

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EMANUELE ANTHONY SCARSO,
(CRD No. 2080536),

Respondent.

Disciplinary Proceeding
No. E062003035102

DEFAULT DECISION

Hearing Officer – SW

Date: May 22, 2006

Respondent was barred for violating NASD Conduct Rule 2110 and IM-2310-2(b)(4)(A)(iii) by executing twelve unauthorized transactions in the accounts of four customers. In addition to the bar, Respondent was directed to reimburse: (i) customer WS \$18,699.55, plus interest; (ii) customer HS \$19,896, plus interest; (iii) customer AC \$24,544.59, plus interest; and (iv) customer OV \$10,980, plus interest.

Appearances

Karen E. Whitaker, Esq., Regional Counsel, Dallas, TX, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Emanuele Anthony Scarso.

DECISION

I. Introduction

On September 13, 2005, the NASD Department of Enforcement ("Enforcement") filed the attached one-count Complaint in this proceeding. The Complaint alleges that, while employed by Salomon Grey Financial Corporation ("Salomon Grey" or the "Firm"), Respondent Emanuele Anthony Scarso ("Respondent") executed twelve unauthorized transactions in the accounts of four customers, WS, HS, AC, and OV, in violation of NASD Conduct Rule 2110 and IM-2310-2(b)(4)(A)(iii).

On December 6, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the declaration of Karen E. Whitaker, Esq., Regional Counsel in NASD's Dallas, TX office, and by three exhibits. Enforcement amended its Motion on February 22, 2006, and supplemented its amended Motion on April 18, 2006, with an amended declaration and an additional exhibit.¹ For the reasons set forth below, Enforcement's Motion, as amended and supplemented, is granted.

II. Respondent's Default

On September 13, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent, via first class and certified mail, at his most current residential address as reflected in NASD's Central Registration Depository ("CRD address").² (CX-1, p. 1; CX-2; DECL at ¶ 24). Respondent did not answer the Complaint. (DECL at ¶ 26).

On October 14, 2005, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first class and certified mail, at his CRD address. (CX-3; DECL at ¶ 25). Although Respondent signed the receipt for the October 14, 2005 certified mailing, reflecting delivery of the mailing, Respondent has not filed an Answer to the Complaint. (CX-3, p. 14; DECL at ¶¶ 25, 26).

Based on the certified mail receipt signed by Respondent, the Hearing Officer finds that Respondent received actual notice of the proceeding. In any event, Respondent received constructive notice of this proceeding because Enforcement complied with Rule 9134(b)(1) by

¹ Hereinafter, the statements in the Amended Motion will be designated as "Amended Motion, p."; the statements in the Whitaker Declaration will be designated as "DECL at ¶"; and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number. The statements in the Amended Declaration will be designated as "Amended DECL at p.", and the statements in the Supplement to the Amended Declaration will be designated as "SUPP DECL at p."

² The CRD address is [REDACTED]

mailing the Complaint and Notices of Complaint to Respondent's CRD address.³ Accordingly, the Hearing Officer finds that Respondent received effective notice of this proceeding and defaulted by failing to answer the Complaint.⁴

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent became registered with NASD in July 1990. (CX-1, pp. 21, 26; DECL at ¶ 5). Respondent was registered with NASD member firm Salomon Grey from October 20, 2000 to June 23, 2003 as a general securities representative.⁵ (CX-1, p. 4). Subsequently, on September 16, 2003, the Firm filed an amended Form U-5 that disclosed receipt of a customer complaint alleging unauthorized trading by Respondent. (CX-1, pp. 42-48; DECL at ¶ 7). Respondent is not currently employed with any NASD member firm. (CX-1, p. 3).

Article V, Section 4(a) of the NASD's By-Laws creates a two-year period of retained jurisdiction over former registered persons. Article V, Section 4(a) also provides that the running of the two year period of retained jurisdiction recommences from the date of the filing of an amended Form U-5, if the amended Form U-5 (i) is filed within two years of the original Form U-5 filing, and (ii) discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation.⁶

The Hearing Officer finds that the September 16, 2003 amended Form U-5 (i) was filed within two years of the original June 23, 2003 Form U-5 filing, and (ii) disclosed that the Respondent may have engaged in conduct actionable under the NASD Rules. Accordingly, the

³ See Dept of Enforcement v. Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n. 1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

⁴ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rule 9215(f) and NASD Notice to Members 99-77.

⁵ Salomon Grey submitted a Form U-5 on Respondent's behalf on June 23, 2003. (CX-1, pp. 27, 38-41).

⁶ NASD Notice to Members 92-19.

