

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

RALPH MERHI
(CRD No. 3094962),

Respondent.

Disciplinary Proceeding
No. E072004044201

Hearing Officer – RSH

DEFAULT DECISION

March 14, 2006

Respondent made excessive trades in a customer account, in violation of NASD Conduct Rules 2310 and 2110 and IM-2310-2(b)(2), and exercised discretion in a customer account without having written discretionary authority, in violation of Conduct Rules 2510(b) and 2110. For these violations, Respondent is barred from associating with any NASD member in any capacity.

Appearances

Gene E. Carasick, Esq., Regional Counsel, Atlanta, GA; Andrew A. Favret, Esq., Regional Chief Counsel, Washington, DC (Rory C. Flynn, Esq., Washington, DC, Of Counsel, Roger D. Hogoboom, Esq., Denver, CO, Of Counsel) for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint (attached to this decision as Exhibit A) on October 26, 2005, alleging that Respondent Ralph Merhi violated NASD Conduct Rules

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2310, 2510(b) and 2110 by trading excessively in a customer account and by exercising discretion in a customer account without having written discretionary authority.

Respondent did not file an Answer to the Complaint. On January 20, 2006, Enforcement filed a Motion for Entry of Default Decision, which was supported by the Affidavit of Gene E. Carasick and two exhibits. Respondent did not file a response to the motion. Accordingly, for the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on October 25, 2005, by certified and first class mail to the address listed in the Central Registration Depository ("CRD address").² The staff did not receive a delivery receipt for the certified mailing; however, neither the certified nor the first class mailing was returned by the Postal Service.

Respondent did not file an Answer by the November 22, 2005 due date. On November 23, 2005, Enforcement sent the Complaint and Second Notice of Complaint by first class and certified mail to Respondent's CRD address. The certified mailing was returned marked "unclaimed". The first class mailing was not returned.³

The Second Notice of Complaint required Respondent to submit an answer to the Complaint by December 12, 2005. To date, Respondent has failed to answer or otherwise respond to the Complaint.⁴ On January 19, 2006, Enforcement sent the Motion for Entry of Default Decision by overnight mail to Respondent's CRD address.

Enforcement served the Complaint and Notices of Complaint on Respondent in accordance with Rule 9134, thereby giving him constructive notice of this proceeding. By

¹ The factual determinations in this decision are based on the allegations in the attached Complaint, which are deemed admitted, as well as the additional materials filed by Enforcement with its motion.

² Carasick Declaration, ¶ 6.

³ Carasick Declaration, ¶ 7.

⁴ Carasick Declaration, ¶ 8.

failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Procedural Rule 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

The Complaint alleges, and the Respondent's CRD record shows, that Respondent was registered as a general securities representative with Newbridge Securities Corporation ("Newbridge") from August 25, 2000 until October 1, 2003. He was also registered as a general securities principal from February 15, 2001 until October 1, 2003. Respondent was last registered with NASD member Salomon Grey Financial Corporation, as a general securities representative and principal, from May 24, 2004 until August 9, 2004. He is not currently registered with an NASD member; however, NASD retains jurisdiction over Respondent for purposes of this proceeding pursuant to Article V, Section 4 of NASD's Bylaws, because the Complaint was filed within two years following the termination of Respondent's employment and registration.

B. Excessive Trading

The First Cause of the Complaint alleges that Respondent violated Conduct Rules 2310 and 2110 and IM-2310-2(b)(2) by trading excessively in customer JM's Newbridge account from July 2002 through March 2003. During that time, pursuant to oral discretion given by JM, Respondent made 75 trades of low-priced speculative securities in JM's account. JM's only prior investment experience was in a mutual fund IRA and with limited partnerships. He had never engaged in short-term trading in stocks and never discussed such trading with Respondent. During the period of the trading, JM's average account equity was only \$31,280.06, yet he was

charged commissions of \$20,731.97 and margin interest of \$1,344.38. The annual turnover rate in the account was 19.36 and the cost-equity ratio was 94.17%. JM's trading losses were \$28,453.68.⁵

Enforcement's allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent violated Conduct Rules 2310 and 2110 and IM-2310-2(b)(2) by trading excessively in a customer account.

