

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD L. ROSEN
(CRD No. 1643922),

Respondent.

Disciplinary Proceeding
No. E102002179201

Hearing Officer – DRP

DEFAULT DECISION

August 25, 2006

Respondent is barred from associating with any NASD member firm in any capacity for violating NASD Conduct Rule 2110 by selling unregistered securities in violation of Section 5 of the Securities Act of 1933. In light of the bar, no additional sanctions are imposed for: (i) membership agreement violations (NASD Membership and Registration Rule 1017 and Conduct Rule 2110); (ii) continuing education violations (NASD Conduct Rules 1120(a) and 2110); (iii) net capital violation (NASD Conduct Rule 2110); (iv) failure to retain electronic mail (SEC Rule 17a-4(b)(4) and NASD Conduct Rules 3110(a) and 2110); (v) failure to designate a financial and operations principal (NASD Membership and Registration Rule 1022 and NASD Conduct Rule 2110); and (vi) failure to maintain a general ledger (SEC Rule 17a-3 and NASD Conduct Rules 3110 and 2110).

Appearances

Frank M. Weber, Regional Counsel, New York, NY (Rory Flynn, Washington, DC, and Mark P. Dauer, New Orleans, LA, Of Counsel) for Complainant.

No appearance by or for Richard L. Rosen.

DECISION

I. Background

On January 19, 2006, the Department of Enforcement filed a seven-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Richard L. Rosen (Respondent or Rosen), as President and sole full-time employee of former

member Post-Lane & Co., LLC (Post-Lane): (i) sold unregistered securities in violation of Section 5 of the Securities Act of 1933, thereby violating NASD Conduct Rule 2110; (ii) caused Post-Lane to violate its membership agreement with NASD, in violation of NASD Membership and Registration Rule 1017 and NASD Conduct Rule 2110; (iii) failed to comply with continuing education requirements, in violation of NASD Conduct Rules 1120(a) and 2110; (iv) caused a net capital violation by Post-Lane, in violation of NASD Conduct Rule 2110; (v) caused Post-Lane's failure to retain electronic mail, in violation of SEC Rule 17a-4(b)(4) and NASD Conduct Rules 3110(a) and 2110; (vi) caused Post-Lane's failure to designate a financial and operations principal (FINOP), in violation of NASD Membership and Registration Rule 1022 and NASD Conduct Rule 2110; and (vii) caused Post-Lane's failure to maintain a general ledger, in violation of SEC Rule 17a-3 and NASD Conduct Rules 3110 and 2110. Respondent did not file an Answer to the Complaint.

Accordingly, on April 24, 2006, Enforcement filed a motion for entry of default decision, supported by the declaration of counsel and 26 exhibits. Respondent did not file a response to the motion. For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On January 18, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail to Respondent's address, as reflected in the Central Registration Depository (the CRD address).² Respondent did not file an Answer.³

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

² Respondent's CRD address is [REDACTED]. The CRD address matches the address Enforcement found for Respondent in a LexisNexis search.

³ The first-class mailing was returned, marked "Return to Sender/Attempted, Not Known." The certified mailing was returned, marked "Returned to Sender/Moved, Unable to Forward."

On or about February 14, 2006, Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class and certified mail at the CRD address. As before, Respondent did not file an Answer.⁴

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Rule 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent entered the securities industry in 1988 and was registered with several member firms, including D.H. Blair, Hornblower & Weeks, and LT Lawrence. In 1999, Respondent registered with then-NASD member Post-Lane as a general securities representative and general securities principal. On June 2, 2005, NASD cancelled Post-Lane's membership due to its failure to pay fees. Since that time, Respondent has not been associated or registered with any NASD member.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of Respondent's registration with Post-Lane, alleges misconduct that occurred while he was registered.

⁴ The first-class mailing was returned, marked "Returned to Sender/Attempted, Not Known." The certified mailing was returned, marked "Returned to Sender/Moved, Unable to Forward."

