

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Eric J. Brown
(CRD No. 2203972)

Respondent.

Disciplinary Proceeding
No. E112003006903

Hearing Officer - AHP

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: 6/27/06

INTRODUCTION

Disciplinary Proceeding No. E112003006903 was filed on or about December 5, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Eric J. Brown ("Brown") or ("Respondent") submitted an Offer of Settlement ("Offer") to Complainant on or about June 22, 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

Brown entered the securities industry on or about February 1992 as a general securities registered representative (Series 7). From on or about May 28, 1999 through March 2006

Brown was registered with Prime Capital Services, Inc. ("Prime"). Brown is no longer registered with a member firm. Brown has no prior NASD disciplinary history.

FINDINGS AND CONCLUSIONS

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

A. Violation of NASD Conduct Rules 2310 and 2110 and IM-2310-2: Unsuitable Variable Product Recommendations - Customer RB

The Initial Four Switches

In or about July 2000, a non-brokerage account form at Prime was completed on behalf of customer RB. That form provided that RB was retired and born in [REDACTED]. The form also listed RB's investment objectives as long-term growth and capital appreciation.

Prior to becoming a client of Respondent Brown, RB held three (3) annuity contracts: Allstate policy [REDACTED] (Allstate #1) (purchased in 1998), Allstate policy [REDACTED] ("Allstate #2") (purchased in 1993), and Travelers policy [REDACTED] ("Travelers") (purchased in 1998). RB also held a life insurance policy with Hartford Life [REDACTED] ("Hartford"), which was not Brown's recommendation.

In or about July 2000, Brown recommended that RB surrender her Hartford Life policy and use the proceeds to fund a variable annuity contract. RB agreed, and on or about July 24, 2000, RB liquidated the proceeds from her Hartford Life policy into SunAmerica Polaris II Principal Rewards Variable Annuity contract [REDACTED] ("Sun America") through Anchor National Life Insurance Company ("Anchor") which Brown had recommended. This contract was funded with those proceeds in or about August 2000. Brown received at least \$7,147.49 in commissions based on that transaction.

In or about September 2000, Brown also recommended that RB surrender her Allstate #2 variable annuity contract to purchase another variable annuity contract. RB agreed and in or about October 2000, Brown caused \$389,055.99 from RB's Allstate #2 variable annuity to be

transferred into a new variable annuity contract with American Enterprise Life Signature [REDACTED] ("American Enterprise"). Brown received a commission in the amount of \$14,006.02 based on that transaction.

In addition, in or about December 2000, based upon Brown's recommendation, RB liquidated her Allstate #1 variable annuity totaling \$153,509.57 and her Travelers annuity totaling \$293,959.36 and purchased two Allmerica Select variable annuity contracts [REDACTED] ("Allmerica #1") and [REDACTED] ("Allmerica #2") with those proceeds.

The Allmerica variable annuity contracts provided for similar investment sub-accounts. Indeed, for the period ending March 31, 2001, Brown made the recommendations that the funds be allocated within similar sub-accounts within those two contracts. Specifically, the Allmerica #2 contract held positions within the following sub-account types: International, Aggressive Growth, Growth, Growth & Income and Capital Preservation. For the same time period, Allmerica #1 contract held positions within the same sub-account types.

RB incurred approximately \$21,254.40 in total surrender charges as a result of Brown's recommendations that she surrender her Allstate #1 and Travelers variable annuity contracts to purchase the two Allmerica variable contracts. Brown received at least \$12,887.10 as a result of RB's purchase of the Allmerica variable annuity contracts described above.

The Allmerica Switches

Less than one year later, on or about September 20, 2001, Brown recommended that RB withdraw \$142,000 from the Allmerica #2 contract and place those funds into a Phoenix Home Life Big Edge variable annuity [REDACTED] ("Phoenix #1"), which RB did. The Phoenix #1 contract was funded with these proceeds on or about November 5, 2001. RB incurred \$9,095.10 in surrender charges and Brown received \$4,089.60 in commissions based on the transaction.

In addition, within less than one year from the purchase of the Allmerica #1 contract in September 2001, Brown also recommended that RB withdraw \$72,000 from the Allmerica #1

variable annuity contract and place those funds into another Phoenix Home Life Big Edge variable annuity contract [REDACTED] ("Phoenix #2"). The Phoenix #2 contract was funded with these proceeds on or about November 5, 2001.

RB incurred at least \$6,467.49 in surrender charges as a result of the withdrawal of \$72,000 from the Allmerica #1 variable annuity contract to purchase the Phoenix #2 variable annuity contract. Brown received at least \$2,073.60 in commissions based on the purchase transaction for the Phoenix #2 contract.

