

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

**JOHN J. STAPLETON,
(CRD No. 2791194)**

Respondent.

**Disciplinary Proceeding
No. E9B2003033501**

Hearing Officer – AHP

**ORDER ACCEPTING
OFFER OF SETTLEMENT**

Date: March 16, 2006

INTRODUCTION

Disciplinary Proceeding No. E9B2003033501 was filed on or about August 9, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent John J. Stapleton ("Stapleton") submitted an Offer of Settlement ("Offer") to Complainant on or about March 14, 2006. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order is now 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

1. Stapleton became registered with NASD as a Series 7 general securities representative on or about September 12, 1996.

2. From on or about July 15, 1996, through on or about January 27, 2004, Stapleton was associated with Continental Broker-Dealer Corp. ("Continental"), which was a NASD member firm from on or about November 9, 1983, until it was expelled from membership on or about May 6, 2004.

3. On or about January 29, 2004, Continental filed a Form U5 on behalf of Stapleton terminating his employment as January 27, 2004.

4. From on or about January 16, 2004, through on or about November 29, 2004, Stapleton was associated with LH Ross & Company, Inc. ("LH Ross"), which was a NASD member firm from on or about September 15, 1995, until it was expelled from membership on or about March 17, 2005.

5. On or about December 17, 2004, LH Ross filed a Form U5 on behalf of Stapleton terminating his employment as of November 29, 2004.

6. Stapleton is currently registered with NASD through Pointe Capital, LLC, an NASD member firm. Accordingly, Stapleton is subject to NASD's jurisdiction.

FINDINGS AND CONCLUSIONS

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

A. Customer JD's Account

1. In or about August 2002, customer JD received an unsolicited telephone call from Stapleton and agreed to open a securities brokerage account (#[REDACTED]) at Continental.

2. Stapleton served as JD's account executive from in or about August 2002 through in or about June 2003.

3. When JD opened his account at Continental, he was thirty-six years old and self-employed as the owner of a meat packing business. In addition, JD had an annual income of approximately \$70,000 and a liquid net worth of approximately \$500,000.

4. Prior to opening this account, JD investment experience was quite limited and he had never utilized options or margin.

5. JD funded this account with several cash deposits totaling approximately \$512,356.

6. When JD opened this account he was interested in growth with minimal risk.

7. While Stapleton served as his account executive, JD relied on Stapleton to make appropriate investment decisions in JD's account.

8. From in or about August 2002 through in or about June 2003, Stapleton, while exercising effective control over customer JD's account, effected or caused to be effected approximately 815 purchases and sale transactions in JD's account as more fully detailed in Schedule A attached hereto.

9. The transactions referred to in paragraph 8 above were excessive, costing a total of approximately \$3.6 million, while the average monthly equity in the account was approximately \$245,000.

10. Stapleton's trading activity in JD's account, from in or about August 2002 through in or about June 2003, generated an annualized Cost-to-Equity Ratio (converted to a percentage) of approximately 83%, an annualized Commission-to-Equity Ratio (converted to a percentage) of approximately 78% and an annualized Turnover Ratio of approximately 16. Accordingly, JD's account would have had to earn, annually, nearly an 83% return just to break even.

11. Between August 2002 and June 2003, JD paid approximately \$175,000 in commissions and approximately \$11,093 in margin interest, while sustaining losses of approximately \$234,000.

12. As part of this course of conduct, Stapleton, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

13. From in or about August 2002 through in or about June 2003, Stapleton, while exercising effective control over customer JD's account (#[REDACTED]), recommended to JD approximately 815 securities transactions involving equities and options, as more fully detailed

on Schedule A attached hereto, without having reasonable grounds for believing that such transactions were suitable for JD in view of the size and frequency of the transactions, the nature of the account and his financial situation, investment objectives and needs.

14. The transactions referred to in paragraph 13 above were excessive, costing a total of approximately \$3.6 million, while the average monthly equity in the account was approximately \$245,000.

15. Stapleton's trading activity in JD's account, from in or about August 2002 through in or about June 2003, generated an annualized Cost-to-Equity Ratio (converted to a percentage) of approximately 83%, an annualized Commission-to-Equity Ratio (converted to a percentage) of approximately 78% and an annualized Turnover Ratio of approximately 16. Accordingly, JD's account would have had to earn, annually, nearly an 83% return just to break even.

16. Between August 2002 and June 2003, JD paid approximately \$175,000 in commissions, while sustaining losses of approximately \$234,000.

17. Many of the transactions referred to in paragraph 13 above were effected through the use of margin and resulted in JD incurring additional costs of approximately \$11,093 in margin interest. In fact, on June 30, 2003, this account had a margin balance of approximately \$432,192 while the account's equity that month was approximately \$199,543.

18. The margin utilized by Stapleton in JD's accounts was unsuitable for JD in view of the size and the nature of the account and JD's financial situation and needs.

