

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY S. WEICK
(CRD No. 4293526),

Respondent.

Disciplinary Proceeding
No. E072004078401

Hearing Officer – SW

DEFAULT DECISION

Date: July 19, 2006

Respondent was barred for executing forty-one unauthorized transactions in the accounts of four customers, in violation of Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

Appearances

William Brice La Hue, Esq., Regional Counsel, Atlanta, GA, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Jeffrey S. Weick.

DECISION

I. Introduction

On December 21, 2005, the NASD Department of Enforcement (“Enforcement”) filed the attached one-count Complaint in this proceeding. The Complaint alleges that while employed by LH Ross & Company, Inc. (“LH Ross” or the “Firm”), Respondent Jeffrey S. Weick (“Respondent”) executed forty-one unauthorized transactions in the accounts of four customers, JDM, DC, JJM, and CA, in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

On March 15, 2006, Enforcement filed a Motion for Entry of Default Decision (“Motion”), supported by the declaration of William Brice La Hue, Esq., Regional Counsel in NASD’s Atlanta, GA office, and by four exhibits. Enforcement supplemented its Motion with a supplemental declaration and two additional exhibits on June 5, 2006.¹ For the reasons set forth below, Enforcement’s Motion, as supplemented, is granted.

II. Respondent’s Default

On December 19, 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-3; DECL at ¶ 7). Respondent did not answer the Complaint. (DECL at ¶ 8).

On January 19, 2006, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first class and certified mail, at his CRD address. (CX-4; DECL at ¶ 8). Respondent has not filed an Answer to the Complaint. (DECL at ¶ 10).

The Hearing Officer finds that Respondent received constructive notice of this proceeding because Enforcement complied with Rule 9134(b)(1) by 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

¹ Hereinafter, the statements in the Motion will be designated as “Motion, p.”; the statements in the La Hue Declaration will be designated as “DECL at ¶”; the statements in the Supplemental La Hue Declaration will be designated as “SUPP DECL at ¶”; and Enforcement’s exhibits will be designated as “CX-” with the appropriate page or paragraph number.

² Respondent’s CRD address is [REDACTED] (CX-1, p. 1; DECL at ¶ 7).

³ See Dep’t 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.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent initially became associated with an NASD member firm in October 2000. (CX-2, p. 5; DECL at ¶ 5). Respondent was registered with NASD member firm LH Ross from January 9, 2003 to August 20, 2004 as a general securities representative.⁵ (CX-2, p. 2; DECL at ¶ 5). Respondent was registered as a general securities representative with Salomon Grey Financial Corporation (“Salomon Grey”) from August 16, 2004 until July 13, 2005. (CX-2, p. 1; DECL at ¶ 5). Respondent has not been associated with any NASD member since July 13, 2005. (Id.).

However, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after Respondent’s association with Salomon Grey was terminated, and (2) the Complaint charges Respondent with misconduct while he was associated with LH Ross.

B. Respondent Executed Forty-One Unauthorized Transactions in the Accounts of Four Customers

The Complaint alleges that between July 2003 and January 2004, while employed by LH Ross, Respondent executed forty-one unauthorized transactions in the accounts of four customers without their knowledge or consent. (Complaint at ¶¶ 3-15).

Specifically, the Complaint alleges that without the consent or authorization of customer JDM, Respondent executed ten unauthorized transactions in JDM’s account (four sales and six purchases). (Complaint at ¶¶ 4-5).

⁵ Previously, Respondent was registered as a general securities representative with LH Ross from March 14, 2002 to May 8, 2002. (CX-2, pp. 4-5).

The Complaint alleges that, without the consent or authorization of customer DC, Respondent executed twenty-four unauthorized transactions in DC's account (eight sales and sixteen purchases). (Complaint at ¶¶ 6-7).

The Complaint alleges that, without the consent or authorization of customer JJM, Respondent executed two purchases in the account of JJM. (Complaint at ¶¶ 8-9).

Finally, the Complaint alleges that, without the consent or authorization of customer CA, Respondent executed five unauthorized trades in the account of CA (two sales and three purchases). (Complaint at ¶¶ 10-11).

