

NASD
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant	Disciplinary Proceeding No. E062004000201
v.	Hearing Officer: DRP
Daniel Carlos Lacey CRD No. 4312702 Respondents	<u>ORDER ACCEPTING OFFER OF SETTLEMENT</u> Date: <u>July 21, 2006</u>

INTRODUCTION

Disciplinary Proceeding No. E062004000201 was filed on February 8, 2006, by the Department of Enforcement of NASD ("Complainant"). Respondent Daniel Carlos Lacey submitted an Offer of Settlement ("Offer") to Complainant on July 21, 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

Daniel Carlos Lacey entered the securities industry in December 2000 when he registered as a General Securities Representative with member firm Allmerica Investments, Inc. (f/n/a Veravest Investments). Lacey remained registered with Allmerica until January 2003, and while registered with that firm, he engaged in conduct which became the subject of this disciplinary action. After leaving Allmerica in January 2003, Lacey registered, as a General Securities Representative, with member firm Securities America, Inc. Lacey left Securities America in April 2005 and during the same month he registered, as a General Securities Representative with member firm FSC Securities Corporation and his registration with that firm remains in effect.

FINDINGS AND CONCLUSIONS

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

Lacey recommended that customer M. S. switch from a Certificate of Deposit paying 6.57% annual interest that was also collateral for a bank loan, into a variable annuity paying interest at half the rate of the CD. Because she followed Lacey's advice, M. S. incurred a significant surrender charge and received no tax advantages. Lacey earned over \$800 in commissions.

Background:

In January 2002, customer M. S. met Lacey at an investment workshop directed to persons with impaired hearing. Lacey knew that M.S. was deaf and that her investment experience was very

limited. In May 2002, M. S. sought investment advice from Lacey. She told him that her investment objective was retirement, that she was 54 years old, and that she wanted to retire at age 62. She also told Lacey that her budget was very tight and that she needed liquidity.

Cause of Complaint:

During a meeting with Lacey in May 2002, M. S. gave Lacey documents relating to her assets and liabilities. From these documents, Lacey knew that M. S.'s cash and investments were limited to the following:

- a. annual income of \$21,000, with net income of \$17,082;
- b. a savings account with an approximate balance of \$1,487;
- c. a checking account with an approximate balance of \$657;
- d. a bank certificate of deposit, with an approximate value of \$17,200, with an annual interest rate of 6.57%, and with a maturity date of June 2005; and
- e. a retirement savings plan with her employer with an approximate value of \$20,500.

From the customer's documentation, Lacey knew that M.S. had the following obligations and liabilities:

- a. rent of approximately \$500 per month;
- b. a car loan which required monthly payments of \$346;
- c. credit card debt of approximately \$1,685; and
- d. a bank installment loan in the amount of approximately \$10,500 on which M. S. was required to make a monthly payment of \$310.

The installment loan was secured by a pledge of the CD described in the preceding paragraph.

In August 2002, despite knowing that the customer would have to incur an early surrender charge of \$417, Lacey recommended that M.S. liquidate her CD, and invest all the proceeds (\$17,004) in an Allmerica Variable Annuity. Lacey also recommended that the customer allocate the entire premium to the fixed account, which paid only 3% and which charged an annual fee of \$30.

Lacey also falsely represented to the customer (whose marginal tax bracket was 15%) that it was advantageous from a taxation standpoint to exchange (with a surrender charge) a CD with an interest rate of 6.57% for a tax-deferred investment with an interest rate of 3%.

Lacey also falsely represented to Allmerica, in writing, that this transaction was unsolicited.

Lacey earned a commission of \$842 on the variable annuity sale.

As a result of the CD liquidation and the corresponding reduction in current income, M. S. soon had difficulty paying her installment loan and credit card obligations as well as her health care and other expenses. Consequently, M. S. redeemed her Allmerica Variable Annuity in early 2004 incurring an early surrender charge of 8%, or approximately \$1,279.

Lacey failed to have reasonable grounds for believing that his recommendation and resulting variable annuity transaction were suitable for M. S. based on her financial situation and needs

Based on the foregoing, Respondent violated NASD Conduct Rules 2110 and 2310, as alleged in the Complaint.

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.

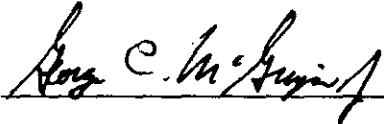
SANCTIONS

It is ordered that Respondent be assessed a monetary fine in the amount of \$2,500 and suspended from association from any NASD member in any capacity for a period of ten business days.

The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

NASD

By: 

George C. McGuigan, Jr.
Regional Counsel

on behalf of the Director of ODA, pursuant to
delegated authority