IV. Findings of Fact and Conclusions of Law

A. Unregistered Securities Transactions

The first cause of the Complaint charges that during the period of approximately May 2002 through October 2004, Post-Lane, acting through Respondent, violated Section 5 of the Securities Act of 1933 and NASD Conduct Rule 2110, by serving as broker for approximately 28 transactions involving unregistered shares of New York Studio, Inc. (NYS) common stock. In 24 transactions, Post-Lane facilitated transactions in which third parties who owned NYS stock sold shares; Respondent was paid commissions for these transactions. In 4 instances, Post-Lane sold NYS shares it owned. In at least 13 of the 28 transactions, Respondent solicited the purchases. Respondent utilized a means of interstate commerce in connection with the offer or sale of these securities.

Section 5 of the Securities Act of 1933 prohibits the sale of any security unless a registration statement is in effect, or the security is exempt from registration. The burden of proving an exemption falls on the party claiming the exemption.⁵

NYS securities were not registered with the SEC or any state, and no registration statement was in effect.⁶ Respondent failed to produce evidence that the transactions Post-Lane

⁵ *Dep't of Enforcement v. J. Alexander Securities, Inc.*, No. CAF010011, 2005 NASD Discip. LEXIS 42, at *26 (NAC June 14, 2005) (citations omitted).

⁶ The private placement memorandum states that NYS securities were offered pursuant to an exemption from registration limiting the number and types of investors, citing Section 4(2) of the Exchange Act and Rule 506 of Regulation D, promulgated thereunder. Under Rule 502 of Regulation D, such securities could not be resold without registration or an exemption therefrom.

handled were conducted in accordance with any applicable exemption from registration.⁷

Accordingly, the allegations in the first cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated Section 5 of the Securities Act of 1933 and NASD Conduct Rule 2110.⁸

B. Membership Agreement Violations

The second cause of the Complaint charges that Post-Lane, acting through Respondent, violated NASD Membership and Registration Rule 1017 and NASD Conduct Rule 2110.

A firm's membership agreement memorializes the general and specific terms of its NASD membership. Post-Lane's membership agreement required the firm to operate pursuant to the SEC's customer protection rule, by clearing all transactions with and for customers on a fully disclosed basis with its clearing firm and promptly transmitting customer funds and securities to the clearing firm.⁹ In addition, the membership agreement required Post-Lane to maintain a minimum net capital of \$50,000, pursuant to the SEC's net capital rule.

The Complaint alleges that none of the 28 customer transactions in NYS stock was handled through Post-Lane's clearing firm¹⁰ and that in or about February 2003, Post-Lane, through Respondent, ended its agreement with its clearing firm without obtaining another

⁷ According to counsel's declaration, Respondent failed to respond directly to the staff's request that he identify the applicable exemption under which Post-Lane resold the securities. Respondent wrote that according to NYS's attorney, the securities "have been held long period," then cited Rule 15c2-11. Exchange Act Rule 15c2-11 relates to quotations for OTCBB securities and is inapplicable to the charges here. Respondent may have been referring to the Securities Act Rule 144 "holding period" prior to resale of restricted securities that must be met to ensure that Post-Lane was not an underwriter pursuant to Section 2(a)(1) of the Securities Act. Respondent did not provide documents or information regarding the length of time sellers held NYS stock and failed to substantiate any exemption to registration.

⁸ A violation of the Securities Act constitutes a violation of NASD Conduct Rule 2110. *See Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NAC June 2, 2000).

⁹ According to the membership agreement executed by Respondent, Post-Lane would not hold customer funds or securities.

