

NASD

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

**MEYERS ASSOCIATES, L.P., formerly
known as ROAN-MEYERS & ASSOCIATES,
L.P.**

B/D No. 34171

Respondent.

**Disciplinary Proceeding
NO. EAF0400360003**

Hearing Officer -- AWH

ORDER ACCEPTING OFFER OF SETTLEMENT

INTRODUCTION

Disciplinary Proceeding No. CE2050003 was filed on March 1, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Meyers Associates, L.P. (hereinafter referred to as "Meyers" or "Respondent"), submitted an Offer of Settlement ("Offer") to Complainant on August 19, 2005. 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

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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

Meyers Associates, L.P. (B/D No. 34171), or its predecessors, has been a member of the NASD since 1993. The firm's principal offices are located in New York, New York. The firm has no relevant disciplinary history.

FINDINGS AND CONCLUSIONS

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

On or about March 11, 2003, Mary Nehrig ("Claimant") filed a Statement of Claim against Meyers in an arbitration proceeding styled as *In re Mary Nehrig v. Roan-Meyers Associates, L.P.*, Claim No. 03-01806. Claimant asserted claims of unsuitability, churning, over-concentration, market manipulation and failure to supervise against the firm, its president, and another individual who had been a broker with the firm at that time. Among other things, Claimant alleged that the firm traded her savings in volatile microcap securities that were unsuitable in light of her age, disability, and financial needs.

In June 2003, Claimant served her First Request for Production of Documents and Information ("First Request") on Meyers. The firm failed, however, to respond to the First Request or produce any documents responsive to the First Request. Accordingly, Claimant filed her first Motion to Compel on or about July 29, 2003. On or about August 5, 2003, Meyers filed an opposition to the motion to compel, claiming that it had never received Claimant's First

Request but would respond within 30 days. On August 26, 2003, the arbitration panel issued an order compelling Meyers to **"PRODUCE THE DOCUMENTS** requested in Claimant's First Request no later than Friday, September 12, 2003. It shall not be sufficient for Respondents to simply respond to Claimant's First Request by that date." (Emphasis in original).

On or about August 27, 2003, Meyers produced some documents responsive to Claimant's First Request for Documents, but objected to some of the categories of documents sought by Claimant and failed to produce documents responsive to those requests. Claimant issued a Second Request for Documents on September 19, 2003. Because Meyers failed to produce all of the documents requested in Claimant's First Request for Documents (and ordered to be produced by the arbitration panel), Claimant filed a second Motion to Compel Production of Documents on October 2, 2003. Meyers thereafter filed an opposition to the motion on October 22, 2003, arguing that some of the documents sought by Claimant were not relevant to the claims pending in the arbitration proceeding.

On December 3, 2003, the arbitration panel issued a second order granting Claimant's motion and requiring Meyers to

PRODUCE THE DOCUMENTS requested in Claimant's First Request no later than Monday, December 22, 2003. **If Respondents do not have any documents or categories of documents that have been requested, Respondents or their counsel SHALL PROVIDE TO CLAIMANT'S COUNSEL A STATEMENT TO THAT EFFECT.**

(Emphasis in original). The arbitration panel further ordered that if responsive documents or the statement were not provided by December 22, 2003, "sanctions for non-compliance will be imposed on Respondents at the rate of \$1,000 per day."

Meyers failed to produce any documents, or a statement to Claimant's counsel that the firm did not have the requested documents, by the December 22, 2003 deadline, as required by the arbitration panel's December 3, 2003 Order. Indeed, Meyers did not respond in any manner

until January 13, 2004, and only after Claimant filed a Motion for Sanctions on January 12, 2004. In its January 13, 2004 letter to the arbitration panel, Meyers indicated that documents would be produced to Claimant's counsel by January 16, 2004. Despite this representation, Meyers did not produce any documents responsive to Claimant's First Request until on or about January 21, 2004, at which time it produced only certain of the documents.

