

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

John Barry Chambers,
(CRD No. 2136192)

Respondent.

Disciplinary Proceeding
No. CLI040031

Hearing Officer - DMF

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 28, 2005

INTRODUCTION

Disciplinary Proceeding No. CLI040031 was filed on November 17, 2004, by the Department of Enforcement of NASD ("Complainant"). The Complaint was amended on August 29, 2005 ("Amended Complaint"). Respondent John Barry Chambers submitted an Offer of Settlement ("Offer") to Complainant on October 24, 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 Amended 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 Amended 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 first became registered with NASD as a General Securities Representative ("GSR") on or about June 25, 1991. From on or about April 16, 1999 through on or about May 30, 2001, Respondent was registered with NASD as a GSR through member firm Brill Securities, Inc. (BD No. 18565) ("Brill").

Since on or about April 12, 2002, Respondent has been registered with NASD as a GSR through member firm Brookstreet Securities Corporation (BD No. 14667) ("Brookstreet"). As a registered person, Respondent remains subject to NASD's jurisdiction.

Respondent does not have any disciplinary history with the Securities and Exchange Commission, any state securities regulator, or self-regulatory organization.

FINDINGS AND CONCLUSIONS

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

1. While associated with Brill, Respondent, without prior written notice, or any notice, to Brill, offered and sold to five sets of customers purported shares in New York Partners LLC ("NYP"), a company Respondent had recently formed, using fraudulent representations and omissions with respect to four of the five sets of customers, and he misused and/or converted

funds of all of the customers. Respondent also made unsuitable recommendations in connection with the offering. Additionally, while associated with Brill, Respondent failed to give Brill, prompt written notice, or any notice, of his extensive outside business activities in connection with NYP. Furthermore, Respondent failed to (i) amend his Uniform Application for Securities Industry Registration or Transfer ("Form U-4"), which Brookstreet had filed on his behalf, to disclose that he had been served, in September 2003, with an NASD Wells Notice relating to the above-referenced securities offering, and (ii) timely amend his Form U-4 to disclose that federal felony charges had been filed against him, in March 2003, relating to the offering.

2. Respondent formed NYP on or about April 7, 2000.
3. NYP was purportedly newly established to provide consulting services related to the Internet and invest in start-up Internet ventures.
4. From in or around May 2000 through in or around January 2001, Respondent offered and sold to five sets of Brill customers (APB, HS, JCO, JP and SJC) purported shares in NYP.
5. The customers invested a total of approximately \$180,600 in NYP, as follows:

Approximate Date of Investment	Customer	Investment
May 12, 2000	JCO	\$25,000
June 23, 2000	APB	\$12,500
July 10, 2000	JP	\$50,000
September 8, 2000	SJC	\$25,000
October 5, 2000	JCO	\$12,500
October 6, 2000	HS	\$12,500
November 10, 2000	JCO	\$9,000
December 1, 2000	SJC	\$24,100
January 31, 2001	SJC	\$10,000
	Total =	\$180,600

6. The purported shares in NYP were securities as the customers invested money in NYP, a common enterprise, with the expectation that profits would be derived from the efforts of others.
7. In connection with the purchases of purported shares in NYP by four of the five sets of customers (APB, HS, JCO and JP), and inducements for the purchases, Respondent, directly or indirectly, by the use of means or instrumentalities of interstate commerce, or the mails:
 - (a) Employed artifices, devices or schemes to defraud;
 - (b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
 - (c) Engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit; and/or
 - (d) Effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances.
8. In particular, during the period from in or around May 2000 through in or around January 2001, Respondent engaged in a course of business that operated as a fraud and deceit on APB, HS, JCO and JP, and, as part of that course of business, intentionally and/or recklessly omitted to disclose material facts and/or made misrepresentations of material facts in connection with his offering and sale of purported shares in NYP.
9. Respondent's misrepresentations and omissions were made in telephone communications and written correspondence transmitted by facsimile, mail and/or other means of interstate commerce.

10. Respondent's misrepresentations of material facts included, but were not limited to, his false representations that:

- (a) Investing in NYP was safer than investing in stocks (made to JCO);
- (b) NYP would pay a certain level of interest income to investors (made to APB);
- (c) If dissatisfied with the investment within the first six months of investing, JP would get back his investment principal with 10% interest; and
- (d) JCO's investment principal in NYP would be set aside and, in the event NYP was unsuccessful, the principal would be returned.
- (e) If HS invested in NYP, (1) his investment should double within one year, (2) there was minimal risk associated with the investment, (3) if his investment did not double, he should be able to recover his investment.

