the Motion. Thus, pursuant to NASD Procedural Rules 9215 and 9269, the Hearing Officer grants Enforcement’s Motion.

### **II. Respondent’s Default**

Enforcement served Linzer by first class certified mail in accordance with NASD Procedural Rules 9134(a)(2) and 9134(b)(1). Enforcement mailed copies of the Complaint, Notice of Complaint, and Second Notice of Complaint to Linzer at his last known residential address shown in the Central Registration Depository (the “CRD address”).<sup>1</sup> Linzer thus received valid constructive notice of this proceeding and defaulted

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<sup>1</sup> Decl. ¶¶ 14-15, 21. Enforcement also attempted service of the Complaint at two other possible addresses for Linzer.

by failing to answer the Complaint. Accordingly, the Hearing Officer will deem the allegations of the Complaint admitted.<sup>2</sup>

### **III. Jurisdiction**

According to Linzer's record in the Central Registration Depository ("CRD"), he was registered as a General Securities Representative with former member firm G.F.B. Securities, Inc., from October 27, 1994, until September 9, 1999, and as a Municipal Securities Representative from November 3, 1994, until September 9, 1999. From August 18, 1999, until September 29, 1999, the Respondent was registered in the same capacities through former member firm Northridge Capital Corporation. The Respondent was also registered in those capacities with former member firm Thomas F. White & Co., Incorporated from October 15, 1999, until June 16, 2000. Linzer was last registered with NASD in those capacities from October 27, 2000, until September 30, 2002 through former member firm Mantis Securities, Inc. ("Mantis Securities").<sup>3</sup>

Article V, Section 4 of the NASD By-Laws allows NASD to retain jurisdiction over a formerly registered person for two years following his or her date of termination. Moreover, Article V, Section 4 of the NASD By-Laws specifically grants NASD the power to request information from formerly registered persons during this period of retained jurisdiction.

The Complaint alleges misconduct that occurred from 1998 through 2002 while Respondent was registered with NASD. In addition, NASD staff mailed the information requests that are the subject of the Third Cause of Complaint, and Enforcement filed the

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<sup>2</sup> The following Findings of Fact incorporate the allegations in the attached Complaint.

<sup>3</sup> Ex-1, at 5-8.

Complaint within two years after Linzer's registration terminated. Thus, NASD has jurisdiction over Linzer and this proceeding.

#### **IV. Findings of Fact**

##### **A. The Mortgage Programs**

During the period from 1998 until 2002, Linzer solicited public customers JB, WD, and AK, to invest in various "mortgage programs," which he described as "safe."<sup>4</sup> He particularly touted "Investment Property International, Inc." ("IPI"), a purported "mortgage specialist."<sup>5</sup> Linzer led each client to believe that the money invested in those programs was used to fund mortgages and real estate investments.<sup>6</sup> The Respondent promised each customer monthly interest payments at fixed rates ranging from 11-14% followed by a balloon payment of the principal at the end of the term.<sup>7</sup> The investment periods ranged from one to seven years.

After considering the Respondent's solicitations, JB, WD, and AK each liquidated securities from their brokerage accounts in order to invest in the mortgage programs, including IPI.<sup>8</sup> To date, none of the clients has received more than a few interest payments under these programs, and none has received a return of principal.<sup>9</sup>

##### **(1) Customer JB**

In October 2001, 86-year-old JB, who had been Linzer's client for approximately six years, liquidated some of her holdings and gave the Respondent \$25,000 with the

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<sup>4</sup> Complaint ¶ 10; Ex. 17; Ex. 18; Decl. ¶¶ 39-40.

<sup>5</sup> Ex. 16; Ex. 17; Ex. 18.

<sup>6</sup> *Id.*; Complaint ¶ 10; Decl. ¶ 35.