Two days after the document production, Claimant submitted a status report on outstanding discovery issues at the request of the arbitration panel. In that status report, dated January 23, 2004, Claimant stated that Meyers still had not produced all documents required by the arbitration panel's December 3, 2003 Order and, accordingly, requested that the *per diem* sanction amount be increased. By letter dated February 4, 2004, counsel for Meyers informed Claimant that additional documents would be produced "within the next day or so." Despite this representation, no additional documents were produced.

The arbitration panel issued another order on February 12, 2004, requiring Meyers to produce by February 20, 2004 any documents requested by Claimant that had not already been produced. The arbitration panel ordered that the sanctions for failure to produce responsive documents by February 20, 2004 would be increased from \$1,000 per day to \$5,000 per day. With respect to any documents that Meyers claimed it was unable to locate, the panel further ordered the firm to:

submit a sworn affidavit to the Panel and counsel for Claimant no later than February 20, 2004 stating with detailed specificity what documents could not be located or no longer exist The affidavit shall be executed by [Meyers'] Chief Executive Officer and additionally shall state that he or she either personally undertook the search for such documents or personally directed such search.

On or about February 17, 2004, Meyers produced some additional responsive documents, as well as a declaration from the firm's "compliance consultant," Charles Lake, which indicated that Mr. Lake had personally searched for, but was unable to locate, certain documents requested by

Claimant. Meyers, however, did not submit an affidavit from the firm's CEO, as required by the arbitration panel's February 12, 2004 Order.

On or about February 25, 2004, Claimant filed a second Request for Sanctions, arguing that Meyers had failed to produce all documents requested by Claimant and had failed to submit an affidavit from its CEO. On March 15, 2004, the arbitration panel issued an order requiring Meyers to pay Claimant \$57,000 in sanctions "for Respondents' willful and intentional failure to comply with the prior Order dated December 3, 2003." The arbitration panel further ordered Respondents to pay \$20,000 in sanctions for their "willful and intentional failure to comply with the affidavit requirement set forth in the Order dated February 12, 2004." Pursuant to the order, the total sanctions amount was to be paid by March 26, 2004, with interest accruing after that date. Meyers failed, however, to pay the sanctions amount by March 26, 2004. In response to Meyers' motion for reconsideration filed on April 8, 2004, the \$20,000 sanction for failure to submit an affidavit from the firm's CEO was reduced to \$10,000.

The parties to the *Nehrig* arbitration ultimately settled the proceeding by way of a stipulated award entered on the record on the day that the hearing was scheduled to begin. Pursuant to the stipulated award, all of the respondents named in the *Nehrig* arbitration agreed to be jointly and severally liable to Claimant and to pay her \$185,000. The stipulated award stated that this amount included the discovery sanctions previously awarded by the panel.

As a result of Respondent's repeated failure to comply with its discovery obligations and to comply with discovery orders issued by the arbitration panel in the *Nehrig* matter as addressed above, Respondent violated IM-10100 and 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 the following sanctions be imposed against Respondent:

1. A censure;
2. A fine in the amount of \$25,000;
3. The firm shall revise its written supervisory procedures to require it to notify all counsel representing the firm in arbitration proceedings of the firm's policy to comply with discovery requirements as set out in the Code of Arbitration Procedure and to comply with all orders of arbitration panels relating to discovery obligations; and
4. Within 60 days of the date of the entry of the Order accepting this Offer, the firm shall confirm to NASD staff that the firm implemented the above procedure. At six months, and again at one year, from the date of entry of the Order accepting this Offer, the firm shall also inform the staff of any arbitrations in which sanctions were issued against the firm for failing to comply with discovery orders issued by an arbitration panel, shall describe the circumstances of the order that led to the sanction, and shall describe the steps taken to address the conduct that led to the sanction.

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

SO ORDERED.

NASD

By: Thomas B. Lawson

Thomas B. Lawson, Esquire

Chief Counsel

on behalf of the Director of ODA, pursuant to
delegated authority