¹⁰ Post-Lane, through Respondent, usually directed customer funds to the attorney for NYS, who then sent stock certificates to the firm's customers.

clearing firm. Furthermore, in at least three transactions involving NYS stock, Post-Lane, through Respondent, improperly caused customer funds to be deposited to the firm's bank account. Finally, the Complaint charges that by depositing customer funds in the firm's account, Respondent increased the firm's net capital requirements to \$250,000 under SEC Rule 15c3-1(a)(2)(i). Each of these allegations, which are deemed admitted, represents a failure to comply with the firm's membership agreement, and thus, each constitutes a violation of NASD Conduct Rule 2110.¹¹

Furthermore, under Rule 1017, a member must file with NASD an application for approval of a "material change in its business operations," which includes, but is not limited to "removing or modifying a membership agreement restriction," or "adding business activities that require a higher minimum net capital."¹² Post-Lane, acting through Respondent, effected material changes in its business operations without filing with NASD an application for approval. Thus, the allegations in the second cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated NASD Membership and Registration Rule 1017 and NASD Conduct Rule 2110.¹³

C. Continuing Education Violations

The third cause of the Complaint charges that Respondent violated NASD Conduct Rules 1120(a) and 2110 by failing to complete the regulatory element of NASD's continuing education requirement.

¹¹ See, e.g., *Sacks Investment Co., Inc.*, Exchange Act Release No. 32,436, 1993 SEC LEXIS 1422, at *15 (June 9, 1993) (a violation of a restriction agreement constitutes a violation of Article III, Section 1, the predecessor to Conduct Rule 2110).

¹² See Membership and Registration Rule 1011(i).

¹³ A violation of a Registration Rule is also a violation of Conduct Rule 2110. *William S. Mentis*, Exchange Act Release No. 37,952, 1996 SEC LEXIS 3192, at *5 (Nov. 15, 1996).

Pursuant to Conduct Rule 1120(a), any registered person who fails to complete the regulatory element of NASD's continuing education requirement within the prescribed time frame will have his or her registration deemed "inactive" until the program requirements are satisfied. An individual whose registration is inactive is prohibited from performing any duties or functions that require registration.

The Complaint alleges that Respondent's registration was inactive between August 19, 2002 and February 14, 2003, due to his failure to complete the continuing education requirement. Although Respondent's registration was inactive during this period, he continued to effect securities transactions for which he received compensation. During this period, Respondent also continued to serve as president of Post-Lane. The allegations in the third cause of the Complaint, which are deemed admitted, are thus sufficient to establish for purposes of this default decision that Respondent violated NASD Conduct Rules 1120(a) and 2110.¹⁴

D. Net Capital Violation

The fourth cause of the Complaint alleges that Post-Lane, through Respondent, effected securities transactions in January 2003 while failing to meet its minimum net capital requirement, in violation of NASD Conduct Rule 2110.

The net capital rule (SEC Rule 15c3-1) requires broker-dealers to maintain specific levels of net capital to "ensure that a firm has on hand at all times sufficient liquid assets to satisfy its indebtedness."¹⁵ The Complaint alleges that Post-Lane operated pursuant to Rule 15c3-1(a)(2)(iv), requiring the firm to maintain a minimum net capital of \$50,000. The Complaint

¹⁴ A violation of an NASD Rule also constitutes a violation of Conduct Rule 2110's ethical obligation to observe high standards of commercial honor and just and equitable principles of trade. *See Steven J. Gluckman*, Exchange Act Release No. 41,628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (other citations omitted).

¹⁵ *FundCLEAR, Inc.*, Exchange Act Release No. 34,735, 1994 SEC LEXIS 2956, at *7 (Sept. 28, 1994) (other citations omitted).

further alleges that the firm's net capital requirement increased to \$250,000 when Respondent accepted and deposited customer funds into Post-Lane's bank account or about January 31, 2003. On that date, Post-Lane's net capital was \$3,341.95.

