

NASD
OFFICE OF HEARING OFFICERS

RECEIVED
2007 JUN 13 P 3:28
REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PORTER BINGHAM,
(CRD No. 1450227)

and

HAL BUTTS,
(CRD No. 4029277)

Respondent.

Disciplinary Proceeding
No. E072005021301

Hearing Officer: LBB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 12, 2007

INTRODUCTION

Disciplinary Proceeding No. E072005021301 was filed on January 11, 2007, by the Department of Enforcement of NASD ("Complainant"). Respondent Hal Butts submitted an Offer of Settlement ("Offer") to Complainant on May 23, 2007. Respondent Porter Bingham submitted an Offer of Settlement ("Offer") to Complainant on May 29, 2007. 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.

000039165 2007

Under the terms of the Offer, Respondents have 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 understand that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent Porter Bingham ("Bingham") was first registered as a general securities representative in March 1988, while employed by a NASD member firm. He was subsequently registered as a general securities principal in 1997. He was employed by The Malachi Group, Inc. ("Malachi") from December 1996 until April 2006. At all times relevant to this Complaint, Bingham was president and indirect majority owner of Malachi. Bingham is not currently employed by a member and has no prior disciplinary history.

Respondent Hal Butts ("Butts") was first registered with the NASD by Malachi as an introducing broker-dealer/financial and operations principal ("FINOP") in January 2000. He was employed by Malachi from March 1999 until April 2006. His initial registration with the NASD as a FINOP was terminated by Malachi in June 2002, but he was re-registered by Malachi in February 2004, and continued such registration until April 2006. Currently, Butts is registered with the NASD as a FINOP by another NASD member firm. He also has no prior disciplinary history.

FINDINGS AND CONCLUSIONS

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

Malachi was a broker-dealer conducting a securities business and, as such, was required to comply with the minimum net capital requirements set forth in Rule 15c3-1 under the Securities Exchange Act of 1934 ("SEA"). Bingham, as president of Malachi and as designated in Malachi's written supervisory procedures, was responsible for ensuring that Malachi did not conduct a securities business unless it complied with the minimum net capital requirements set forth in SEA Rule 15c3-1. During at least the period from February 2004 until April 2006, Butts, as Malachi's FINOP, was responsible for ensuring Malachi's compliance with SEA Rule 15c3-1. During the period commencing in June 2004 and continuing through June 2005, Bingham and Butts failed to cause Malachi to maintain its required minimum net capital in violation of SEA Rule 15c3-1 on the following dates: June 30, 2004; July 30, 2004; August 30, 2004 and/or September 1, 2004; September 30, 2004; October 29, 2004; November 30, 2004; December 31, 2004; April 18, 2005; and, June 8, 2005.

Malachi was further obligated pursuant to SEA Rule 17a-3 and NASD Rule 3110 to make, keep current and preserve books and records relating to Malachi's business, including trial balances, general ledgers and net capital computations. Malachi was also required pursuant to SEA Rule 17a-5 to prepare and file with the NASD Financial and Operational Combined Uniform Single Reports ("FOCUS"). Bingham and Butts were responsible for ensuring that Malachi complied with the requirements of SEA Rules 17a-3 and 17a-5 and NASD Rule 3110. Bingham and Butts prepared and/or were responsible for the preparation of inaccurate net capital computations, trial balances and general ledgers for Malachi as of the following dates: May 31, 2004; June 30, 2004; July 31, 2004; August 31, 2004; September 30, 2004; October 30, 2004;

November 30, 2004 and December 31, 2004. Bingham and Butts prepared and/or caused the preparation of inaccurate FOCUS reports for Malachi and filed such inaccurate reports with the NASD for the months ending: May 31, 2004; June 30, 2004; July 31, 2004; August 31, 2004; September 30, 2004; October 30, 2004; November 30, 2004 and December 31, 2004.

Malachi was also obligated, pursuant to SEA Rule 17a-11, to provide notification to the NASD and the Securities and Exchange Commission on the day it learned it had, among other things, a net capital deficiency. Bingham and Butts were responsible for ensuring that Malachi complied with the requirements of SEA Rule 17a-11. On November 29, 2004, Bingham and Butts were put on notice that Malachi had a net capital deficiency but they failed to submit telegraphic notice to the NASD and did not file the required notice until January 7, 2005.

Finally, Malachi was required, pursuant to SEA Rule 17a-5(d), to file an annual audit report with the NASD within 60 days of the end of its fiscal year. Bingham was responsible for ensuring that Malachi's annual audit was filed in a timely manner. Malachi's fiscal year ended on September 30. Consequently, Malachi's annual audit for 2004 was due on November 29, 2004. Bingham filed Malachi's annual audit for 2004 with the NASD on January 6, 2005, thirty-seven (37) calendar days late. Bingham further failed to file Malachi's annual audit for its fiscal year ended September 30, 2005.

Based on the foregoing, Respondents Bingham and Butts violated NASD Conduct Rule 2110, each separately.

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 Bingham be fined \$10,000 and suspended from association with any NASD member as a general securities principal for a period of one year and required to re-qualify as a general securities principal prior to acting again in any such capacity. The fine shall be due and payable either immediately upon reassociation with a member firm or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

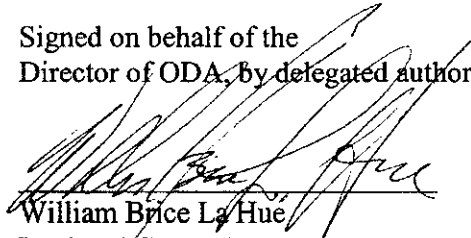
It is further ordered that Respondent Butts be fined \$5,000 fine and suspended from association with any NASD member as a financial and operations principal for a period of 15 business days.

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

SO ORDERED.

NASD

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

A handwritten signature in black ink, appearing to read 'William Brice LaHue', is written over a horizontal line.

William Brice LaHue
Regional Counsel
NASD Department of Enforcement
One Securities Centre, Suite 500
3490 Piedmont Road, N.E.
Atlanta, Georgia 30305
(404) 239-6111; Fax: (404) 264-1586