

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD JAMES MORGAN
(CRD No. 3056196),

Respondent.

Disciplinary Proceeding
No. E062004026501

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

October 10, 2006

The Respondent exercised discretion in a customer account without having written discretionary authority, in violation of Conduct Rules 2510 and 2110, and made excessive trades in customer accounts, in violation of NASD Conduct Rules 2310 and 2110. The Respondent is barred from associating with any NASD member in any capacity.

Appearances

George C. McGuigan, Jr., Esq., Regional Counsel, Dallas, TX (Rory C. Flynn, Esq., Washington, DC, Of Counsel, Mark P. Dauer, Esq., New Orleans, LA, Of Counsel) for Complainant.

No appearance by or for Respondent.

DECISION

The Department of Enforcement (Enforcement”) filed a Complaint (attached to this decision as Exhibit A) on May 24, 2006, alleging that Richard James Morgan (the “Respondent” or “Morgan”): (1) exercised discretionary transactions in customers’ accounts without their written authority, in violation of NASD Conduct Rules 2510 and 2110; (2) engaged in excessive trading in customers’ accounts, in violation of NASD Conduct Rules 2310 and 2110; and (3) failed to contact NASD staff to set a date and time for his on-the-record interview, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

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I. Respondent's Default

On August 24, 2006, Enforcement filed a Motion for Entry of Default Decision, which is supported by the Declaration of George C. McGuigan, Jr. and three exhibits.¹ The Respondent did not file a response to the motion.

The motion and supporting declaration show that Enforcement sent the Complaint and Notice of Complaint by first-class certified mail to Respondent on May 23, 2006, at his address listed in the Central Registration Depository ("CRD address").² The Respondent did not file an Answer. On June 22, 2006, Enforcement sent the Complaint and Second Notice of Complaint by first-class certified mail to Respondent at his CRD address.³ To date, the Respondent has failed to answer or otherwise respond to the Complaint.

The Hearing Officer finds that the Respondent defaulted by failing to file an Answer or otherwise respond to the Complaint within the time required under Procedural Rule 9215. Enforcement served the Complaint and Notices of Complaint on Respondent in accordance with Rule 9134, thereby giving him constructive notice of this proceeding. Accordingly, the Hearing Officer deems the allegations in the Complaint admitted and grants Enforcement's motion for entry of a default decision pursuant to Procedural Rule 9269(a)(2).⁴

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

NASD has jurisdiction of this proceeding. Article V, Section 4 of NASD's By-Laws provides that NASD may bring a disciplinary proceeding against, and may request information from, a formerly registered person for two years after his registration terminated. Here, Morgan was registered as a General Securities Representative with Next Financial Group, Inc. ("Next

¹ The declaration is referenced as "McGuigan Decl." followed by the applicable paragraph number.

² McGuigan Decl. ¶ 29.

³ *Id.* ¶ 30.

⁴ The factual findings in this decision are based on the allegations in the attached Complaint and the additional materials Enforcement filed with its motion.

Financial”), an NASD member firm, between January 30 and June 15, 2004.⁵ The Complaint Enforcement filed in May 2006 alleged misconduct that occurred while Morgan was associated with Next Financial, and NASD staff timely issued the written requests that he contact NASD staff to set a date and time for his on-the-record interview pursuant to Procedural Rule 8210.

A. Use of Discretion Without Written Authority

The Second Cause of the Complaint alleges that, between February 1 and May 15, 2004, Morgan exercised discretion in customer accounts held by MC, JC, NH, and JH at Next Financial without obtaining their written discretionary authority. Morgan effected approximately 385 stock and options transactions in MC and JC’s joint account and another 59 stock and options transactions in JC’s individual retirement account. Morgan also effected approximately 232 stock and option transactions in NH’s account and 39 stock and options transactions in JH’s account.⁶ Further, the Complaint alleges that Next Financial had not accepted these as discretionary accounts.

The Hearing Officer finds the foregoing allegations sufficient to establish that Morgan violated NASD Rules 2510 and 2110.

B. Excessive Trading

The Third Cause of the Complaint alleges that Morgan violated Conduct Rules 2310 and 2110 by trading excessively in MC’s, JC’s, NH’s, and JH’s Next Financial accounts from February 1 to May 15, 2004.

MC’s and JC’s new account documentation listed their investment objectives as “growth and long-term growth” and their risk tolerance as “conservative/growth and moderate risk.”⁷ MC and JC were in their early 60’s, and JC was retired.