<sup>7</sup> Ex. 16; Ex. 17; Ex. 18.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; Decl. ¶ 49.

understanding that she would receive a 12% annual return on her investment and a balloon repayment of the principal at the end of one year. The Respondent had given JB a brochure about IPI, which included such statements as, “[IPI] has become one of the nation’s leaders in providing customers top dollar for Private Mortgages,” and “[IPI] provid[es] mortgages for all types of properties, with personalized service, competitive prices, low closing costs, faster closings, and answers to all your questions in a language you can understand.”<sup>10</sup> Linzer also gave her “Cumulative Statements” from IPI to show a record and schedule of payments she had received and would receive in the future. Contrary to the Respondent’s promise, JB received only five or six monthly interest payments, and her principal was never returned.<sup>11</sup>

## **(2) Customer WD**

WD was a loyal client of the Respondent for approximately 18 years who even moved his account with Linzer each of the four times that he switched firms from 1997 to 2000. When Linzer approached WD about investing in mortgage programs, WD expressed some hesitation; WD explained that he was retired and his highest priority was capital preservation. The Respondent reassured WD, who was nearly 70 years old at the time, that the recommended investments were safe. From 1999 to 2002, WD liquidated various securities holdings to make mortgage program investments with the Respondent, totaling \$122,972.89. Linzer promised WD that he would receive an annualized return of 11% on his first investment, 13% on his second investment, and 14% on his final investment. The Respondent gave WD “amortization schedules” reflecting his promised return.

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<sup>10</sup> Ex. 16.

<sup>11</sup> *Id.*; Decl. ¶¶ 37, 49.

At first, the Respondent paid WD with post-dated checks. Eventually, however, the checks were dishonored for lack of available funds. The Respondent still owes WD \$38,237.21.<sup>12</sup>

### **(3) Customer AK**

AK invested in the mortgage programs through Linzer on several occasions, using inherited funds and other funds obtained from liquidating certain mutual funds. By August 2000, his investment totaled \$227,172.00. The Respondent told AK, a client of approximately 15 years, that he would receive 14.375% interest annually for 5 years, at the end of which time his principal investment would be returned. AK received 19 of 60 interest payments.<sup>13</sup>

In fact, none of the “mortgage programs” existed. There is no record that IPI was ever actually an incorporated entity, or that it was in the mortgage business.<sup>14</sup> Its physical address consisted of a mailbox in a store called “Mailboxes Inc.”<sup>15</sup> Linzer solicited his customers to invest in IPI and other fictitious entities as a way to fund Mantis Securities, a start-up brokerage firm owned in part by the Respondent.<sup>16</sup> Indeed, in a letter to NASD staff dated October 3, 2002, the Respondent admitted that he used the mortgage program investment proceeds to fund Mantis Securities.<sup>17</sup>

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<sup>12</sup> Ex. 17; Decl. ¶ 49.

<sup>13</sup> Ex. 18; Decl. ¶ 49.

<sup>14</sup> Decl. ¶¶ 32, 40, 42; Ex. 21.

<sup>15</sup> Ex. 16.

<sup>16</sup> Decl. ¶¶ 40, 42; Ex. 21.

<sup>17</sup> Ex. 21.

## **B. NASD's Investigation**

As a part of its investigation of this matter, the Staff sent to the Respondent requests for documents and information, in accordance with NASD Procedural Rule 8210. The Staff sent these requests by mail to Linzer's CRD address, as well as additional addresses, on September 25, October 15, October 25, and November 15, 2002.<sup>18</sup> The Staff received reply letters from the Respondent on October 23, and on November 22, 2002.<sup>19</sup>

Subsequently, on January 15 and February 13, 2003, and on January 6, 2004, the Staff sent to Respondent requests that he appear for an on-the-record interview, pursuant to Rule 8210. The requests were sent by first class and certified mail to Linzer's CRD address, and additional possible addresses.<sup>20</sup> The Respondent nonetheless failed to appear.<sup>21</sup>

## **V. Conclusions of Law**

### **A. Misrepresentation**

The First Cause of Complaint alleges that Linzer violated NASD Conduct Rule 2110 by making material misrepresentations to customers JB, WD, and AK. Linzer misrepresented the nature of the investments themselves by telling his clients they were investing in mortgage programs when they were actually funding the start-up expenses for Mantis Securities. Further, the Respondent enticed his clients to invest by misrepresenting the degree of risk involved in the investments. Instead of revealing the

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<sup>18</sup> Decl. ¶¶ 51-55; Ex. 19; Ex. 20; Ex. 23.

<sup>19</sup> Decl. ¶¶ 54-55; Ex. 21; Ex. 24.

<sup>20</sup> Decl. ¶¶ 56-62.

