

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

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REGISTRATION & DISCLOSURE

Department of Enforcement,

Complainant,

v.

Jason J. DeFelice
CRD No. 2748462,

Respondent.

Disciplinary Proceeding
No. E072003011204

Hearing Officer RSH

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 29, 2009

INTRODUCTION

Disciplinary Proceeding No. E072003011204 was filed on June 30, 2008, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant).

Respondent Jason J. DeFelice (DeFelice) submitted an Offer of Settlement (Offer) to Complainant on May 19, 2009. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA 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

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proceeding brought by or on behalf of FINRA, or to which FINRA 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 FINRA.

BACKGROUND

DeFelice entered the securities industry in April 1996 with a FINRA (f/k/a NASD) member firm, and initially became registered as a general securities representative in June 1996. He has been registered with J.P. Turner as a general securities representative since December 2001, and currently is registered with J.P. Turner. FINRA has jurisdiction over DeFelice pursuant to its By-laws.

FINDINGS AND CONCLUSIONS

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

*FIRST CAUSE OF ACTION
(False and Misleading Offering Memorandum)
(NASD Conduct Rule 2110)*

1. In 2002 and 2003, Respondent DeFelice and another registered individual, RG, recommended and sold interests in a hedge fund called the Encierro Fund, L.L.P. to two individuals in a private placement offering. These individuals collectively invested \$1,150,000. JMR Partners, LLC, of which DeFelice and RG were the only members, was the general partner of the Encierro Fund. A securities account for the Encierro Fund was established at FINRA member J.P. Turner and Co., where DeFelice and RG were registered.
2. The Offering Memorandum states, among other things, that:

- “The partnership will primarily maintain a diversified portfolio of securities with potential for both short-term and long-term capital gains (p. 3).”
- “The goal of the Partnership will be to identify companies that have the potential for superior short and/or long-term capital gains (p. 8).”
- “Although the Partnership’s strategy horizon will generally be long-term, market conditions and strategy will dictate the Partnership’s course of action (p. 17).”
- “The portfolio of the partnership will be diversified in terms of maintaining a mix of ‘blue chip’ companies to ‘micro-cap’ companies. However, under certain market conditions, the Partnership’s portfolio may be more heavily weighted in a particular market or security (p. 17).”
- “The objective of the Partnership is to aggressively maximize the Partnership’s assets primarily derived from, but not limited to, the capital appreciation of stocks and various other derivative strategies. The General Partner will initially focus primarily on securities that have the greatest potential for capital appreciation (p. 15).”

3. Respondent DeFelice, who controlled and effected the trading in the account, never maintained a mix of blue chip and micro-cap companies in the account, never engaged in any long term trading strategies whatsoever, and never invested for capital appreciation, as represented in the Offering Memorandum. Rather, as set forth more fully in the Second and Third Causes of Complaint, he engaged primarily (with the exception of some options transactions) in highly aggressive short-term trading in low-priced equity securities from the inception of the account, generating substantial commissions to both himself and RG, as well

as substantial fees to J.P. Turner. There were no market conditions that would justify the type of trading in which DeFelice engaged in the Encierro Fund account.

4. The representations in the Offering Memorandum relating to the trading strategy to be employed in the Encierro Fund account were materially false and misleading because DeFelice never engaged in the trading strategies described in the Offering Memorandum.
5. In addition, the Offering Memorandum failed to disclose: the actual trading strategy that was employed in the Encierro Fund account, and the attendant risks of such a strategy; as well as the substantial commissions and fees that would be paid to DeFelice, RG, and the firm.
6. Respondent DeFelice, a Managing Member of the General Partner of the Encierro Fund, had a responsibility, when recommending the purchase of the Encierro Fund interests to his customers, to ensure that the Offering Memorandum was materially accurate, and not misleading. As a registered representative for the Encierro Fund Account, he had a responsibility not to trade in a manner inconsistent with the disclosures in the Offering Memorandum.
7. The failure of Respondent DeFelice to ensure that the Offering Memorandum was accurate and not misleading, as well as his failure to trade in accordance with the Offering Memorandum, constitutes separate and distinct violations of NASD Conduct Rule 2110 by DeFelice.