In December 2002, which was less than one year from the initial recommendation and purchase of the Allmerica #2 variable annuity contract, Brown recommended that RB liquidate the remaining funds in that variable annuity contract, which RB did. On or about December 12, 2002, based upon Brown's recommendation, RB liquidated the remaining funds in the Allmerica #2 variable annuity contract in the amount of \$123,558.33 and placed those funds into a Jefferson Pilot life insurance policy.

RB incurred \$8,872.94 in surrender charges as a result of the liquidation of the Allmerica #2 variable annuity contract that RB had purchased less than one year before.

Brown also recommended that RB liquidate the remaining funds held in her Allmerica #1 variable annuity contract, which she did. On or about December 30, 2002, based upon Brown's recommendation, RB liquidated the remaining funds in the Allmerica #1 variable annuity contract in the amount of \$69,534.33 and placed those funds into a Jackson National Life variable annuity contract ("Jackson").

RB incurred \$5,173 in surrender and contract fees as result of the liquidation of the remaining funds held in the Allmerica #1 variable annuity contract and Brown received commissions as result of this transaction.

In or about October 2000, Brown also recommended that RB purchase a GE variable annuity contract [REDACTED] which she did and she placed at least \$93,731.98 into that contract in 2000.

From in or about July 2000 until in or about December 2002, Brown recommended and effected transactions on behalf of RB that resulted in RB purchasing seven different variable annuity contracts with five different companies within a two-year period. Brown failed to have a reasonable basis for recommending that RB purchase four variable annuity contracts in 2000, and subsequently recommend that RB partially withdraw, and ultimately completely withdraw, *her funds from two of the variable annuity contracts she purchased in 2000 to fund three new variable annuities and a life insurance policy within less than a two-year period.* The purchase and sale of multiple variable annuities and variable life products was unnecessary, redundant and unsuitable. Brown's recommendations were inconsistent with RB's financial situation, investment objectives, circumstances and needs.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

B. Violation of NASD Conduct Rules 2310 and 2110 and IM-2310-2: Unsuitable Variable Product Recommendations - Customer VC)

In October 2001, VC agreed to become a customer at Prime. On or about October 12, 2001, a non-brokerage new account form at Prime was completed on behalf of customer VC. On that new account form, VC stated that he was retired and was born in 1939. VC's investment objectives were listed as long-term growth and capital appreciation. On or about November 1, 2001, VC's Individual Retirement Account (the "Prime IRA") at Prime showed that he had \$1,121,391.93 in cash and securities in that account. Over the course of less than two years, Brown recommended that customer VC liquidate at least \$1.25 million from his Prime IRA account at Prime in order to purchase variable annuity contracts.

Switch One

In or about November 2001, Brown recommended that VC sell securities from his Prime IRA account and purchase a variable annuity contract. Based on this recommendation, VC completed an application for a variable annuity with Anchor on or about November 10, 2001.

Thereafter, VC caused \$250,000 to be transferred from his Prime IRA account to fund the SunAmerica Polaris Protector variable annuity contract [REDACTED] with Anchor. The Anchor annuity was funded with these proceeds on or about January 11, 2002.

The Letter of Intent to Switch Investments from the Prime IRA account to the Anchor variable annuity provided, among other things, that the change was being made "to provide death benefit guarantee to beneficiaries along with guarantee income benefits."

Brown received approximately \$6,000 in commissions for effecting the transaction.

Switches Two and Three

At or around the same time that Brown was recommending VC purchase the Anchor variable annuity, he also was recommending that he purchase another variable annuity with GE Life & Annuity Assurance Company. Based upon Brown's recommendation, VC agreed to purchase another variable annuity with GE Life & Annuity Assurance Company. On or about November 10, 2001, VC completed an application to purchase the GE-Extra – Variable Annuity ("GE variable annuity"). Thereafter, VC caused a transfer in the amount of \$400,000 from his Prime IRA account to purchase the GE variable annuity. The GE variable annuity was funded with these proceeds on or about January 16, 2002.

Similar to the Letter of Intent to Switch Investments that VC completed for the Anchor variable annuity switch, the Letter of Intent to Switch Investments from the Prime IRA account to the GE variable annuity stated, among other things, that the change was being made "to provide death benefit guarantee and possible bonus on gains."

Brown earned at least \$10,560 in commissions for effecting this transaction.

On or about February 13, 2002, after the second recommendation that VC transfer \$400,000 from VC's Prime IRA account into the GE variable annuity, Brown also recommended and effected another \$100,000 from VC's Prime IRA account and caused those funds to be placed into the established GE variable annuity.