Hearing Officer finds that NASD has jurisdiction over Respondent in this proceeding because the Complaint in this proceeding was filed on September 13, 2005, within two years of the filing of the Form U-5 amendment on September 16, 2003, and the Complaint alleges that Respondent engaged in misconduct while subject to NASD's jurisdiction.

B. Respondent Executed Twelve Unauthorized Transactions in the Accounts of Four Customers

The Complaint alleges that between February 2001 and February 2003, Respondent executed twelve unauthorized transactions in the accounts of four customers, WS, HS, AC, and OV, without their knowledge or consent. (Complaint at ¶¶ 4-15).

Specifically, the Complaint alleges that without the consent or authorization of customer WS, Respondent executed: (1) the sale of 15,230 shares of Mediabay Inc.; (2) the purchase of 20,000 shares of Dyntek, Inc. Class A; and (3) the sale of 20,000 shares of Sirius Satellite Radio, Inc., in the account of customer WS. (Complaint at ¶¶ 4-7; Schedule A to the Complaint). Enforcement provided the additional information that Respondent purchased the 20,000 shares of Dyntek, Inc. for \$18,436 on February 28, 2003, and sold them for \$9,007.72, resulting in a loss of \$9,428.28. (Amended DECL at p. 4). On March 14, 2003, Respondent sold 20,000 shares of Sirius Satellite Radio, Inc. for \$8,963.73 to pay the balance due on the Dyntek stock, and the sale resulted in a loss of \$9,271.27.⁷ (*Id.*) Thus, as of March 14, 2003, Customer WS's total loss on the unauthorized transactions was \$18,699.55. (Amended DECL at p. 4; Schedule A to Amended Motion).

The Complaint alleges that, without the consent or authorization of customer HS, Respondent executed: (1) the purchase of 4,000 shares of Global Net, Inc.; (2) the purchase of 5,000 shares of Metromedia Fiber Network, Inc.; (3) two sales of E Trade Group, Inc.

⁷ On February 24, 2003, customer WS had purchased the 20,000 shares of Sirius Satellite Radio, Inc. for \$18,235. (Schedule A to Amended Motion).

aggregating 2,000 shares; and (4) two sales of Global Net, Inc. aggregating 25,000 shares, in the account of customer HS. (Complaint at ¶¶ 8-9; Schedule A to the Complaint). Enforcement provided the additional information that the 5,000 shares of Metromedia Fiber Network, Inc. were purchased on March 7, 2001, for \$51,204 and subsequently sold for \$34,495, resulting in a loss of \$16,709. (Amended DECL at p. 4). On February 26, 2001, Respondent purchased 4,000 shares of Global Net, Inc. for \$6,562 and subsequently sold the shares in two transactions-- March 21, 2001 and April 24, 2001--for a total of \$3,375, resulting in a loss of \$3,187. (*Id.*). Thus, as of April 24, 2001, Customer HS's total loss on the two purchase transactions was \$19,896. (Amended DECL at p. 4; Schedule A to Amended Motion).

The Complaint alleges that, without the consent or authorization of customer AC, Respondent executed: (1) the purchase of 20,000 shares of Conolog Corp. New; and (2) the sale of 80,000 shares of Senior Care Industries, in the account of customer AC. (Complaint at ¶¶ 10-12; Schedule A to the Complaint). Enforcement provided the additional information that the 20,000 shares of Conolog Corp. New were purchased for \$23,036 on July 8, 2002, and subsequently sold for \$9,763.70, representing a loss of \$13,272.30. (Amended DECL at p. 5). On July 23, 2002, Respondent sold 80,000 shares of Senior Care Industries for \$9,563.71 to pay the balance due on the Conolog Corp. New stock, which resulted in a loss of \$11,272.29.⁸ (*Id.*) Thus, as of July 23, 2002, Customer AC's total loss on the unauthorized transactions was \$24,544.59. (Amended DECL at p. 5; Schedule A to the Amended Motion).

Finally, the Complaint alleges that, without the consent or authorization of customer OV, Respondent executed the purchase of 9,000 shares of Global Crossing, Ltd., in the account of customer OV. (Complaint at ¶¶ 13-15; Schedule A to the Complaint). Enforcement provided the

⁸ On June 6, 2002, customer AC purchased the 80,000 shares of Senior Care Industries for \$20,836. (Amended DECL at p. 5).

additional information that the 9,000 shares of Global Crossing, Ltd. were purchased for \$10,980 on October 31, 2001, and became worthless on December 10, 2003, as a result of Global Crossing's bankruptcy. (Amended DECL at p. 5; Schedule A to Amended Motion; SUPP DECL at p. 1; CX-4). Thus, as of December 10, 2003, customer OV's loss totaled \$10,980. (Id.).