C. Use of Discretion Without Written Authority

The Second Cause of the Complaint alleges that Respondent exercised discretion in JM's account with respect to 65 transactions without obtaining written discretionary authority from JM. Enforcement's investigative files contain, among other documents, a sworn declaration from JM affirming that the transactions in question were discretionary.⁶

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent's conduct violated Conduct Rules 2110 and 2510(b).

IV. Sanctions

A. Excessive Trading

For excessive trading, the NASD Sanction Guidelines recommend a fine of \$5,000-\$75,000, and in egregious cases, a bar.⁷

There is no definitive turnover rate that establishes excessive trading; however, a turnover rate of six generally indicates that excessive trading has occurred.⁸ Here, the turnover rate of 19.36 is more than triple that standard. In addition, the cost-equity ratio of 94.17% means

⁵ Complaint, at p.2-3.

⁶ Carasick Aff., at ¶ 12.

⁷ NASD Sanction Guidelines, at 82 (2005 ed.).

⁸ *Daniel Richard Howard*, Exch. Act Rel. No. 46269, 2002 SEC LEXIS 1909, at *8 (July 26, 2002); see *Peter C. Bucchieri*, 52 S.E.C. 800, 805, 1996 SEC LEXIS 1331 (May 14, 1996). ("While there is no clear line of demarcation, courts and commentators have suggested that an annual turnover rate of six reflects excessive trading.").

that the stocks in JM's account would have had to almost double before the account would have been profitable. Respondent, being a principal, clearly should have appreciated the deleterious effects such trading would have on JM's account. The trading appears to have been done to generate commissions at the expense of an unsophisticated and trusting customer.

Respondent's conduct was egregious and 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. The Respondent is also ordered to pay to JM restitution in the amount of \$28,454.

B. Exercise of Discretion

For use of discretion without the customer's written authorization, the Sanction Guidelines recommend a fine of \$2,500 to \$10,000, and in egregious cases, a suspension of 10 to 30 business days.⁹ Respondent's conduct was egregious because not only did he fail to obtain written authority from JM, he abused JM's oral discretionary authority by trading excessively. The Hearing Officer finds that Respondent's conduct would merit a fine and suspension in the upper end of the recommended range; however, because she is imposing a bar for his other misconduct, an additional sanction would not serve any purpose.¹⁰

V. Conclusion

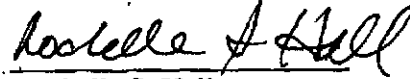
Respondent Ralph Merhi violated NASD Conduct Rules 2310 and 2110 and IM-2310-2(b)(2) by trading excessively in a customer account, and violated Conduct Rules 2510(b) and 2110 by exercising discretion in a customer account without written discretionary authority. For these violations, Respondent is barred from associating with any NASD member in any capacity.

⁹ NASD Sanction Guidelines at 90 (2005 ed.).

¹⁰ See *DOE v. Hodde*, Complaint No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (N.A.C. Mar. 27, 2002).

The bar will become effective immediately if this decision becomes NASD's final disciplinary action in this proceeding.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Ralph Merhi (*via overnight and first class mail*)
 Gene E. Carasick, Esq. (*via electronic and first class mail*)
 Andrew A. Favret, Esq. (*via electronic and first class mail*)
 Rory C. Flynn, Esq. (*via electronic and first class mail*)
 Roger D. Hogoboom, Esq. (*via electronic and first class mail*)

**NASD
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Department of Enforcement,

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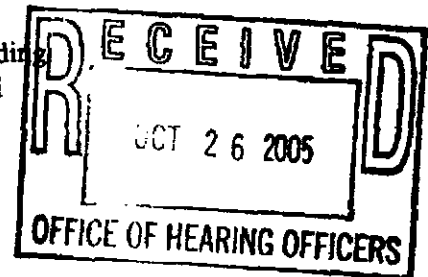
Ralph Merhi
CRD No. 3094962

Respondent.