⁵ C 1 at 4. The Respondent is not currently registered or associated with an NASD member firm.

⁶ Compl. ¶ 8.

⁷ *Id.* ¶ 13.

During the three months MC and JC maintained accounts with Morgan, he used discretion to effect 444 transactions in their accounts. The majority of the transactions involved high-risk technology companies. During this period of active trading, their joint account decreased in value by approximately \$150,000, and JC's retirement account decreased in value by approximately \$16,000.⁸ The cost-to-equity ratio for their joint account equaled 23.17%, and the cost-to-equity ratio in JC's retirement account equaled 15.63%.⁹

The Complaint alleges a similar pattern of excessive trading in NH's and JH's accounts. *NH and JH were in their 60's and retired. Their new account documentation listed their investment objectives as "growth and long-term growth" and their risk tolerance as moderate.*¹⁰ During the same three-month period, Morgan used his discretion to effect 271 trades in their accounts. Here also, the majority of the transactions involved high-risk technology companies. During this period of active trading, NH's retirement account decreased in value by approximately \$47,000, and JH's retirement account decreased in value by approximately \$19,777.¹¹ The cost-to-equity ratio for NH's account equaled 11.32%, and the cost-to-equity ratio in JH's account equaled 16.20%.¹²

The Hearing Officer finds the foregoing allegations sufficient to establish that Morgan violated NASD Rules 2310 and 2110. On an annualized basis, the cost-to-equity ratios in the foregoing customer accounts ranged from 45% to 92%, which meant that the accounts needed to *generate those rates of return just to pay the commissions and costs Morgan incurred on the trades.* Generally, a cost-to-equity ratio in excess of 20% is evidence of excessive trading.¹³

⁸ *Id.* ¶ 14.

⁹ *Id.* ¶ 15.

¹⁰ *Id.* ¶¶ 16, 17.

¹¹ *Id.* ¶ 18.

¹² *Id.* ¶ 19.

¹³ *See, e.g., Department of Enforcement v. Michael O'Hare*, No. C9B030045, 2005 NASD Discip. LEXIS 39, at 13 (Apr. 21, 2005).

C. Failure to Contact NASD Staff

The First Cause of the Complaint alleges that NASD staff sent Morgan two letters requesting that he contact the staff to “establish a date and time for an on-the-record interview.” The letters were dated September 7, 2005, and September 23, 2005. The letters did not request information regarding the staff’s investigation. Morgan did not call the staff as requested to set a date for his on-the-record interview, nor did the staff ever schedule him for an on-the-record interview.

Procedural Rule 8210(a)(1) provides in part that NASD may require a person subject to its jurisdiction to provide information, orally or in writing, “and to testify at a location to be specified by [NASD] staff ... with respect to any matter involved in [an] investigation.” But the staff never set a date and location for Morgan to appear and testify. Accordingly, without further evidence, the Hearing Officer cannot determine whether Morgan violated Procedural Rule 8210 and NASD Conduct Rule 2110, as alleged in the Complaint.¹⁴ The Hearing Officer finds, however, that he need not reach the issue presented by the First Cause of Complaint in light of the sanctions imposed for the violations under the other two causes of the Complaint. The bars imposed for those violations are sufficient to protect the investing public and to deter similar misconduct. Accordingly, the Hearing Officer dismisses the First Cause of the Complaint.

III. Sanctions

A. Excessive Trading

For excessive trading, the NASD Sanction Guidelines recommend a fine of \$5,000-\$75,000, which may be increased by the amount of the respondent’s financial benefit, and a suspension in any or all capacities for 10 business days to one year. In egregious cases, the

¹⁴ Enforcement did not submit copies of the letters it sent to the Respondent or submit any authority to support a finding that the failure to provide convenient dates for an on-the-record interview is a violation of Procedural Rule 8210.

Sanctions Guidelines further recommend consideration of a bar.¹⁵ In this case, the Hearing Officer concludes that a bar is the appropriate sanction for this violation.

The extraordinary level of activity over a short period combined with the very high cost-to-equity ratios indicate that Morgan was trading for his benefit. Without question, Morgan should have appreciated the deleterious effects such trading would have on his customers' accounts. Moreover, Morgan used unauthorized discretion to make these trades, a factor that further supports the conclusion that he acted for his self-interest. There do not appear to be any mitigating circumstances that would justify a lesser sanction in this case. Consequently, a bar is appropriate and will be imposed.