11. Those representations were without factual basis and unreasonable as NYP was only recently formed, with little or no operational history, and Respondent was commingling the funds invested in NYP and spending the funds largely for his own purposes.

12. Respondent's omissions of material fact included:

- (a) His failure to disclose to at least customers JCO and JP,
 - i. his association with and financial interest in NYP, including, for example, that he had established NYP, was its president, secretary and director, and was receiving a \$68,000 salary in connection with NYP,
 - ii. the risks associated with the investment, including, for example, that NYP, as a new company, was a speculative investment that might fail and there was a risk that the investors would lose their investments,

- iii. the illiquidity of the investment, in that the purported shares in NYP, which the investors were acquiring, were not readily transferable, unlike securities actively traded in the public market, and
 - iv. NYP's financials, including, for example, NYP's costs and expenses, its revenue, if any, and Respondent's use of investor funds for his own purposes;
- (b) His failure to disclose to APB the risks associated with the investment, as in the case of JCO and JP; and
- (c) His failure to disclose to four sets of customers (APB, HS, JCO and JP) that he was self-dealing, and would use a large portion, if not most, of the funds invested for his personal use and benefit.
13. Furthermore, in connection with the acts and transactions described in paragraphs 7 through 12 above, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade.
14. From on or about May 12, 2000 through in or around January 2001, Respondent induced the above-referenced five sets of public customers to submit to NYP, or its agent, a total of approximately \$180,600 for the purpose of investing in NYP. Specifically:
- (a) From on or about May 12, 2000 through on or about November 10, 2000, Respondent induced customer JCO to wire \$21,500 to an NYP checking account at Fleet Bank, which Respondent controlled ("NYP's Account"), and to wire to Respondent's former attorney \$25,000 (of which \$22,500 was then wired to NYP's Account) for the purpose of investing in NYP;
 - (b) From on or about September 8, 2000 through on or about January 29, 2001, Respondent induced customer SJC to send a \$25,000 check to NYP, which was deposited into

NYP's Account, and to wire \$34,100.74 to NYP's Account for the purpose of investing in NYP;

(c) On or about July 10, 2000, Respondent induced customer JP to send a \$50,000 check to NYP, which was deposited into NYP's Account, for the purpose of investing in NYP;

(d) On or about June 23, 2000, Respondent induced customer APB to wire \$12,500 to NYP's Account or send a \$12,500 check to NYP, which was deposited into NYP's Account, for the purpose of investing in NYP; and

(e) On or about October 4, 2000, Respondent induced customer HS to send a \$12,500 check to NYP's Account for the purpose of investing in NYP.

15. Approximately 90% of the funds in NYP's Account came directly or indirectly from the above-referenced customers.

16. Without the knowledge, authorization or consent of the five sets of customers, Respondent used a large portion, if not virtually all of the customer funds that had been invested in NYP and deposited into NYP's Account, for his own use and benefit and, thus, misused and/or converted those funds.

17. For example, Respondent used customer funds from NYP's Account to purchase clothing at department stores, rent a home in East Hampton, New York, purchase merchandise at a shoe store, and purchase a mattress.

18. Moreover, in 2000, JCO (husband and wife) were in their mid-70s, retired, had no pension, approximately \$61,000 in savings, and were living on approximately \$1,500 in monthly payments from Social Security. Prior to JCO's investments in NYP, the husband advised Chambers of their financial condition and that he and his wife needed safe investments and could not afford to lose money.

19. Respondent recommended each of JCO's investments in NYP, including the sale of a mutual fund position to finance JCO's initial investment in NYP.
20. In recommending JCO's investments in NYP, Respondent lacked reasonable grounds to believe the investments were suitable for JCO, in light of the JCO's financial situation, investment objectives and needs, and the above-referenced risks associated with the investments.
21. Respondent's above-referenced solicitations and sales to the five sets of customers of approximately \$180,600 in shares of NYP, which investments Respondent then facilitated, occurred during the period from in or around May 2000 through in or around January 2001, while he was associated with Brill, and occurred outside of the regular course or scope of his employment with Brill.
22. Respondent facilitated the customers' investments by, among other things, instructing the customers where to send their money and by preparing related correspondence.
23. Respondent engaged in the above-referenced private securities transactions without providing prior written notice to Brill.
24. From in or around April 2000 through in or around May 2001, Respondent, while associated with Brill, engaged in outside business activities in connection with NYP, including:
 - (a) Establishing NYP, in or around April 2000, for the purported purpose of investing in Internet start-up companies and/or providing consulting services relating to the Internet. According to Respondent, during that time period, eighty percent of his day was devoted to NYP's development;
 - (b) Serving as President, Secretary and Director of NYP;
 - (c) Creating websites for NYP (www.NewYorkPartners.com and www.NYPLL.com);