Pursuant to Rule 15c3-1(a)(2)(i), a broker-dealer that holds funds or securities for its customers must maintain a minimum net capital of \$250,000. On January 31, 2003, the firm was operating with a net capital deficiency. Respondent is liable for the firm's net capital violation, due to his position as president of Post-Lane and his direct involvement in the relevant transactions.¹⁶ Accordingly, the allegations in the fourth cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated NASD Conduct Rule 2110.¹⁷

E. Failure to Retain Electronic Mail

The fifth cause of the Complaint charges that Post-Lane, acting through Respondent, violated SEC Rule 17a-4(b)(4) and NASD Conduct Rules 3110(a) and 2110. Specifically, the Complaint alleges that in 2003 and 2004, Post-Lane did not have an adequate system in place for the retention of electronic mail (e-mail).

NASD Conduct Rule 3110(a) requires all members to retain correspondence and other records in the manner and for the time period prescribed by SEC Rule 17a-4. Rule 17a-4(b)(4) requires that all communications sent and received by a broker-dealer relating to its business be maintained for at least three years, and Rule 17a-4(f)(2)(ii)(A) specifically requires that records stored by means of electronic storage media be preserved in a non-rewritable, non-erasable format.

¹⁶ See *Dep't of Enforcement v. Block*, No. C05990026, 2001 NASD Discip LEXIS 35, at *25-26 (NAC Aug. 21, 2001) (citations omitted).

¹⁷ A violation of the net capital rule constitutes a violation of NASD Conduct Rule 2110. See, e.g., *William H. Gerhauser*, Exchange Act Release No. 40,639, 1998 SEC LEXIS 2402, at *20-21 (Nov. 4, 1998).

The Complaint alleges that during an on-the-record interview, Respondent testified that to the extent he saved e-mail, he merely saved it to his computer; otherwise, he simply deleted e-mail. Respondent's practice of either deleting e-mail or storing it on his computer violates SEC and NASD record-keeping provisions, as he failed to maintain all records in the manner and for the time period prescribed by Rule 17a-4.

Accordingly, the allegations in the fifth cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated SEC Rule 17a-4(b)(4) and NASD Conduct Rules 3110(a) and 2110.

F. Failure to Designate a Financial and Operations Principal

The sixth cause of the Complaint charges that Post-Lane, acting through Respondent, violated NASD Membership and Registration Rule 1022 and NASD Conduct Rule 2110 by failing to designate a financial and operations principal (FINOP) from approximately March 27, 2004, until the firm's membership was cancelled in June 2005.

NASD Membership and Registration Rule 1022 requires NASD member firms to designate a limited principal to perform specific duties related to the firm's financial responsibilities. Because Post-Lane was operating pursuant to SEC Rule 15c3-1(a)(2)(iv), Respondent was required to designate, or be registered as, a limited principal – introducing broker/dealer financial operations (FINOP), pursuant to Membership and Registration Rule 1022(c). Respondent failed to do so for more than a year.

Accordingly, the allegations in the sixth cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated NASD Membership and Registration Rule 1022 and NASD Conduct Rule 2110.

G. Failure to Maintain a General Ledger

The seventh cause of the Complaint charges that Post-Lane, acting through Respondent, failed to create and maintain a general ledger from approximately March 2003 through September 2004, in violation of SEC Rule 17a-3 and NASD Conduct Rules 3110 and 2110.

As provided by SEC Rule 17a-3(2), a firm “shall make and keep current . . . ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.”

NASD Conduct Rule 3110 requires members to “make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws . . . and as prescribed by SEC Rule 17a-3.” Though the responsibility to create the general ledger may have been delegated to the firm’s FINOP, Post-Lane operated without a FINOP for some of the period in question (March to September 2004). During that time, Respondent failed to create any records reflecting the firm’s assets and liabilities, income and expenses and capital accounts. In fact, the firm had no records detailing expenses.

Thus, the allegations in the seventh cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated SEC Rule 17a-3 and NASD Conduct Rules 3110 and 2110.