In addition to the information in the Complaint, Enforcement represented in its Motion that its files contained: (i) declarations from each of the customers, stating that he did not authorize the above trades in his account; (ii) copies of the customers' complaint letters; and (iii) a written statement from Respondent. (DECL at ¶ 22). Enforcement provided the additional information that Respondent ignored customer DC's questions regarding the unauthorized trades executed in his account, and that in response to customer JJM's question regarding the unauthorized trades, Respondent assured JJM that the investments would be profitable and that he had acted in JJM's best interest by executing the unauthorized trades. (CX-5, p. 1; CX-6, p. 1; SUPP DECL at ¶ 6).

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." In order to find a violation of

Section 10(b) of the Exchange Act,⁶ SEC Rule 10b-5 thereunder, and NASD Conduct Rule 2120,⁷ there must be a showing that: (1) respondent made misrepresentations and/or omissions; (2) the misrepresentations and/or omissions were material; (3) the misrepresentations and/or omissions were made with scienter;⁸ and (4) the misrepresentations and/or omissions were made in connection with the purchase or sale of securities.⁹ Scienter is established by a showing that the respondent acted intentionally or with severe recklessness.¹⁰

Unauthorized trading violates the anti-fraud provisions of the federal securities laws when accompanied by deceptive conduct.¹¹ Thus, the four above elements for a violation of the anti-fraud provisions are met when a broker, intentionally or recklessly, fails to disclose to a customer, before the trade is made, the material fact that a trade will be made in the customer's account.¹²

In addition, the SEC has long held the position that sending written confirmations of

⁶ Section 10(b) of the Exchange Act provides:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest for the protection of investors."

⁷ Rule 2120 provides that "No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

⁸ Aaron v. SEC, 446 U.S. 680, 686-87 n.5 (1980); Ernst v. Hochfelder, 425 U.S. 185, 193 (1976).

⁹ For Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder, the transactions must also involve interstate commerce or the mails, or a national securities exchange. Respondent used a means and instrumentality of interstate commerce when he communicated with the customers via telephone across state lines and when he used the mails to send confirmations to the customers. SEC v. Hasho, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992), 1992 U.S. Dist. LEXIS 1322 at *148-149 (1992).

¹⁰ Tuchman v. DSC Communications Corp., 14 F.3d 1061, 1067 (5th Cir. 1994), 1994 U.S. App. LEXIS 3326 at *14 (1994).

¹¹ Edgar B. Alacon, Exchange Act Rel. No. 49,970, 2004 SEC LEXIS 1422 (July 6, 2004).

¹² Laurie Jones Canaday, Exchange Act Rel. No. 41,250, 1999 WL 183600 at *9 (1999).

trades to a customer who has not agreed to the trades violates the anti-fraud provisions.¹³ The SEC also has found deceptive conduct in violation of the anti-fraud provisions where a salesperson makes misrepresentations to victimized customers in an effort to conceal the salesperson's unauthorized transactions.¹⁴

Here, Respondent failed to apprise his customers that he would be executing unauthorized trades in their accounts, and Respondent sent the customers confirmations of trades that they neither agreed to nor had knowledge of until the confirmations were received. Further, Respondent deceived a customer by telling him that the transactions were in his best interests. (CX-5; CX-6). The SEC 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.¹⁵

The allegations of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent executed 41 unauthorized transactions in the accounts of four customers, JDM, DC, JJM, and CA, without their knowledge or prior authorization, in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110.

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.¹⁶

¹³ Martin Herer Engelman, 1993 SEC LEXIS 3128, at *26 (Nov. 8, 1993), aff'd, Exchange Act Rel. No. 35,729, 1995 SEC LEXIS 1197 (May 18, 1995), aff'd sub nom. Isen v. S.E.C., 87 F.3d 1319 (9th Cir. 1996).

¹⁴ Robert Meledandri, Exchange Act Rel. No. 42,471, 2000 SEC LEXIS 336, at *3 (Feb. 29, 2000) (respondent engaged in deceptive conduct where he told customers that the unauthorized transactions were clerical mistakes).

¹⁵ Robert Lester Gardner, Exchange Act Rel. No. 35,899, 1995 SEC LEXIS 1532, at *1 n. 1 (June 27, 1995).

¹⁶ NASD Sanction Guidelines, p. 103 (2006).

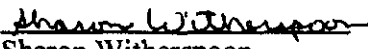
Pointing to the number of unauthorized transactions, Enforcement contended that Respondent's execution of forty-one unauthorized transactions was quantitatively egregious under the National Adjudicatory Council's holding in District Bus. Conduct Comm. No. 10 v. Hellen.¹⁷ Accordingly, Enforcement requested that Respondent be barred.