SECOND CAUSE OF ACTION
(Excessive Trading)
(NASD Conduct Rules 2310, IM-2310-2, 2860(b)(19), and 2110)

8. Respondent DeFelice effected the trading in the Encierro account and DeFelice controlled the account.
9. There were only two individuals who invested in the Encierro Fund:
 - EW invested \$500,000 in October 2002, and an additional \$500,000 in January 2003. EW requested and received the return of his principal of \$1 million in April 2003. DeFelice continued to trade the profits thereafter, and on August 6, 2003, \$64,225 in profits was wired to EW.
 - PR, DeFelice's father-in-law, invested \$150,000 in August 2003. PR lost his entire investment.
10. During the time period that EW's funds were in the Encierro account (about October 17, 2002 – August 16, 2003):
 - The annualized turnover ratio was approximately 51.19;
 - The cost-equity ratio was approximately 69.01% (75.28% annualized). Accordingly, during this time period the account would have had to earn, annually, more than a 75% return in order to just break even;
 - There were approximately 3,149 transactions effected;
 - Purchases totaled approximately \$19,020,868; sales totaled approximately \$19,304,239;

- Average monthly equity was \$405,374.45; and
- The gross commissions/charges paid by the account were approximately \$279,735.80, of which DeFelice received approximately \$126,421.94, representing about 78.40% of his total commissions for all of his retail accounts for the time period.

11. During the time period from about August 14, 2003, until about April 30, 2004, when PR's funds were in the Encierro Fund account:

- The annualized turnover ratio was approximately 25.49;
- The cost-equity ratio was approximately 81.46% (108.62 % annualized). Accordingly, during this time period, the account would have had to earn, annually, more than a 108 % return in order to just break even;
- There were approximately 1,055 transactions effected;
- Purchases totaled approximately \$1,963,242; sales totaled approximately \$1,923,056;
- Average monthly equity was \$102,686.01; and
- The gross commissions/charges paid by the account were approximately \$83,651.10, of which DeFelice received approximately \$40,499.78, representing approximately 29.71% of DeFelice's total commissions in all of his retail accounts for the time period.

12. Combined, during the time period from about October 17, 2002, until about April 30, 2004:

- The annualized turnover ratio was approximately 48.21;

- The cost-equity ratio was approximately 132.07% (83.42 % annualized). Accordingly, during this time period, the account would have had to earn, annually, more than an 83% return in order to just break even;
 - There were approximately 4,202 transactions effected;
 - Purchases totaled approximately \$20,968,110; sales totaled approximately \$21,227,296;
 - Average monthly equity was \$274,720.70; and
 - The gross commissions/charges paid by the account were approximately \$362,836.90, of which DeFelice received approximately \$166,700.32, representing approximately 56.84% of his total commissions for all of his retail accounts for the time period.
13. The highly aggressive short-term trading strategy employed by Respondent DeFelice in the Encierro Fund account was unsuitable, excessive, and inconsistent with the disclosures in the Encierro Fund Offering Memorandum.
14. Such conduct, acts and practices constitute separate and distinct violations of NASD Conduct Rules 2310, IM-2310-2, 2860(b)(19), and 2110 by Respondent DeFelice.

THIRD CAUSE OF ACTION

(Churning)

(NASD Conduct Rules 2310, IM-2310-2, 2860(b)(19), and 2110; Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder)

15. In the course of conduct described above, Respondent DeFelice, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national

securities exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

16. By effecting the highly aggressive short-term trading strategy in the Encierro Fund account, Respondent DeFelice acted with intent to defraud or with reckless disregard for the customers' best interests, for the purpose of generating commissions.
17. As such, the trading effected by Respondent DeFelice in the Encierro Fund account constitutes churning.
18. Such conduct, acts and practices constitute separate and distinct violations of NASD Conduct Rules 2310, IM-2310-2, 2860(b)(19), and 2110; and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder by Respondent DeFelice.

Based on the foregoing, Respondent violated NASD Conduct Rules 2110, 2310, IM-2310-2, 2860(b)(19) and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

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 FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be suspended from association with any FINRA member in any capacity for two months and fined \$70,550 (\$50,550 of which is partial disgorgement of commissions). Respondent has submitted a sworn financial statement and demonstrated a limited ability to pay. Respondent's limited ability to pay has been considered in connection with the monetary sanctions imposed in this matter.

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

SO ORDERED.

FINRA

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

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