V. Sanctions

NASD Sanction Guidelines recommend a fine of \$2,500 to \$50,000, plus the amount of respondent’s financial gain, for sales of unregistered securities. In egregious cases, a suspension of up to two years or a bar should be considered.¹⁸ The Guidelines specify three principal considerations in determining specific sanctions for this type of violation: whether respondent attempted to comply with an exemption from registration; whether respondent sold before the

¹⁸ *NASD Sanction Guidelines* at 26 (2006 ed.).

effective date of a registration statement; and the share volume and dollar amount of the transactions involved.¹⁹ Enforcement contends that Respondent's actions were egregious and that he should be barred for his sale of unregistered securities.

Respondent facilitated at least 28 transactions in unregistered securities over a two-year period, raising approximately \$800,000, by serving as broker for transactions where individuals employed by NYS sold stock to others. Respondent produced no evidence that these sales fell within an exemption from registration. Moreover, in some instances, Respondent caused customer funds to be deposited in Post-Lane's account and handled transactions through NYS, rather than through a registered broker-dealer, putting customer funds at risk. Furthermore, Respondent facilitated some of these transactions while his registration was inactive. These separate violations of NASD and SEC rules are aggravating factors that demonstrate a pattern of misconduct. The Hearing Officer concurs that Respondent's misconduct was egregious. Accordingly, Respondent is barred in all capacities for violating NASD Conduct Rule 2110 by selling unregistered securities, in violation of Section 5 of the Securities Act of 1933 and NASD Conduct Rule 2110.

Enforcement recommends a separate suspension and monetary sanction for each of the other violations. Because Respondent will be barred in all capacities for selling unregistered securities, additional sanctions would be redundant and serve no additional remedial purpose.²⁰ Accordingly, no additional sanctions will be imposed for these violations.

¹⁹ *Id.*

²⁰ See *Dep't of Enforcement v. Castle Securities Corp.*, No. C3A010036, 2004 NASD Discip LEXIS 1, at *36-37 (NAC Feb. 19, 2004); *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

VI. Conclusion

Respondent Richard L. Rosen is barred from associating with any NASD member firm in any capacity for violating NASD Conduct Rule 2110 by selling unregistered securities in violation of Section 5 of the Securities Act of 1933. In light of the bar, Respondent will not be further sanctioned for: (i) membership agreement violations (NASD Membership and Registration Rule 1017 and NASD Conduct Rule 2110); (ii) continuing education violations (NASD Conduct Rules 1120(a) and 2110); (iii) a net capital violation (NASD Conduct Rule 2110); (iv) failure to retain electronic mail (SEC Rule 17a-4(b)(4) and NASD Conduct Rules 3110(a) and 2110); (v) failure to designate a financial and operations principal (NASD Membership and Registration Rule 1022 and NASD Conduct Rule 2110); and (vi) failure to maintain a general ledger (SEC Rule 17a-3 and NASD Conduct Rules 3110 and 2110).

The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED,



Dana R. Pisanelli
Hearing Officer

Dated: August 25, 2006
Washington, DC

Copies to: Richard L. Rosen (*via overnight and first-class mail*)
Frank M. Weber, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD LEWIS ROSEN
(CRD No. 1643922),

Respondent.

Disciplinary Proceeding No. E102002179201

Hearing Officer--

COMPLAINT

Upon information and belief, the Department of Enforcement alleges the following:

JURISDICTION

1. Respondent Richard Lewis Rosen ("Respondent") first became registered with NASD as a General Securities Representative ("GSR") through an association with a former member firm on or about April 19, 1988.
2. From on or about March 2, 1999 through on or about June 2, 2005, Respondent was registered as a GSR and as a General Securities Principal ("GSP") through an association with former member firm Post-Lane & Co., L.L.C. (BD No. 46043) ("Post-Lane").
3. At all times relevant to this case, Rosen was the President of Post-Lane. Except for periods of time when Post-Lane employed a part-time Financial and Operations Principal ("FINOP"), Rosen was the only employee of Post-Lane.
4. Post-Lane's registration with NASD was cancelled on June 2, 2005 for failure to pay fees. Post-Lane had previously filed a Form BDW on April 18, 2005.