Enforcement represented that it had in its files: (i) the declarations from each of the customers, stating that he did not authorize the above trades in his account, and (ii) copies of the customers' complaint letters that were sent to Respondent and or Salomon Grey shortly after the customers discovered the subject transactions. (DECL at ¶ 14).

Enforcement also provided the additional information that both the SEC and NASD had previously disciplined Respondent for unauthorized trading. (Amended Motion, p. 3). In connection with the SEC action, Respondent was suspended from association with any broker or dealer for a year. (Id.). In the NASD action, Respondent was suspended for two months. (Id.).

According to IM-2310-2(b)(4)(A)(iii), unauthorized trading is "[c]ausing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon." The Securities and Exchange Commission has affirmed that unauthorized trading in a customer's account is a violation of Conduct Rule 2110's requirement to observe just and equitable principles of trade.⁹

The allegations of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent executed twelve unauthorized transactions in the accounts of four customers, WS, HS, AC and OV, without their knowledge or prior authorization, in violation of NASD Conduct Rule 2110 and IM-2310-2(b)(4)(A)(iii).

⁹ In re Robert Lester Gardner, Exchange Act Rel. No. 35899, 1995 SEC LEXIS 1532, at *1 n. 1 (1995).

IV. Sanctions

The NASD Sanction Guidelines for unauthorized transactions suggest a fine between \$5,000 and \$75,000, and a suspension of 10 business days to one year, in cases involving customer loss, and a longer suspension of up to two years or a bar, in egregious cases.¹⁰ The Guidelines also provide that adjudicators may order restitution when an identifiable person has suffered a quantifiable loss as a result of a respondent's misconduct.¹¹

Pointing to the number of unauthorized transactions, Enforcement contended that Respondent's execution of twelve unauthorized transactions was quantitatively egregious under the National Adjudicatory Council's holding in District Bus. Conduct Comm. No. 10 v. Hellen.¹² Enforcement also cited as aggravating factors that Respondent had been previously disciplined by both the SEC and NASD. Accordingly, Enforcement requested that Respondent be barred and that customers be reimbursed their losses plus interest, i.e., (i) customer WS be reimbursed \$18,699.55, (ii) customer HS be reimbursed \$19,896, (iii) customer AC be reimbursed \$24,544.59, and (iv) customer OV be reimbursed \$10,980.

The Hearing Officer agrees that Respondent's conduct was egregious both because of the number of unauthorized trades and because Respondent had been disciplined previously for engaging in unauthorized trades. Accordingly, the Hearing Officer accepts Enforcement's recommended sanction. The Respondent is barred from associating with any member firm in any capacity. In addition, the Hearing Officer orders Respondent to pay (i) \$18,699.55 to customer WS, plus interest from March 14, 2003, (ii) \$19,896 to customer HS, plus interest from

¹⁰ NASD Sanction Guidelines, p. 103 (2006).

¹¹ Id. at p. 4.

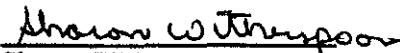
¹² Complaint No. C3A970031 (NAC, June 15, 1999). (Egregious unauthorized trading warranting a bar or lengthy suspension includes cases involving numerous unauthorized transactions); See also In re Peter D. Ragofsyk, Disciplinary Proceeding No. C10000086, 2001 NASD Discip. LEXIS 19 (OHO, Jan. 31, 2001) (10 unauthorized transactions in five customer accounts is quantitatively egregious).

April 24, 2001, (iii) \$24,544.59 to customer AC, plus interest from July 23, 2002, and (iv) \$10,980 to customer OV, plus interest from December 10, 2003, until paid. Interest is set at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2).

V. Order

Respondent Emanuele Anthony Scarso is ordered to reimburse his four customers \$74,120.14, plus interest as set forth above, and is barred from associating with any NASD member firm in any capacity for violating NASD Conduct Rule 2110 and IM-2310-2(b)(4)(A)(iii) by engaging in unauthorized trading in four customer accounts.

These sanctions shall become effective on a date set by NASD, but not before the expiration of 30 days after the date this Default Decision becomes the final disciplinary action of NASD; provided, however, that the bar shall become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
May 22, 2006

Copies to:
Emanuele Anthony Scarso (via FedEx and first class mail)
Karen E. Whitaker, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)
Rodger D. Hogoboom, Esq. (via electronic and first class mail)

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement, Complainant, v. Emanuele Anthony Scarso, CRD No. 2080536 Respondent.	Disciplinary Proceeding No. E062003035102 Hearing Officer: COMPLAINT
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Upon information and belief, Complainant alleges as follows:

1. Emanuele Anthony Scarso ("Scarso" or "Respondent") entered the securities industry in July 1990 when he associated with an NASD member firm. During the period from June 1991 to October 2000, Scarso associated with eleven NASD member firms. He registered with NASD member firm Salomon Grey Financial Corporation ("Salomon Grey") from October 2000 through March 24, 2003. He has not been registered with another member since his termination from Salomon Grey. During his career in the securities industry Scarso obtained Series 7, 62 and 63 securities licenses.
2. Salomon Grey submitted an initial Form U-5 on Scarso's behalf on June 23, 2003. On September 16, 2003, the firm submitted an amended U-5 filing that revealed a previously undisclosed customer complaint against Scarso that alleged unauthorized trading. The U-5 amendment filing extended NASD's jurisdiction over Scarso until September 15, 2005. Accordingly, NASD has jurisdiction to file this complaint, pursuant to Article V, Section 4 of the Association's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons.

CAUSE OF COMPLAINT

Respondent Made Unauthorized Transactions In Customer Accounts

(Violations of NASD Conduct Rule 2110 and IM 2310-2)

3. Paragraph numbers 1 and 2 above are realleged and incorporated herein by reference.
4. During the period from February 2001 through February 2003, Scarso executed unauthorized purchase and/or sales transactions in the accounts of Salomon Grey customers WS, HS, AC and OV.

Customer WS

5. During the relevant time period, customer WS maintained a securities account with Salomon Grey that was serviced by Respondent Scarso.
6. On or about February 24, 2003, February 28, 2003 and March 14, 2003, Respondent Scarso purchased or caused to be purchased and sold or caused to be sold securities for the account of WS, as reflected on Schedule A attached hereto and incorporated by reference, without the knowledge or consent of WS, and in the absence of written or oral authorization to Respondent Scarso to exercise discretion in said account.
7. WS lost approximately \$18,000 as a result of the unauthorized transactions in his account.

Customer HS

8. During the relevant time period, customer HS maintained a securities account with Salomon Grey that was serviced by Respondent Scarso.
9. On or about February 26, 2001, March 7, 2001, March 12, 2001, March 21, 2001 and April 24, 2001, Respondent Scarso purchased or caused to be purchased and sold or caused to be sold securities for the account of HS, as reflected on Schedule A attached hereto and incorporated by reference, without the knowledge or consent of HS, and in

the absence of written or oral authorization to Respondent Scarso to exercise discretion in said account.

Customer AC

10. During the relevant time period, customer AC maintained a securities account with Salomon Grey that was serviced by Respondent Scarso.
11. On or about July 8, 2002 and July 23, 2002, Respondent Scarso purchased or caused to be purchased and sold or caused to be sold securities for the account of AC, as reflected on Schedule A attached hereto and incorporated by reference, without the knowledge or consent of AC, and in the absence of written or oral authorization to Respondent Scarso to exercise discretion in said account.
12. AC lost approximately \$22,000 as a result of the unauthorized transactions in his account.

Customer OV

13. During the relevant time period, customer OV maintained a securities account with Salomon Grey that was serviced by Respondent Scarso.
14. On or about October 31, 2001, Respondent Scarso purchased or caused to be purchased securities for the account of OV, as reflected on Schedule A attached hereto and incorporated by reference, without the knowledge or consent of OV, and in the absence of written or oral authorization to Respondent Scarso to exercise discretion in said account.
15. OV lost approximately \$13,389 as a result of the unauthorized transactions in his account.
16. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and IM 2310-2 by Emanuele Anthony Scarso.

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 the Respondent in accordance with NASD Rule 8310.
- C. An order requiring Respondent to disgorge fully any and all 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 in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: September 13, 2005

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SCHEDULE A

Customer WS

Date	Activity	Security	Price	# Shares
2/24/03	Sold	Mediabay Inc.	\$.943	15,230
2/28/03	Bought	Dyntek, Inc. Class A	\$.920	20,000
3/14/03	Sold	Sirius Satellite Radio, Inc.	\$.450	20,000

Customer HS

Date	Activity	Security	Price	# Shares
2/26/01	Bought	Global Net, Inc.	\$1.6405	4,000
3/7/01	Bought	Metromedia Fiber Network, Inc.	\$10.23	5,000
3/12/01	Sold	E Trade Group, Inc.	\$9.7	700
3/21/01	Sold	E Trade Group, Inc.	\$7.23	1,300
3/21/01	Sold	Global Net, Inc.	\$.84	20,000
4/24/01	Sold	Global Net, Inc.	\$1.141	5,000

Customer AC

Date	Activity	Security	Price	# Shares
7/8/02	Bought	Conolog Corp. New	\$1.15	20,000
7/23/02	Sold	Senior Care Industries	\$.12	80,000

Customer OV

Date	Activity	Security	Price	# Shares
10/31/01	Bought	Global Crossing, Ltd.	\$1.22	9,000