

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT FRANKLYN MALIN
(CRD No. 1178312),

Respondent.

Disciplinary Proceeding No.
E102004085602

Hearing Officer - RSH

**ORDER ACCEPTING OFFER
OF SETTLEMENT**

Date: February 27, 2006

INTRODUCTION

Disciplinary Proceeding No. E102004085602 was filed on July 11, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Robert Franklyn Malin ("Respondent") submitted an Offer of Settlement ("Offer") to Complainant on February 7, 2006. 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.*

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 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 understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent first became registered with NASD as a General Securities Representative ("GSR") on or about October 19, 1983 through an association with a former member firm.

From on or about August 26, 1993 through on or about February 27, 2004, Respondent was registered with NASD as a GSR and as a General Securities Principal ("GSP") through an association with former member firm A.B. Watley Inc. (BD No. 797) ("ABW Inc.").

Respondent was President of ABW Inc. from in or about September 1996 until on or about July 2, 2004, when ABW Inc. was expelled from NASD.

From on or about July 22, 2002, to the present date, Respondent has been registered as a GSR, and as a GSP with member firm A.B. Watley Direct, Inc. (BD No. 18663) ("ABW Direct").

Respondent is subject to NASD's jurisdiction because he is currently registered with NASD through an association with a member firm.

FINDINGS AND CONCLUSIONS

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

Respondent was ABW Inc.'s President at all times relevant herein.

In or about January 2003, ABW Inc. obtained a \$5 million subordinated loan from a third party known as LC, LLC ("LC").

In connection with the subordinated loan, on or about January 10, 2003, ABW Inc. initially caused to be filed with NASD a:

- Form SL-6 Secured Demand Note Collateral Agreement for Equity Capital (“SL-6 Collateral Agreement”);
 - Secured Demand Note (“SL-6 SDN”); and
 - Subordination Agreement Investor Disclosure Document between ABW Inc. and LC.
- (collectively, the “Form SL-6 Documents”).

Respondent signed the SL-6 Collateral Agreement and the SL-6 SDN on behalf of ABW Inc. on or about January 8, 2003.

On or about January 8, 2003, on behalf of ABW Inc., former ABW Inc. Financial and Operations Principal (“FINOP”) Craig Feltz (CRD No. 2447886) (“Feltz”) signed a tri-party agreement (the “Side Agreement”) between and among ABW Inc., ABW Inc.’s parent company, A.B. Watley Group, Inc. (“ABW Group”) and LC concerning the SDN.

The terms of the Side Agreement conflicted with the terms of the Collateral Agreement, the SDN and the requirements of Appendix D to the SEC Net Capital Rule, SEC Rule 15c3-1d.(b)(5)(ii) and (iii). The Side Agreement was neither filed with NASD, nor received the written consent of NASD.

Also on or about January 8, 2003, in furtherance of the terms of the Side Agreement, Feltz signed a Limited Power of Attorney (the “POA”) that gave LC limited power of attorney over a bank account containing the funds that served as collateral for the SDN. The POA conflicted with the requirements of the Collateral Agreement, the SDN, and the SEC Net Capital Rule. The POA was neither filed with NASD, nor received the written consent of NASD.

ABW Inc. became aware that in utilizing the Form SL-6 it had filed the wrong forms. Therefore, on or about January 17, 2003, ABW Inc. caused to be filed with NASD a:

- Form SL-3 Secured Demand Note Collateral Agreement (“SL-3 Collateral Agreement”);
 - Secured Demand Note (“SL-3 SDN”); and
 - Subordination Agreement Investor Disclosure Document
- (collectively, the “Form SL-3 Documents”).

Respondent signed the SL-3 Collateral Agreement and the SL-3 SDN on behalf of ABW Inc. on or about January 15, 2003.

Both the SL-3 Collateral Agreement and SL-6 Collateral Agreement provided that “[t]his instrument embodies the entire agreement between [ABW Inc.] and [LC] and no other evidence of such agreement has been or will be executed without prior written consent of NASD.”

The terms of the Side Agreement and POA also conflict with the terms of the SL-3 SDN and the requirements of the SEC Net Capital Rule (including, inter alia, SEC Rule 15c3-1d.(b)(5)). Based on the false representations contained therein, NASD approved the Form SL-3 Documents.

By signing the Form SL-6 Documents and Form SL-3 Documents on behalf of ABW Inc. and causing same to be filed without disclosing to NASD the existence of the Side Agreement and POA and by not obtaining the written consent of NASD for the Side Agreement and POA, Respondent caused false, incomplete and misleading filings to be made with NASD. Respondent either knew or should have known that the

representations he made to NASD were false, incomplete and misleading. Based on the false representations contained therein, NASD approved the Form SL-3 Documents.

By reason of the foregoing, Respondent violated NASD Conduct Rule 2110.

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 be suspended from associating with any NASD member firm in a principal capacity for a period of thirty calendar days and fined in the amount of \$15,000.

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

SO ORDERED.

NASD

By: Frank M. Weber
Frank M. Weber, Regional Counsel
on behalf of the Director of ODA,
pursuant to delegated authority