<sup>21</sup> *Id.* ¶¶ 59, 61, 63.

uncertainty related to investments in start-up businesses, he gave false assurances as to the safety of the fictitious mortgage programs. Finally, Linzer went to great lengths to make the programs appear legitimate by supplying a phony brochure and account statement to JB, and by giving amortization schedules and post-dated checks to WD. Without question, such misconduct undermines the “high standards of commercial honor” and “just and equitable principles of trade” demanded of registered persons under NASD Conduct Rule 2110.<sup>22</sup>

#### **B. Misuse of Customer Funds**

The Second Cause of Complaint alleges that Linzer misused customer funds, in violation of NASD Conduct Rule 2110. The Respondent misused customer funds by failing to invest his customers’ funds according to their wishes and by failing to return their principal amounts, as he had promised. “[M]isuse of customer funds is ‘patently antithetical’” to the standards and principles that the NASD seeks to promote through Rule 2110.<sup>23</sup> Accordingly, Linzer violated NASD Conduct Rules 2110.

#### **C. Failure to Appear for On-the-Record Interviews**

The Third Cause of Complaint alleges that Linzer failed to appear at an on-the-record interview on three separate occasions, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. 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

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<sup>22</sup> See, e.g., *Dist. Bus. Conduct Comm. v. Merten*, No. C8A950030, 1997 NASD Discip. LEXIS 71 (N.B.C.C. Oct. 31, 1997) (finding that the respondent had violated NASD Conduct Rule 2110 by misrepresenting in a letter to a customer that the prospective investment involved little, if any, risk).

<sup>23</sup> *Dist. Bus. Conduct Comm. v. Shegon*, No. C9A960030, 1997 NASD Discip. LEXIS 66, at \*5 (NBCC Nov. 20, 1997) (quoting *In re Blanchard*, 46 S.E.C. 365, 366 (1976)).

allows NASD to carry out its regulatory functions without subpoena power.<sup>24</sup> Here, although Linzer received valid constructive notice of the three requests,<sup>25</sup> he failed to appear for the interviews, as requested. Linzer thereby violated Procedural Rule 8210 and Conduct Rule 2110.

## **VI. Sanctions**

Enforcement seeks to bar Linzer for all charges due to the egregious nature of his misconduct. Accordingly, while Enforcement seeks an order of restitution, it does not seek the imposition of a fine for the violations.<sup>26</sup>

The NASD Sanction Guidelines (“Guidelines”) for misrepresentation suggest imposing a bar for egregious misconduct that is either intentional or reckless.<sup>27</sup> The evidence of Linzer’s intent to mislead his long-time clients is strong. The corroborated customer statements show that he consciously lied about the very existence of the programs in which he suggested his customers invest. Moreover, he purposely misled customers by telling them that their investments were risk-free. These misrepresentations were especially egregious considering two of the clients were retired and elderly. Finally, the brochure, account statements, amortization schedules, and post-dated checks he

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<sup>24</sup> 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).

<sup>25</sup> See *David I. Cassuto*, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at \*9 (June 25, 2003).

<sup>26</sup> See 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).

<sup>27</sup> NASD Sanction Guidelines 94 (2004 ed.).

created and gave to JB and WD provide additional evidence that Linzer acted intentionally to deceive his clients.

For improper use of customer funds, the Guidelines recommend a bar unless there are mitigating factors, such as evidence of a misunderstanding regarding the customer's intentions.<sup>28</sup> Here, there is no evidence of a misunderstanding or other mitigating factor that would warrant a lesser sanction. Indeed, the circumstances support the conclusion that Linzer knowingly acted contrary to his customers' wishes. Accordingly, a bar is the appropriate sanction for this violation.

For failing to appear for three on-the-record interviews, as required under NASD Procedural Rule 8210, the Guidelines recommend the imposition of a bar unless mitigating circumstances exist.<sup>29</sup> Here, the record discloses no mitigating factors. Therefore, Linzer is also barred for this violation.

Finally, restitution is appropriate in this case as well. JB, WD, and AK each unjustly suffered a quantifiable loss as a result of Linzer's misconduct, none of which has been repaid.<sup>30</sup>

## **VII. Order**

Edward Linzer is barred from association with any member firm in any capacity for misrepresentations, in violation of NASD Conduct Rule 2110, improper use of customer funds, in violation of NASD Conduct Rule 2110, and for failing to appear for

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<sup>28</sup> *Id.* at 40.

<sup>29</sup> *Id.* at 37.