Brown earned at least \$2,640 in commissions for effecting the GE variable annuity transaction.

Switch Four

In January 2002, Brown recommended that VC purchase yet another variable annuity contract, which VC agreed to do. On or about January 14, 2002, Brown recommended that VC use additional funds from his Prime IRA account to purchase another variable annuity. Based upon Brown's recommendation, \$250,000 from VC's Prime IRA account was used to purchase another variable annuity from the Equitable Company ("Equitable"). The Equitable variable annuity was funded with these proceeds on or about February 12, 2002.

Brown received at least \$7,800 in commissions for effecting this transaction.

Switch Five

At the same time that Brown was recommending and VC purchased the Equitable variable annuity to VC, he also recommended that VC purchase another annuity from The Manufacturers Life Insurance Company of North American ("Manulife"). Indeed, based upon Brown's recommendation, VC completed and submitted a Manulife application to purchase the Manulife Venture Vantage variable annuity (the "Manulife variable annuity"). This time, VC caused \$250,000 from the Prime IRA account to be used to fund the Manulife variable annuity, which was funded on or about February 27, 2002.

VC also obtained certain riders associated with the Manulife variable annuity contact that cost VC \$1,078.48 in the first year.

Brown received at least \$7,200 in commissions for effecting this transaction.

February 2003 Partial Switches From VC's Variable Annuities Into Jackson National Variable Annuity Contract

In February 2003, Brown recommended and effected four partial withdrawals from each of VC's existing variable annuity contracts - the Anchor, GE, Equitable, and Manulife variable

annuities - to purchase a fifth variable annuity with Jackson National Life Insurance Company (the "Jackson variable annuity"). On or about February 26, 2003, \$175,000 was placed into the Jackson variable annuity from the Anchor, GE, and Equitable variable annuities, and another \$22,500 was placed into that annuity on March 3, 2003 from the Manulife variable annuity.

Similar to the previously purchased four variable annuities, the Jackson variable annuity had a death benefit guarantee, guaranteed minimum income benefits, and contract enhancement options.

VC incurred surrender charges totaling at least \$6,820.36.

Brown received commissions totaling at least \$7,959.25 relating to the transactions associated with VC's purchase of the Jackson variable annuity.

Unsuitable Variable Annuity Recommendations

From in or about November 2001 until in or about March 2003, Brown engaged in a series of five transfers from customer VC's existing Prime IRA account into four different variable annuity contracts. In February 2003, just two years after purchasing four different variable annuity contracts, Brown engaged in a series of four partial switches from the variable annuity contracts that VC had purchased and placed those proceeds into a fifth variable annuity. Brown failed to have a reasonable basis for recommending that VC liquidate cash and securities totaling \$1.25 million from his Prime IRA account to purchase four different variable annuity contracts with four different companies, and to subsequently take partial withdrawals from those existing four variable annuity contracts to purchase another variable annuity contract within less than a two-year period. The purchase and sale of multiple variable annuities and subsequent liquidations of those variable annuities was unnecessary, redundant and unsuitable. Brown's recommendations to VC were inconsistent with VC's financial situation, investment objectives, circumstances and needs.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2110 and 2310, and IM-2310-2.

C. Violation of NASD Conduct Rule NASD Conduct Rule 2110: Falsification of Records

In or about January 2002, Brown completed an application for VC to purchase the Equitable variable annuity. In completing that application, Brown answered "no" to the question on the application that asked whether VC had any "other existing life insurance or annuities?"

In or about January 2002, Brown completed another application for VC, this time, to purchase the Manulife variable annuity. In completing that application, Brown answered "no" to the question on the application that asked whether VC had "any existing annuities or insurance?"

Brown had previously sold VC other variable annuities. The statements on the applications were false and created a false book and record at Brown's member firm.

By reason of the foregoing, Respondent violated NASD Conduct Rules 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 NASD member firms in any and all capacities for a period of three (3) months;
- Fined in the amount of \$15,000. The fine shall be due and payable either prior to reassociation with a member firm following the three-month suspension noted above, 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; and

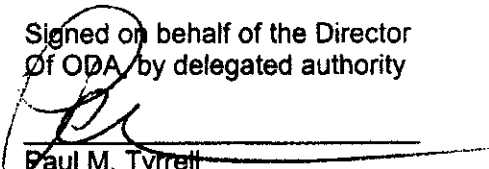
- An order to pay restitution to customer RB the total amount of \$17,653.52, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from February 2003, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable immediately upon reassociation with a member firm following the three-month suspension noted above, 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. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies. If for any reason Respondent cannot locate customer RB, after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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

SO ORDERED.

NASD

Signed on behalf of the Director
Of ODA by delegated authority



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