5. Respondent is not currently registered through or associated with any NASD member firm. However, NASD retains jurisdiction over Respondent pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF COMPLAINT
Unregistered Securities Transactions
(Violations of Section 5 of the Securities Act of 1933 and NASD Conduct Rule 2110)

6. Paragraphs 1 through 5 are re-alleged and incorporated herein by reference.
7. During the period of May 2002 through October 2004, Post-Lane, acting through Respondent, served as broker in connection with approximately 28 transactions involving unregistered shares of common stock of a company known as New York Studios, Inc. ("NYS").
8. Post-Lane, acting through Respondent, offered to sell and sold shares of NYS. In 24 of the 28 transactions, Post-Lane, acting through Respondent, facilitated transactions where third parties who held shares in NYS sold their shares to purchasers. In 4 of the transactions, Post-Lane, acting through Respondent, sold shares that were owned by Post-Lane to purchasers. Respondent was paid commissions for these transactions.
9. Further, with respect to the 28 transactions:
 - a. Respondent facilitated all of the transactions and solicited at least 13 of the purchases.
 - b. Documents obtained from Post-Lane and Respondent stated that the transactions were conducted "without registration under the Securities Act of 1933, in reliance on an exemption from registration."
10. Respondent has not substantiated the claim that the NYS securities in question were exempt from registration.

11. The shares of NYS were not registered with the Securities and Exchange Commission or with any state, and no registration statement was in effect with respect to the shares of NYS.
12. The transactions were not conducted pursuant to an applicable exemption from registration.
13. Respondent utilized the means of interstate commerce in connection with the transactions, including, inter alia, telephone, the mails and bank wires.

By reason of the foregoing, Respondent violated Section 5 of the Securities Act of 1933 and NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT

Membership Agreement Violations

(Violation of NASD Membership and Registration Rule 1017 and Conduct Rule 2110)

14. Paragraphs 1 through 13 are re-alleged and incorporated herein by reference.
15. Post-Lane's membership in NASD was governed at all times by a Membership Agreement memorializing the general and specific terms of the firm's NASD membership.
16. At all relevant times, Post-Lane's Membership Agreement with NASD stated that the firm operated pursuant to SEC Rule 15c3-3(k)(2)(ii) (the Customer Protection Rule), and that the firm was to clear all transactions with and for customers on a fully disclosed basis with a clearing broker or dealer, and promptly transmit all customer funds and securities to the clearing broker or dealer. It further stated that Post-Lane would not hold customer funds or safekeep customer securities.
17. Despite such terms of the Membership Agreement, none of the 28 transactions involving shares of NYS was handled through Post-Lane's clearing broker-dealer.

18. Additionally, in or about January 2003, in at least three transactions involving shares of NYS that were effectuated for customers JS, MV Inc. and BR, Post-Lane, acting through Respondent, improperly accepted customer funds and caused the funds to be deposited into Post-Lane's bank account. As a result, pursuant to SEC Rule 15c3-1(a)(2)(i), Post-Lane's net capital requirement increased to \$250,000.
19. Post-Lane, acting through Rosen, did not seek or obtain approval from NASD to change its net capital requirement, a material change in its business.
20. In or about February 2003, in further violation of its membership agreement, Post-Lane, acting through Respondent, terminated its clearing arrangement with its clearing broker-dealer and had no agreements with any other clearing broker-dealers, although it continued to conduct a securities business.

By reason of the foregoing, Respondent violated NASD Membership and Registration Rule 1017 and Conduct Rule 2110.

THIRD CAUSE OF COMPLAINT
Continuing Education Violations
(Violation of NASD Conduct Rules 3040 and 2110)

21. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.
22. During the period between August 19, 2002 and February 14, 2003, Respondent's registration with NASD was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirement.
23. At a time when Respondent's registration with NASD was inactive, he engaged in the following conduct: (i) served as President of Post-Lane; (ii) participated in at least seven securities transactions, including three transactions in shares of NYS; and (iii) received transaction-based compensation.