The Hearing Officer agrees that Respondent's conduct was egregious because the number of unauthorized trades demonstrated a pattern of knowing misconduct. Accordingly, the Hearing Officer accepts Enforcement's recommended sanction. The Respondent is barred from associating with any member firm in any capacity.

V. Order

Respondent Jeffrey S. Weick is barred from associating with any NASD member firm in any capacity for violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110 by intentionally engaging in repeated unauthorized trading in four customer accounts.

The bar shall become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
July 19, 2006

Copies to:
Jeffrey S. Weick (via FedEx and first class mail)
William Brice La Hue, 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)
Andrew A. Favret, Esq. (via electronic and first class mail)

¹⁷ Complaint No. C3A970031 (NAC, June 15, 1999) (egregious unauthorized trading warranting a bar or lengthy suspension includes cases involving numerous unauthorized transactions); see also 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).

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DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFERY WIECK
(CRD No. 4293526)

Respondent.

Disciplinary Proceeding
No. E072004078401

Hearing Officer -

COMPLAINT

Upon information and belief, Complainant alleges as follows:

RESPONDENT

1. Jeffrey Weick ("Weick") entered the securities industry in about October 2000, as a general securities representative of an NASD member. He has been associated with seven NASD members including LH Ross & Company, Inc. ("LH Ross"), where he was employed on two separate occasions most recently during the period from January 2003 until August 2004. He was last registered by Salomon Grey Financial Corporation where he was employed until July 2005. Weick is not currently employed by a NASD member, however he remains subject to the jurisdiction of the NASD pursuant to Article V, Section 4 of the NASD Bylaws.

FOR A CAUSE OF COMPLAINT

Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and NASD

Conduct Rules 2110 and 2120

(Unauthorized Transactions)

2. The allegations contained in paragraph 1 above, are hereby re-alleged and incorporated herein by reference.
3. Weick executed numerous unauthorized trades in multiple customer accounts and overbought trades that were authorized in a pattern of knowing misconduct. Specifically, he entered a total of forty-one (41) unauthorized trades in four (4) customer accounts during a 7-month period from July 2003 to January 2004 while employed by LH Ross.

Customer JDM

4. Customer JDM opened a securities account with LH Ross after receiving a "cold call" in 1999. His account was subsequently transferred to Weick in October 2003.
5. During the period beginning October 9, 2003 and continuing through January 13, 2004, Weick executed a series of transactions as listed below in JDM's account without the prior knowledge and authorization of JDM:

Date	Transaction	Security	Quantity	Price
10/09/03	Sale	Consolidated Mercantile Inc.	941	5.62
10/14/03	Purchase	Amtech Sys Inc. Par \$.01	500	7.42
10/14/03	Sale	Sirius Satellite Radio Inc.	500	2.36
10/23/03	Purchase	Lucent Technologies Inc.	400	2.81
11/18/03	Sale	Lucent Technologies Inc.	400	3.06

12/02/03	Purchase	American Recreational Enterprises, Inc. ¹	1,000	1.1
12/09/03	Sale	Amtech Sys Inc. Par \$.01	500	5.75
12/10/03	Purchase	AREP	500	4.45
12/16/03	Purchase	AREP	90	5.00
01/13/04	Purchase	BVLE	1,025	4.08

Customer DC

6. Customer DC established an account with LH Ross in March 2003, after receiving a "cold call" from Weick. He further transferred approximately \$12,000 and authorized the purchase of 500 shares of IVAX Corp. common stock.
7. During the period beginning July 1, 2003 and continuing through January 31, 2004, Weick executed a series of transactions as listed below in DC's account without the prior knowledge and authorization of DC:

Date	Transaction	Security	Quantity	Price
07/08/03	Sale	Microsoft Corp.	500	27.31
07/10/03	Purchase	Internet Initiative Japan, Inc. ("IIJ")	500	11.489
07/10/03	Purchase	IIJ	200	11.49
07/10/03	Purchase	IIJ	200	11.499
07/10/03	Purchase	IIJ	100	11.487
08/13/03	Sale	IIJ	1,000	5.65
9/16/03	Purchase	Western Digital Corp.	625	11.47
9/22/03	Sale	Western Digital Corp.	625	13.02
9/24/03	Purchase	Western Digital Corp.	600	13.23

¹ On December 11, 2003, American Recreational Enterprises, Inc. ("AREP") completed a share exchange with No Bidding, Inc. (d/b/a Bidville) and was renamed Bidville, Inc. ("BVLE").