B. Exercise of Discretion

For exercise of discretion without the customer's written authorization, the Sanction Guidelines recommend a fine of \$2,500 to \$10,000, which may be increased by the amount of the respondent's financial benefit. In egregious cases, the Sanction Guidelines further recommend consideration of a suspension in any or all capacities for 10 to 30 business days.¹⁶

Morgan's conduct was egregious. Morgan engaged in a pattern of excessive trading in several customers' accounts, and Next Financial had not approved the accounts for discretionary trading. Accordingly, the Hearing Officer finds that Morgan's conduct would merit a fine and suspension at the upper end of the recommended range; however, because he is barring Morgan for his excessive trading, no additional sanction is imposed for this violation.¹⁷

IV. Order

Richard James Morgan violated NASD Conduct Rules 2310 and 2110 by trading excessively in customers' accounts, and violated Conduct Rules 2510 and 2110 by exercising

¹⁵ NASD Sanction Guidelines 82 (2006 ed.).

¹⁶ Sanction Guidelines 90.

¹⁷ See *Department of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (N.A.C. Mar. 27, 2002).

discretion in those accounts without written discretionary authority. For these violations, Morgan is barred from associating with any NASD member in any capacity.¹⁸ The bar will become effective immediately if this decision becomes NASD's final disciplinary action in this proceeding.

The First Cause of the Complaint is dismissed.

A handwritten signature in black ink, appearing to read 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to: Richard James Morgan (*via FedEx, overnight delivery, and first-class mail*)
George C. McGuigan, Jr., Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)

¹⁸ The Hearing Officer did not order restitution because Enforcement did not request it and the record does not show whether the customers already recovered their losses.

**NASD
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Department of Enforcement,

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v.

Richard James Morgan
CRD No. 3056196

Respondent

Disciplinary Proceeding
No. E062004026501

Hearing Officer: AHP

COMPLAINT

Date: May 23, 2006

Upon information and belief the Department of Enforcement alleges as follows:

1. Respondent Richard James Morgan entered the securities industry in December 1998 as a General Securities Representative with an NASD member firm. In January 2004 he registered with Next Financial Group as a General Securities Representative and remained registered with the firm until June 15, 2004. Since June 15, 2004, he has not been registered with any other member of NASD. NASD has jurisdiction to file this complaint against Morgan pursuant to Article V, Section 4 of the NASD By-Laws.

FIRST CAUSE OF COMPLAINT

Morgan Failed to Contact NASD Staff

(Violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210)

2. In connection with its investigation of Morgan, NASD staff requested that he provide written information to NASD concerning his handling of transactions in several customer accounts. Following the receipt of that information, NASD staff sought Morgan's on-the-

record testimony to clarify the existing information and to obtain additional information.

In a letter dated September 7, 2005, NASD staff requested, pursuant to NASD Procedural Rule 8210, that Morgan contact the staff no later than September 21, 2005, to "establish a date and time for an on-the-record interview ("OTR"). On this date that you will need to set up with the staff, you will report to the NASD District Office...You may be represented by an attorney of your choice at the OTR." The staff's letter was sent, via certified mail and regular mail, to Morgan at his CRD home address and referenced an enclosed one page Addendum which explained, among other things, the purpose for the OTR, and the fact that failure to provide truthful testimony, or the failure to appear could result in NASD disciplinary action and the imposition of sanctions including a bar from the industry.

3. Morgan never contacted the staff. The return receipt card for the certified mailing was signed and returned to the district office; however, it was not clear whether the signature on the card belonged to Morgan. The regular mailing of the September 7th letter was never returned.
4. Because Morgan failed to respond to the staff's September 7th letter, the staff sent him another letter. In a letter dated September 23, 2005, the staff requested, pursuant to Rule 8210, that Morgan contact the staff immediately in order to "arrange a date and time for an on-the-record interview ("OTR") with regard to your termination from Next Financial Group. For your convenience we have enclosed a copy of our September 7, 2005 letter with attachments." The September 23rd letter was sent, via certified mail and regular mail, to Morgan at his CRD home address, and it included the same one page Addendum that had been enclosed with the previous request letter. In the September 23rd letter, NASD staff told Morgan that his response was overdue and that his failure to contact NASD staff "could result in disciplinary action" being taken against him.

