

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

MICHAEL D. McCLELLAN
Registered Representative
(CRD No. 4369132)

Respondent

**Disciplinary Proceeding
No. E8A2004095001**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

SUMMARY

1. From on or about June 10, 2003, to on or about August 20, 2004, Michael D. McClellan ("McClellan") recommended and effected a total of 329 purchases or sales of equity securities transactions for the individual retirement account of RK, a member of the public, without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for RK, based upon RK's age, net worth, liquid net worth, financial situation and investment objectives, in violation of NASD Conduct Rules 2110 and 2310.

2. On or about February 13, 2006, March 7, 2006, and March 14, 2006, the NASD Staff ("Staff") sent letters to McClellan, pursuant to and in accordance with NASD procedural Rule 8210 requesting information and documentation about the trading in RK's account, but McClellan failed to respond to the requests for information, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

RESPONDENT

3. From on or about October 9, 2001 to on or about February 2, 2005, McClellan was registered as a General Securities Representative with Gregory, Zent & Swanson Inc. ("Member"), a member of NASD. McClellan is not currently associated with any member of NASD. Since this Complaint is filed within two years of the termination of McClellan's registration with the Member, McClellan is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

**FIRST CAUSE FOR COMPLAINT
NASD Conduct Rules 2110 and 2310 -- Recommending and Selling Unsuitable Securities
Transactions to One Member of the Public by McClellan.**

4. Paragraphs number 1 through 3 above are re-alleged and incorporated herein by reference as paragraph 4.

5. During the time in question, RK was a member of the public who had an individual retirement securities account with the Member which was handled by McClellan.

6. In or about May 2003, when RK's individual retirement account was opened, he was 50 years old. The New Account Form that RK signed showed that RK had an annual income of \$20,000 to \$30,000, that he had a net worth of \$150,000 to \$200,000, and that he had securities holdings of \$100,000 to \$150,000.

7. RK's new account form showed that his investment objectives were to purchase securities for long term growth, short term trading and the safety of his principal. Prior to opening this individual retirement account, RK's investment experience was limited to stocks, which he had purchased through his 401(k) account with his former employer for about 10 years, and mutual funds that he had purchased over the past 16 years through other members of NASD.

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8. On or about June 10, 2003, RK deposited the proceeds of his 401(k) account, which totaled \$110,123.44, in to his individual retirement account. On or about July 15, 2003, RK rolled over an annuity that he owned with the Hartford Life Insurance Companies, valued at \$12,312.36, into his individual retirement account at the Member. On or about February 13, 2004, RK rolled over his pension account from Sherwin-Williams, RK's former employer, valued at \$43,689.20, into his individual retirement account with the Member.

9. From on or about June 10, 2003, to on or about August 20, 2004, McClellan recommended and effected a total of 329 purchases or sales of equity securities transactions for the individual retirement account of RK, which constituted excessive trading activity with an annualized turnover ratio of 8.4% (with an overall turnover ratio of 10.51%); an annualized cost-to-equity ratio (break-even return) of 20.19% (with an overall cost-to-equity ratio of 25.24%) and a average holding period of about 47 days and a weighted average holding period of about 44 days.¹ Eight of the equity securities were purchased and sold on the same day, or sold within one day after its purchase. Out of the 139 instances that McClellan purchased and sold securities for the account about 48% of the purchases were held for 30 days or less. Moreover, McClellan purchase 2,000 shares of a pharmaceutical company, called Genta Inc., which comprised 12.3% of RK's account on or about March 31, 2004. The price of the Genta, Inc. stock plummeted from its purchase price of \$9.40 on or about March 25, 2004, to \$2.30 on or about May 31, 2004, about two months later. Such recommendations and purchases and sales were made by McClellan without having a reasonable basis for believing that the recommendations and

1 Of the 350 transactions that were effected in RK's account, 21 transactions were options transactions with the remaining 329 transactions being equity transactions. The analysis presented includes only the equities transactions.

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resultant transactions were suitable for RK, based upon RK's age, net worth, liquid net worth, financial situation and investment objectives.

10. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2310 by McClellan.

**SECOND CAUSE FOR COMPLAINT
Conduct Rule 2110 and Procedural Rule 8210 - Failure to Respond to the Staff's Requests
for Information by McClellan.**

11. Paragraph numbers 1 through 10 above are re-alleged and incorporated herein by reference as paragraph 11.

12. On or about January 24, 2006, NASD staff ("Staff") sent to McClellan a request that he appear for an on-the-record ("OTR") interview scheduled for February 8, 2006, related to RK's complaint that McClellan recommended and effected unsuitable securities transactions to RK, based on his age, net worth, liquid net worth and financial situation, as noted in paragraphs 6 through 9 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail, by certified mail, return receipt requested, and by electronic mail to McClellan's address of record as contained in the records of the Central Registration Depository ("CRD Address"). McClellan appeared for the OTR interview on February 8, 2006. Based on the responses offered by McClellan, the Staff requested additional documents and information during McClellan's OTR interview.

13. On or about February 13, 2006, the Staff sent to McClellan a request letter that he provide documents that were discussed during the OTR interview, which included: a signed statement from a former customer that he previously referred to in a response to the Staff; notes in his possession relating to RK and another customer; electronic mail he sent or received related to his suspension and termination from the Member and RKs complaint that he recommended

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and effected unsuitable securities transactions to RK, based on his age, net worth, liquid net worth and financial situation, as noted in paragraphs 6 through 9 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail, by certified mail, return receipt requested, and by electronic mail to McClellan's CRD Address. The first class mailing was not returned to the Staff. The certified mailing was returned to the Staff marked "Return to Sender - Unclaimed."

14. On or about March 7, 2006, having received no response from McClellan, the Staff sent to McClellan a letter marked "Second Request," that he provide documents that were discussed during the OTR interview, which included: a signed statement from a former customer that he previously referred to in a response to the Staff; notes in his possession relating to RK and another customer; electronic mail he sent or received related to his suspension and termination from the Member and RKs complaint that he recommended and effected unsuitable securities transactions to RK, based on his age, net worth, liquid net worth and financial situation, as noted in paragraphs 6 through 9 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail, by certified mail, return receipt requested, and by electronic mail to McClellan's CRD Address. The first class mailing was not returned to the Staff. The certified mailing was returned to the Staff marked "Return to Sender - Unclaimed."

15. On or about March 14, 2006, having received no response from McClellan, the Staff sent to McClellan a letter marked "Final Request," that he provide documents that were discussed during the OTR interview, which included: a signed statement from a former customer that he previously referred to in a response to the Staff; notes in his possession relating to RK and another customer; electronic mail he sent or received related to his suspension and termination

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from the Member and RKs complaint that he recommended and effected unsuitable securities transactions to RK, based on his age, net worth, liquid net worth and financial situation, as noted in paragraphs 6 through 9 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail, and by certified mail, return receipt requested, to McClellan's CRD Address. The first class mailing was not returned to the Staff. The certified mailing was returned to the Staff marked "Return to Sender - Unclaimed."

16. McClellan failed to respond to each and all of the requests for documents and information described in paragraphs 13, 14 and 15 above, and the time for McClellan to respond has passed.

17. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by McClellan.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

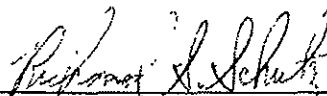
- A. Findings of fact and conclusions of law that McClellan committed the violations charged and alleged herein;
- B. An order imposing sanctions upon McClellan in accordance with NASD Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and,

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D. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

January 26, 2007
Date


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