- (d) Opening NYP's Account, over which Respondent was the only authorized signatory, which account Respondent used to hold and disburse Brill customer funds that had been invested in NYP; and
- (e) Compensating himself in connection with his NYP activities. According to Respondent, he received a \$68,000 salary from NYP.
25. Respondent engaged in the above-referenced outside business activities without providing prompt written notice to Brill.
26. Furthermore, Respondent signed a Form U-4 on or about April 11, 2002, seeking registration with NASD through Brookstreet.
27. Question number 14A.(1) on the Form U-4 asked, in relevant part, "Have you ever: . . . (b) been charged with any felony?"
28. On March 17, 2003, the United States Postal Inspector filed, or caused to be filed, a criminal complaint (the "Criminal Complaint") against Respondent in the United States Federal Court for the Eastern District of New York (the "Federal Court"), charging him with wire and mail fraud, both felonies.
29. On April 14, 2003, Respondent, pursuant to an arrest warrant, appeared before a United States Magistrate in the Federal Court and was arraigned on the charges in the Criminal Complaint. The charges were later dismissed without prejudice on or about October 2, 2003.
30. Question number 14G.(2) on the Form U-4 asked, in relevant part,
- "Have you been notified, in writing, that you are now the subject of any: (2) investigation that could result in a "yes" answer to any part of 14 A, B, C, D or E? (If yes, complete the Investigation Disclosure Reporting Page.)"

31. Under the “EXPLANATION OF TERMS” to the Form U-4, “investigation” includes, in relevant part,

“NASD investigations after the “Wells” notice has been given or after a person associated with a member, as defined in the NASD By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action”

32. Question number 14E on the Form U-4 asks,

“Has any self-regulatory organization [which is defined to include NASD], ever: . . . (1) found you to have made a false statement or omission? (2) found you to have been involved in a violation of its rules [other than a minor rule violation]? . . . (4) disciplined you by . . . barring or suspending your association with its members, or restricting your activities?”

33. On September 23, 2003, Enforcement served Respondent with a Wells notice, and served a copy on Respondent’s counsel, pertaining various anticipated charges against Respondent that were the subject of the Amended Complaint.

34. Pursuant to Article V, Section 2(c) of NASD’s By-Laws, Respondent was required to submit to NASD an amendment to his Form U-4 to NASD within thirty days of his receipt of the Wells notice and an amendment to his Form U-4 within thirty days of his receipt of notice of the criminal charges against him.

35. Respondent willfully failed to amend his Form U-4 to disclose that NASD had served him with a Wells notice.

36. Moreover, Respondent willfully failed to timely submit an amendment to his Form U-4 to disclose the felony charges. Specifically, Respondent waited until September 29, 2004 to do so. His amendment was over 500 days late, and came well after he received an NASD Wells letter concerning, *inter alia*, his failure to amend his Form U-4.

Based on the foregoing, Respondent violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Membership and Registration IM 1000-1, NASD Rules 2110, 2120, 2310, 2330(a), 3030 and 3040, and Respondent acted in contravention of Section 17(a) of the Securities Act of 1933.

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

1. permanently barred from associating with any NASD member firm in any capacity; and;
2. ordered to pay restitution in the total amount of \$73,750, apportioned among the following customers as follows: \$11,250 to Customer APB; \$12,500 to Customer HS; and \$50,000 to Customer JP. Satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution shall be provided to the NASD staff no later than 180 days after acceptance of the Offer of Settlement. If for any reason Respondent cannot locate any customer identified above after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed

property, or abandoned property fund for the state in which the customer is last known to have resided.

Pursuant to IM-8310-2(f), a bar is effective upon approval or acceptance of this Offer by the NAC.

SO ORDERED.

NASD

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read "Gary A. Chodosh", is written over a horizontal line.

Gary A. Chodosh, Regional Counsel

NASD, District 10

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