

NASD OFFICE OF HEARING OFFICERS

Department of Market Regulation,

Complainant,

v.

Back Bay Capital, Inc.
(CRD No. 22824)



Respondent.

Disciplinary Proceeding
No. CMS040049

Hearing Officer - SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

February 2, 2005

INTRODUCTION

Disciplinary Proceeding No. CMS040049 was filed on April 22, 2004, by the Market Regulation Department of NASD ("Complainant"). Respondent Back Bay Capital, Inc. submitted an Offer of Settlement ("Offer") to Complainant on February 2, 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 or ODA.

Under the terms of the Offer, Respondent has consented for the purpose of this proceeding only, without admitting or denying the allegations of the Complaint, and

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solely for the purposes of this proceeding and any other proceeding in which NASD is a party, to the entry of findings of facts and violations consistent with the allegations of the Complaint, and to the imposition of the sanction 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

Back Bay has been a registered broker-dealer and NASD member firm since 1989. Its principal office is located in San Diego, California. Albert Carazolez purchased the firm in December 1999. Except for a period of approximately four months starting in August 2002, when Robert Meyer held a minority interest in the firm, Carazolez has been the sole owner of Back Bay through a holding company called Capital Access Partners, LLC ("Capital Access"). During the period from August 2002 through December 2002, Back Bay had a branch office in San Francisco and 19 registered representatives located in California and nine other states. The firm has no relevant disciplinary history.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:¹

- From August through November 2002, Respondent violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, along with NASD Conduct Rules 2110 and 2120, because, under the doctrine of respondeat superior and as a "controlling person" under Section 20(a) of

¹ The findings herein are pursuant to Respondent Back Bay Capital, Inc.'s Offer of Settlement and are not binding on any other person or entity named as a respondent in this or any other proceeding.

the Exchange Act, Respondent is liable for the acts of its registered representative who, acting under its control and as its employee and agent with express or implied authority to do so, employed fraudulent sales practices, made baseless price predictions and unsuitable recommendations of a security to Back Bay customers.

- Furthermore, Respondent egregiously failed to supervise properly, failed to establish and implement a supervisory compliance structure and failed to provide the firm's registered representatives with written supervisory procedures reasonably designed to prevent fraudulent sales practices, in violation of NASD Conduct Rules 2110 and 3010. ✓
- Finally, Respondent failed to register a person associated with Back Bay who was engaging in the firm's securities business and was acting as a principal of the firm; Respondent also failed to name this associated person in Schedule A of the firm's Form BD, even though this person held an ownership interest of more than five percent of Back Bay, in violation of NASD Membership and Registration Rules 1021(a), 1031(a), IM-1000-1 and IM-1000-3. ✓

Based on these considerations, the sanction hereby imposed by the acceptance of the Offer is in the public interest, is sufficiently remedial to deter Respondent from any future misconduct, and represents a proper discharge by NASD of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTION

It is ordered that Respondent be expelled from NASD membership.

Pursuant to IM-8310-2(f), the expulsion shall become effective upon approval or acceptance of this Order by the NAC or ODA..

SO ORDERED.

NASD



Cameron K. Funkhouser
Senior Vice President
Market Regulation Department

On behalf of the Director of ODA, pursuant to
Delegated authority