<sup>30</sup> 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.

three on-the-record interviews, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

Linzer is further ordered to pay restitution in the following amounts: \$23,500 to JB, \$38,237.21 to WD, and \$125,899.70 to AK, plus interest thereon at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2). Interest shall accrue for each customer from the latter of the date of the customer's investment or the date of the last interest payment received.

If this Default Decision becomes the final disciplinary action of NASD, the bars shall become effective immediately and the remaining sanctions shall become effective on a date set by NASD, but no sooner than 30 days after the date this Default Decision becomes NASD's final disciplinary action.

A handwritten signature in black ink, appearing to read 'Andrew H. Perkins', is written over a horizontal line.

Andrew H. Perkins  
Hearing Officer

Copies to:

Edward Linzer (by overnight courier and first-class mail)  
Frank M. Weber, Esq. (by first-class and electronic mail)  
Rory C. Flynn, Esq. (by first-class and electronic mail)

**NASD  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EDWARD LINZER  
(CRD No. 1050490),

Respondent.

Disciplinary Proceeding No. CLI040027

Hearing Officer--

**COMPLAINT**

Upon information and belief, the Department of Enforcement alleges the following:

**JURISDICTION**

1. Respondent Edward Linzer ("Respondent") first became registered with NASD as a General Securities Representative ("GSR") on or about September 4, 1986 through an association with a member firm.
2. From on or about October 27, 1994 through on or about September 9, 1999, Respondent was registered as a GSR through an association with former member firm G.F.B. Securities, Inc. (BD No. 36381) ("GFB"). Respondent was also registered as a municipal securities representative ("MR") through an association with GFB from November 3, 1994 through September 9, 1999.
3. From on or about August 18, 1999 through on or about September 29, 1999, Respondent was registered as a GSR and MR through an association with former member firm Northridge Capital Corporation (BD No. 16467) ("Northridge").

4. From on or about October 15, 1999 through on or about June 16, 2000, Respondent was registered as a GSR and MR through an association with former member firm Thomas F. White & Co., Incorporated (BD No. 7661) ("Thomas F. White").
5. From on or about October 27, 2000 through on or about September 30, 2002, Respondent was registered as a GSR and MR through an association with former member firm Mantis Securities, Inc. (BD No. 104019) ("Mantis").
6. On or about September 30, 2002, Mantis terminated Respondent's registration with NASD. On that same day, Mantis filed a Form BDW, terminating the firm's registration with NASD.
7. Although Respondent is not currently registered with NASD, he remains subject to the jurisdiction of the Association pursuant to Article V, Section 4 of the Association's By-Laws.

**FIRST CAUSE OF COMPLAINT**  
**Misrepresentation**  
**(Violation of NASD Conduct Rule 2110)**

8. Paragraphs 1 through 7 are re-alleged and incorporated herein by reference.
9. From in or about 1998 continuing through in or about September 2002, while registered with NASD through former member firms GFB, Northridge, Thomas F. White and Mantis, Respondent made material misrepresentations to customers WD, AK and JB in connection with so-called "mortgage programs," including, but not limited to an entity known as Investment Properties International, Inc. ("IPI").
10. Respondent's misrepresentations included, but were not limited to, the following:

- a. Respondent misrepresented the intended use of proceeds raised from the so-called “mortgage programs.” While Respondent represented to the customers that the intended purpose of such “mortgage programs” involved participation in a venture whereby mortgage loans were made to parties and investments in real estate were made; in actuality, Respondent admits using the proceeds for the start-up costs and operational expenses of Mantis, a securities firm, that he directly or indirectly owned.
- b. Respondent misrepresented the degree of risk of the customers’ investments in the “mortgage programs.” While Respondent represented to the customers that investments in the ventures were safe investments, in actuality, they were extremely risky and did not represent investments in legitimate business ventures.
- c. Respondent provided a brochure to customer JB concerning IPI that contained numerous misrepresentations, including but not limited to, misrepresentations as to the nature of IPI’s business, including the misrepresentation that IPI “has become one of the nation’s leaders in providing customers top dollar for Private Mortgages.” Upon information and belief, IPI was not, and is not, a leader in any business and IPI did not engage in the types of businesses as represented in the brochure.

11. Customers WD, AK and JB relied on Respondent’s misrepresentations and, as a result, gave funds to Respondent to invest in the “mortgage programs” and incurred substantial losses as a result.