10/06/03	Sale	Western Digital Corp.	600	14.30
10/08/03	Purchase	NCE Petrofund I TR ("NCE")	680	12.39
10/17/03	Sale	NCE	680	12.52
10/20/03	Purchase	E M C Corp. Mass	600	12.98
11/03/03	Purchase	ADRX Group	400	20.34
11/03/03	Sale	E M C Corp. Mass	600	13.89
11/18/03	Sale	ADRX Group	400	21.34
11/18/03	Purchase	Blue Rhino Corp. ("RINO")	700	12.13
12/02/03	Purchase	AREP	275	1.10
12/17/03	Sale	RINO	700	13.30
12/19/03	Purchase	AREP	970	4.50
12/22/03	Purchase	AREP	255	5.00
12/31/03	Purchase	AREP	300	1.10
01/08/04	Purchase	AREP	435	5.00
01/14/04	Purchase	BVLE	165	4.18

Customer JJM

8. In July 2003, customer JJM opened a securities account with LH Ross as a result of a "cold call" from Weick. JJM authorized the purchase of 50 shares of IVX, which was sold at a later date.
9. In December 2003, Weick executed two purchase transactions as listed below in JJM's account without the prior knowledge and authorization of JJM:

Date	Transaction	Security	Quantity	Price
12/10/03	Purchase	AREP	1,000	4.45
12/16/03	Purchase	AREP	275	5.00

Customer CA

10. Customer CA established a securities account with LH Ross in July 2003, as a result of a "cold call" from Weick and authorized the purchase of 200 shares of the Provident Energy Trust ("PVX").

11. During the period beginning November 25 and continuing through December 11, 2003, Weick executed a series of transactions as listed below in CA's account without the prior knowledge and authorization of CA:

Date	Transaction	Security	Quantity	Price
11/25/03	Sale	PVX	200	8.25
11/25/03	Purchase	RINO	100	12.169
12/05/03	Purchase	AREP	70	3.20
12/09/03	Sale	RINO	100	12.65
12/11/03	Purchase	AREP	250	4.00

12. The fact that Weick executed unauthorized trades and overbuys without authorization in the accounts of JDM, DC, JJM and CA are material facts and Weick failed to disclose to such customers that he was executing unauthorized trades in their respective accounts.
13. Weick acted with scienter in connection with the unauthorized trading in the accounts of JDM, DC, JJM and CA in that he knew the trading at issue was conducted without authorization or, at a minimum, he was recklessly indifferent to whether the customers had authorized the trades.
14. Weick, by engaging in the conduct referenced in paragraphs 3 through 13, above, with scienter, directly or indirectly, in connection with the offer or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails: 1) employed devices schemes or artifices to defraud; 2) made untrue statements of material fact 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; or 3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

15. The purchase of a larger quantity of stock than was authorized and each unauthorized transaction effected in the accounts of JDM, DC, JJM and CA constitute separate and distinct violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and Conduct Rules 2110 and 2120 by Respondent Weick.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint;
- 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:

December 14, 2005



William B. LaHue, Regional Counsel

Andrew A. Favret, Regional Chief Counsel

NASD Department of Enforcement

Atlanta District Office

One Securities Centre, Suite 500

3490 Piedmont Road, N.E.

Atlanta, GA 30305

(404) 239-6111; Fax No. (404) 264-1586

NASD District Director

Daniel J. Stefek, Director

NASD, Atlanta District Office

One Securities Centre, Suite 500

3490 Piedmont Road, N.E.

Atlanta, GA 30305

(404) 239-6128

Of Counsel

Rory C. Flynn, Of Counsel

NASD Department of Enforcement

1801 K Street, N.W., Suite 800

Washington, D.C. 20006

(202) 974-2974; Fax No. (202) 721-8318

Roger D. Hogoboom, Of Counsel

NASD Department of Enforcement

370 17th Street, Suite 2900

Denver, CO 80202

(303) 446-3114; Fax No. (303) 620-9540