19. By reason of the foregoing, Stapleton violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Conduct Rules 2120, 2310, 2860(b)(19) and 2110 and IM-2310-2.

B. Customer GP's Account

1. In or about March 2002, customer GP received an unsolicited telephone call from Stapleton and agreed to open a securities brokerage account (#[REDACTED]) at Continental.

2. Stapleton served as GP's account executive from in or about March 2002 through in or about July 2002.

3. When GP opened his account at Continental, he was sixty-three years old, married and self-employed as the owner of a hardware store. In addition, GP had an annual income of approximately \$90,000 and a liquid net worth which was less than \$50,000.

4. Prior to opening this account, GP's investment experience was quite limited and he had never invested in equities and had not utilized options or margin.

5. GP funded this account with several cash deposits totaling approximately \$62,916.

6. When GP opened this account he sought to preserve his funds and increase his assets.

7. While Stapleton served as his account executive, GP relied on Stapleton to make appropriate investment decisions in GP's account.

8. From in or about March 2002 through in or about July 2002, Stapleton, while exercising effective control over customer GP's account, effected or caused to be effected approximately 180 purchases and sale transactions in GP's account as more fully detailed in Schedule B attached hereto.

9. The transactions referred to in paragraph 8 above were excessive, costing a total of approximately \$364,755, while the average monthly equity in the account was approximately \$14,652.

10. Stapleton's trading activity in GP's account from in or about March 2002 through in or about July 2002, generated an annualized Cost-to-Equity Ratio (converted to a percentage) of approximately 388%, an annualized Commission-to-Equity Ratio (converted to a percentage) of approximately 378% and an annualized Turnover Ratio of approximately 59. Accordingly, GP's account would have had to earn, annually, nearly a 388% return just to break even.

11. Between March 2002 and July 2002, GP paid approximately \$23,067 in commissions and approximately \$599 in margin interest, while sustaining losses of approximately \$62,103. Accordingly, GP lost virtually his entire investment.

12. As part of this course of conduct, Stapleton, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

13. From in or about March 2002 through in or about July 2002, Stapleton, while exercising effective control over customer GP's account (#[REDACTED]), recommended to GP approximately 180 securities transactions involving equities and options, as more fully detailed on Schedule B attached hereto, without having reasonable grounds for believing that

such transactions were suitable for GP in view of the size and frequency of the transactions, the nature of the account and his financial situation, investment objectives and needs.

14. The transactions referred to in paragraph 13 above were excessive, costing a total of approximately \$364,755, while the average monthly equity in the account was approximately \$14,652.

15. Stapleton's trading activity in GP's account from in or about March 2002 through in or about July 2002, generated an annualized Cost-to-Equity Ratio (converted to a percentage) of approximately 388%, an annualized Commission-to-Equity Ratio (converted to a percentage) of approximately 378% and an annualized Turnover Ratio of approximately 59. Accordingly, GP's account would have had to earn, annually, nearly a 388% return just to break even.

16. Between March 2002 and July 2002, GP paid approximately \$23,067 in commissions, while sustaining losses of approximately \$62,103.

17. Many of the transactions referred to in paragraph 13 above were effected through the use of margin and resulted in GP incurring additional costs of approximately \$599 in margin interest. In fact, on May 31, 2002, this account had a margin balance of approximately \$72,062 while the account's equity that month was approximately \$36,394.

18. The margin utilized by Stapleton in GP's accounts was unsuitable for GP in view of the size and the nature of the account and GP's financial situation and needs.

19. By reason of the foregoing, Stapleton violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Conduct Rules 2120, 2310, 2860(b)(19) and 2110 and IM-2310-2.

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 Stapleton be suspended from association with any NASD member in any capacity for sixty (60) business days, fined \$10,000 and ordered to pay restitution to customer JD in the amount of \$104,073.05. Respondent has asserted an inability to pay and has submitted a sworn financial statement. In light of the financial status of the Respondent, restitution amounts ordered, pursuant to this disciplinary action, are due and payable in forty-eight (48) equal monthly installments of \$2,168.19 commencing with the first payment to be made on the 15th day of the month following notice that this Order has been issued. As a precondition to his reassociation with a member firm, Respondent must be current with his restitution payments at the time of application for reassociation. Moreover, Respondent must remain current with his restitution payments while associated with a member firm. Respondent acknowledges that, in accordance with NASD Rules, his failure to make restitution according to the terms of this Order will be grounds for the imposition of a suspension from association with a member firm, until such restitution is paid in full. By the 25th day of each month, Respondent shall furnish the NASD District 9-New Jersey staff with satisfactory proof of payment of restitution to JD.

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 action to obtain restitution or other remedies. If for any reason Respondent cannot locate customer JD after

reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution 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 NASD staff.

SO ORDERED.

NASD

By: 
David B. Klafter, Regional Counsel, on
behalf of the Director of ODA, pursuant to
delegated authority.