Disciplinary Proceeding
No. E072004044201

Hearing Officer:

COMPLAINT



Upon information and belief, Complainant alleges as follows:

1. Respondent Merhi entered the securities industry in July 1998 with an NASD member, and became registered as a general securities representative in August 1998. He was registered as a general securities representative with Newbridge Securities Corporation from August 25, 2000, until October 1, 2003, and as a general securities principal with Newbridge from February 15, 2001, until October 1, 2003. He was last registered with NASD member Salomon Grey Financial Corporation, as a general securities representative and principal, from May 24, 2004 until August 9, 2004. His employment end date with Salomon Grey was August 3, 2004. Merhi is not currently associated with an NASD member. NASD retains jurisdiction over Merhi pursuant to Article V, Section 4 of NASD Bylaws.

**FIRST CAUSE OF COMPLAINT
Excessive Trading
NASD Conduct Rules 2110 and 2310**

2. JM opened a securities account with Respondent Merhi at Newbridge Securities on about November 10, 2000, after having received a series of cold-calls from Merhi soliciting JM to open an account at Newbridge and purchase specific stocks he was recommending.
3. When JM, who was 58 years old, opened the account, he told Merhi that his annual income was approximately \$200,000, and that his investment objective was "to earn a profit with a moderate

amount of risk". JM's only prior investment experience was in a mutual fund IRA and with limited partnerships. He had never engaged in short-term trading in stocks and never discussed it with Merhi.

4. In April 2002, after some initial transactions in the account, JM purchased 5000 shares of Nextel Corporation stock pursuant to Respondent Merhi's recommendation. In July 2002, Respondent Merhi convinced JM to sell the Nextel stock and take a profit because Merhi had "some great investment opportunities coming up with great profit potential".
5. For a period of time thereafter, Respondent Merhi contacted JM prior to effecting transactions in his account.
6. At the end of July or beginning of August 2002, Respondent Merhi asked JM in a telephone conversation if it was necessary to continue to contact JM prior to each transaction. In response, JM gave Merhi oral discretion to effect transactions in his account. However, Merhi did not obtain written authorization from JM for the exercise of discretion, and JM's account was not approved as a discretionary account by Newbridge.
7. Beginning in August 2003, the size and frequency of transactions in low-priced speculative stocks (such as AESP, Inc., Netsmart Technologies, Sirius Satellite Radio, and CyroCell International) in JM's account increased significantly. Respondent Merhi did not receive JM's prior approval for any of the trades that occurred beginning in August 2002, until the account was closed in April 2003.
8. For the time period from July 16, 2002, through March 10, 2003:
 - The average equity in JM's account was \$31,280.06;
 - Merhi effected 32 purchases for \$454,309.01, and 41 sales for \$423,123.02;
 - Margin interest charges were \$1,344.38;
 - The annual turnover rate was 19.36;
 - There were commission charges of \$20,731.97, representing about 16% of Merhi's commissions during the time period;
 - The cost-to-equity or break-even return ratio was 94.17%;

- Trading losses were \$28,453.68; and
- Merhi sold 40 positions, of which 29 were held less than a month, 8 were held less than 2 months, and 3 were held less than 3 months.

A schedule of the transactions in JM's account is attached hereto as Exhibit A.

9. The above-described course of conduct by Respondent Merhi constitutes excessive trading in the account of customer JM during the period from July 2002, through March 2003, in violation of NASD Conduct Rules 2110, 2310 and IM-2310-2(b)(2).

SECOND CAUSE OF COMPLAINT
Discretion
NASD Conduct Rules 2110 and 2510(b)

10. Paragraphs 1-9 are realleged and incorporated herein by reference.
11. During the time period from August 2002, through March 2003, Respondent Merhi exercised discretion in JM's account with respect to about 65 transactions (see Exhibit A hereto) without written authority from JM and without having the account approved as a discretionary account by Newbridge, in violation of NASD Conduct Rules 2110 and 2510(b).

PRAYER FOR RELIEF

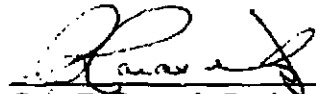
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Merhi committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent Merhi in accordance with NASD Rule 8310.
- C. An order requiring Respondent Merhi 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.

October 25, 2005

NASD Department of Enforcement



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