By reason of the foregoing, Respondent violated NASD Membership and Registration Rule 1120(a) and Conduct Rule 2110.

FOURTH CAUSE OF COMPLAINT
Net Capital Violation
(Violation of NASD Conduct Rule 2110)

24. Paragraphs 1 through 23 are re-alleged and incorporated herein by reference.
25. In or about January 2003, Post-Lane operated pursuant to SEC Rule 15c3-1(a)(2)(iv) and was required to maintain a minimum net capital requirement of \$50,000.
26. On or about Friday, January 31, 2003, Post-Lane, acting through Respondent, accepted customer funds and caused them to be deposited into Post-Lane's bank account. As a result, pursuant to SEC Rule 15c3-1(a)(2)(i), Post Lane's net capital requirement increased to \$250,000.
27. On that date, Post-Lane's net capital was \$3,341.95, a deficiency of \$246,658.05.
28. Post-Lane effected securities transactions on Friday, January 31, 2003.

By reason of the foregoing, Respondent caused Post-Lane to violate SEC Rule 15c3-1 and thus, Respondent violated NASD Conduct Rule 2110.

FIFTH CAUSE OF COMPLAINT
Failure to Retain E-Mails
(Violation of SEC Rule 17a-4(b)(4) and NASD Conduct Rules 3110(a) and 2110)

29. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.
30. During the period of approximately 2003 and 2004, Post-Lane, acting through Respondent, did not have in place an adequate system for the retention of electronic mail ("e-mail").
31. At a November 19, 2004 on-the-record interview of Respondent, the Staff of NASD District 10 (the "Staff") inquired into Post-Lane's practices and policies with respect to

retention of e-mail. Respondent testified that he deleted e-mails, and to the extent he did save e-mails, they were saved on his computer.

32. Post-Lane, acting through Respondent, did not retain and preserve e-mails in a non-erasable and non-rewritable format.

By reason of the foregoing, Respondent violated SEC Rule 17a-4(b)(4) and NASD Conduct Rules 3110(a) and 2110.

SIXTH CAUSE OF COMPLAINT

Failure to Designate a Financial and Operations Principal (Violation of NASD Membership and Registration Rule 1022 and Conduct Rule 2110)

33. Paragraphs 1 through 31 are re-alleged and incorporated herein by reference.
34. During the time period from on or about March 27, 2004 until the time that Post-Lane's membership with NASD was cancelled on June 2, 2005, Post-Lane, acting through Respondent, failed to designate a Limited Principal – Financial and Operations as required by NASD Membership and Registration Rule 1022.
35. Respondent was not a registered Financial and Operations Principal.

By reason of the foregoing, Respondent violated NASD Membership and Registration Rules 1022 and NASD Conduct Rule 2110.

SEVENTH CAUSE OF COMPLAINT

Failure to Maintain a General Ledger (Violation of SEC Rule 17a-3 and NASD Conduct Rule 2110)

36. Paragraphs 1 through 33 are re-alleged and incorporated herein by reference.
37. During the period of in or about March 2003, through at least September 2004, Post-Lane, acting through Respondent, failed to create and maintain a general ledger for Post-Lane. Specifically, Post-Lane failed to create and maintain ledgers (or other records)

reflecting all assets and liabilities, income and expenses and capital accounts of Post-Lane.

By reason of the foregoing, Post-Lane, acting through Respondent, violated SEC Rule 17a-3 and NASD Conduct Rules 2110 and 3110.

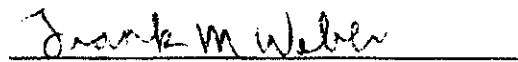
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent in accordance with NASD Procedural Rule 8310;
- C. An order, pursuant to NASD Procedural Rule 8310, requiring Respondent to fully disgorge any 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 and in accordance with NASD Rule 8330; and
- E. An order, pursuant to NASD Procedural Rule 8310, imposing any other fitting sanction.

Dated: January 18, 2006

DEPARTMENT OF ENFORCEMENT



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