

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

David P. Smithey,
CRD No. 4137601

Respondent.

Disciplinary Proceeding
No. E0220040502-01

Hearing Officer DRP

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 6, 2006

INTRODUCTION

Disciplinary Proceeding No. E0220040502-01 was filed on March 8, 2006, by the Department of Enforcement of NASD ("Complainant"). Respondent David P. Smithey submitted an Offer of Settlement ("Offer") to Complainant on September 25, 2006. 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 is the Founder, Chairman and Chief Executive Officer of Tradeportal.com, Inc. ("Tradeportal"), a financial services technology company that produces trading software. Tradeportal wholly owns NASD member firm Tradeportal Securities, Inc. ("TSI").

Respondent became associated with TSI as a member of its Board of Directors on or about October 5, 2000. Respondent also became TSI's Chief Technology Officer in August 2002 and its Treasurer in January 2003. He resigned from all three positions and ceased his association with TSI on or about December 31, 2004.

Respondent is not currently associated with any NASD member firm and has not been the subject of prior disciplinary action by NASD, other self-regulatory organizations, state regulators or the Securities and Exchange Commission.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings relating to Cause Two of the Complaint be made as follows:

From March 7, 2001 to October 26, 2002, Respondent participated in investments made by customer C.C. in World Ventures Trust ("WVT"), totaling \$525,000.00. From June 2001 to July 2003, Respondent periodically transmitted reports concerning WVT's performance to customer C.C.

Respondent failed to provide member firm TSI with prior written notice of his activities involving WVT and customer C.C., as required by NASD Conduct Rule 3040. Moreover, member firm TSI never provided Respondent with approvals, written or otherwise, to accept investments from customer C.C. on behalf of WVT or to transmit reports concerning WVT's performance to customer C.C.

Based on the foregoing, Respondent violated NASD Conduct Rules 3040 and 2110.

It has been determined that Causes One and Three of the Complaint shall be dismissed.

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 the following sanctions be imposed against Respondent:

1. A suspension from association with any NASD member in any capacity for a period of two years; and
2. An order to pay restitution to customer C.C. in the total amount of \$525,000.00, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from October 26, 2002, until the date of payment.

Restitution amounts ordered, pursuant to this disciplinary action, are due and payable prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing

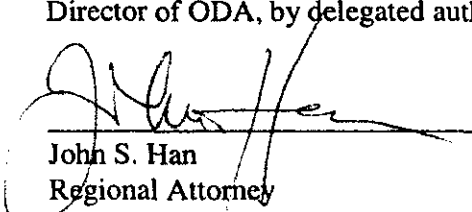
their own actions to obtain restitution or other remedies. If for any reason Respondent cannot locate customer C.C. after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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

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



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