5. Morgan never contacted the staff. The certified mailing of the September 23rd letter was returned to the district office marked "unclaimed." The regular mailing was never returned.
6. The above described conduct by Respondent Richard James Morgan constitutes a failure to respond in violation of NASD Conduct Rule 2110, and NASD Procedural Rule 8210.

SECOND CAUSE OF COMPLAINT

Morgan Used Discretion Without Written Authority

(Violation of NASD Conduct Rules 2110 and 2510)

7. During the period from January 2004 through about May 2004, Morgan, while registered with member firm Next Financial Group, was the broker for the following customer accounts: a joint account for customers M.C. and J. C., an Individual Retirement Account for customer J. C., an IRA for customer N. H., and an IRA for customer J. H.
8. During the period between February 1, 2004 and May 15, 2004, Morgan effected approximately 385 stock and option transactions in the joint account of customers M. C. and J. C. and approximately 59 stock and option transactions in the IRA of customer J. C. During the same period Morgan effected approximately 232 stock and option transactions in the account of N. H. and approximately 39 stock and option transactions in the account of J. H. Morgan used discretion to effect all of the aforementioned transactions.
9. Morgan never obtained written authorization from customers M. C., J. C., N. H. and J. H. to use discretion in their accounts and he never obtained the acceptance in writing by his employing member firm of the accounts as discretionary.

10. The above described conduct by Respondent Richard James Morgan constitutes use of discretion without written authority in violation of NASD Conduct Rules 2110 and 2510.

THIRD CAUSE OF COMPLAINT

Morgan Engaged In Excessive Trading

(Violation of NASD Conduct Rules 2110 and 2310)

11. On January 30, 2004, customers M. C and J. C, husband and wife, opened a joint account with Morgan at member firm Next Financial Group. At the same time, J. C. also opened an IRA with Morgan.
12. When they opened their accounts with Morgan, M. C. was 65 years old and J. C. was 62 years old. M. C. was still working but J. C. was retired.
13. The new account documentation for M. C. and J. C. indicated that both had investment objectives of growth and long-term growth. Their risk tolerance level, as reflected on their new account documentation, was conservative/growth and moderate risk.
14. Between February 1, 2004 and May 15, 2004, Morgan used discretion to effect 385 stock and option transactions in the joint account of M. C. and J. C., and 59 stock and option transactions in J. C.'s IRA. The majority of the transactions in both accounts involved high-risk technology companies such as Micron Technology, Nanogen, Inc., MicroSemi, Corp., Verisign, Inc., and Genta, Inc. During this period, the value of the joint account decreased by approximately \$150,000 and J. C's IRA decreased in value by approximately \$16,000.
15. The cost-to-equity ratio in the joint account of M.C. and J. C. was 23.17% and in J.C.'s IRA it was 15.63%.

16. On January 30, 2004, customers N. H. and J. H., husband and wife, opened Individual Retirement Accounts with Morgan at Next Financial Group. N. H. was 63 at the time and retired. J. H. was 62 and also retired.
17. The new account documentation for N. H. and J. H. indicated that both had investment objectives of growth and long-term growth. Each had a moderate risk tolerance.
18. Between February 1, 2004 and May 15, 2004, Morgan used discretion to effect 232 stock and option transactions in N. H.'s IRA, and 39 stock and option transactions in J. H.'s IRA. The majority of the transactions in both accounts involved high-risk technology companies such as Juniper Networks, Nanogen, Inc., CV Therapeutics, Inc., Verisign, Inc., and Genta, Inc. During this period, the value of N. H.'s IRA decreased by approximately \$47,000 and J. H.'s IRA decreased in value by approximately \$19,777.
19. The cost-to-equity ratio in N. H.'s IRA was 11.32% and in J. H.'s IRA it was 16.20%.
20. The above described conduct by Respondent Richard James Morgan constitutes excessive trading in violation of NASD Conduct Rules 2110, 2310, and IM 2310(b)(2).

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

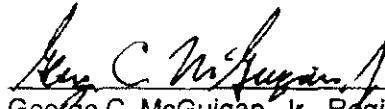
- A. Findings of fact and conclusions of law that Respondent Richard James Morgan committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent Richard James Morgan in accordance with NASD Rule 8310;
- C. An order requiring Respondent Richard James Morgan to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

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- 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: May 23, 2006



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