By reason of the foregoing, Respondent violated NASD Conduct Rule 2110.

**SECOND CAUSE OF COMPLAINT**  
**Misuse of Funds**  
**(Violation of NASD Conduct Rule 2110)**

12. Paragraphs 1 through 11 are re-alleged and incorporated herein by reference.
13. From in or about 1998, continuing through until in or about September 2002, while associated with the aforementioned former member firms, customers WD, AK and JB gave Respondent funds in connection with purported investments in so-called "mortgage programs," including, but not limited to IPI.
14. WD, AK and JB obtained the funds for their investments by liquidating securities maintained in their brokerage accounts.
15. Respondent misused these funds in that he (individually and/or through entities he controlled): (i) did not utilize the funds as he represented he would, and (ii) failed to return principal and interest that he promised to repay to the customers.
16. As a result of Respondent's misconduct, customers WD, AK and JB are each owed substantial sums.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2330 and 2110.

**THIRD CAUSE OF COMPLAINT**  
**Failure to Appear**  
**(Violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)**

17. Paragraphs 1 through 16 are re-alleged and incorporated by reference.
18. During the course of the Staff's inquiry into Respondent's activities, the staff of NASD, District 10 (the "Staff") forwarded to Respondent several requests for documents and information pursuant to NASD Procedural Rule 8210. Such requests were forwarded to several addresses, including Respondent's last current residential address as reflected on the Central Registration Depository ("CRD"), [REDACTED]

██████████ (the "CRD Address"). Respondent responded to these requests pursuant to Rule 8210 by letters dated October 3, 2002 and November 20, 2002. Respondent utilized as his return address an address that was identical to the CRD Address, except that it was more precise in that it included a reference to ██████████ (the ██████████ CRD Address").

### ***The First Request***

19. On or about January 15, 2003, the Staff forwarded pursuant to Rule 8210, a request that Respondent appear at the Staff's offices, at 2 Jericho Plaza, 2d Floor, Wing A, Jericho, NY (the "Staff's Offices") on February 6, 2003, at 10:00 a.m., for an on-the-record examination.
20. The request was forwarded by certified and first class mail to the ██████████ and to ██████████ an address listed on CRD as Respondent's prior residential address (the "Laurel Lane Address"). The requests forwarded to the ██████████ CRD Address were not returned and the certified mailing to the Laurel Lane Address was delivered and signed for by an "Evan Greenburg."
21. Respondent failed to appear on February 6, 2003.

### ***The Second Request***

22. On or about February 13, 2003, the Staff forwarded pursuant to Rule 8210, a request that Respondent appear at the Staff's Offices, on February 24, 2003 at 10:00 a.m., for an on-the-record examination.
23. The request was forwarded by certified and first class mail to the ██████████ CRD Address and to the Laurel Lane Address. The requests forwarded to the ██████████ CRD Address

were not returned to the Staff and the certified and first class mailings to the Laurel Lane Address were returned marked "Forwarding Order Expired."

24. Respondent failed to appear on February 24, 2004.

***The Third Request***

25. On or about January 6, 2004, the Staff forwarded pursuant to Rule 8210, a request that Respondent appear at the Staff's Offices, on January 14, 2004 at 10:00 a.m., for an on-the-record examination.

26. The request was forwarded by certified and first class mail to the ■■■ CRD Address and to the Laurel Lane Address. The first class mailing to the ■■■ CRD Address was not returned. The certified mailing to the ■■■ CRD Address was returned marked "Unable to Forward." The certified and first class mailings to the Laurel Lane Address were returned marked, respectively, "Forwarding Time Expired" and "Undeliverable as Addressed Forwarding Order Expired."

27. Respondent failed to appear on January 14, 2004.

**PRAYER FOR RELIEF**

**WHEREFORE**, Complainant respectfully requests:

A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;

B. An order imposing sanctions upon Respondent in accordance with NASD Procedural Rule 8310;

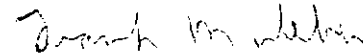
C. An order, pursuant to NASD Procedural Rule 8310, requiring Respondent to fully disgorge any ill-gotten gains and/or make full and complete restitution, together with interest;

D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances and in accordance with NASD Rule 8330; and

E. An order, pursuant to NASD Procedural Rule 8310, imposing any other fitting sanction.

Dated: September 28, 2004

**DEPARTMENT OF ENFORCEMENT**



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