

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM A. MALLOY
(CRD No. 1492864),

Respondent.

**Disciplinary Proceeding
No. ELI2004008101**

Hearing Officer -

Upon information and belief, the Department of Enforcement alleges that:

JURISDICTION

1. Respondent William A. Malloy ("Respondent") first became registered with NASD, as a General Securities Representative ("GSR"), on approximately May 17, 1986.
2. Respondent was registered with Delta Asset Management, LLC ("Delta") during three periods of time: (a) from on or about October 6, 2000 through on or about October 26, 2001; (b) from on or about November 10, 2001 through on or about June 17, 2003; and, (c) from on or about July 14, 2003 through on or about September 29, 2004.
3. On September 29, 2004, Delta filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of Respondent.
4. Respondent is not currently associated with an NASD member firm. However, NASD retains jurisdiction pursuant to Article V, Section 4 of the NASD's By-Laws.

FIRST CAUSE OF COMPLAINT
Transactions for or by Associated Persons
(Violation of NASD Conduct Rules 3050(c) and 2110)

5. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
6. On or about October 23, 2001, customer JB opened an account at member firm, Datek Online Financial Services LLC ("Datek"). Pursuant to a Limited Power of Attorney, Respondent was given and exercised the discretion to trade for the account.
7. From on or about October 31, 2001 through on or about December 19, 2001, Respondent purchased and sold securities for the online account of JB at Datek.
8. During the periods that he was associated with Delta, Respondent engaged in the above-referenced activities without providing written notification to Delta and Datek that he was associated with the other member firm.

By reason of the foregoing, Respondent violated NASD Conduct Rules 3050(c) and 2110.

SECOND CAUSE OF COMPLAINT
Sharing in Accounts
(Violation of NASD Conduct Rules 2330(f) and 2110)

9. Paragraphs 1 through 8 are re-alleged and incorporated herein by reference.
10. As payment for his trading of JB's Datek account, Malloy entered into an agreement with JB to receive a portion of the profits generated in the account. Under the terms of the agreement, Malloy received ten percent of the profits from the Datek account.
11. On or about December 14, 2001, Malloy accepted \$1651.76 as a portion of the profit from trading in JB's account at Datek.

12. On or about January 4, 2002, Malloy accepted \$1509.00 as a portion of the profit from trading in JB's account at Datek.
13. Malloy did not obtain prior written authorization from Delta to accept such compensation and Malloy did not make any financial contribution to JB's Datek account.
14. By receiving the approximately \$3,160.76 from customer JB, Respondent directly, or indirectly, impermissibly shared in the profits of JB's Datek account.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2330(f) and 2110.

THIRD CAUSE OF COMPLAINT

Excessive Trading/Churning

(Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; NASD Conduct Rules 2110, 2120 and 2310(a))

15. Paragraphs 1 through 14 are re-alleged and incorporated herein by reference.
16. In or about January 2002, customers PB and JB opened accounts [REDACTED] and [REDACTED] at Delta. The accounts were each opened with approximately \$150,000.
17. At least a portion of the funds for the trading in Accounts [REDACTED] was comprised of money from a mortgage that PB and JB took out on their home.
18. At the time that they opened the Delta accounts, PB and JB were, respectively, 64 years old and 65 years old. Their estimated combined income was between \$100,000 and \$250,000 and estimated net worth between \$150,000 and \$999,999. Their investment objectives were "Income," and "Long term growth with safety."

19. For both accounts, PB and JB completed Limited Trading Authorization forms pursuant to which they gave Respondent authority to make purchases and sales in the accounts. Respondent had trading authority over both accounts and made all the trades for the accounts.
20. From January 2002 through March 2002, the trading in Account [REDACTED] generated approximately \$43,594.01 in commissions. During that same period, the trading in Account [REDACTED] generated approximately \$41,236.78 in commissions.
21. By the end of March 2002, the balance in Account [REDACTED] was approximately \$15,837.25 and the balance in Account [REDACTED] was approximately \$15,038.65.
22. For the period of approximately January through March 2002, for Account [REDACTED] the cost-to-equity ratio, which is calculated by dividing the total of all transaction costs incurred in an account by the average equity in the account, was 264% annualized.
23. The turnover rate in an account measures the number of times during a given period that the securities in the account are replaced by new securities, and is calculated by dividing the total cost of purchases by the average equity in the account. The annualized turnover rate for Account [REDACTED] was 1703.
24. For the period of approximately January through March 2002, for Account [REDACTED] the cost-to-equity ratio was 250% annualized. The annualized turnover rate for the account was 1598.
25. The level of activity in Accounts [REDACTED] was inconsistent with PB's and JB's objectives and financial situation.

26. By virtue of this conduct, Respondent, by the use of any means or instrumentality of interstate commerce or of the mails, intentionally or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and intentionally or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances.

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

FOURTH CAUSE OF COMPLAINT
Settling Customer Complaint Away From Member Firm
(NASD Conduct Rule 2110)

27. Paragraphs 1 through 26 are re-alleged and incorporated herein by reference.

28. Upon learning of the losses in the Delta accounts, Accounts [REDACTED] customer PB complained to Respondent.

29. After PB complained to Respondent, Respondent settled the complaint by the following actions: (i) on or about June 26, 2002, Respondent wired \$5,000 from his personal bank account to customer JB's bank account; (ii) on or about July 28, 2003, Respondent wired \$1,000 from his personal bank account to customer JB's bank account; and, (iii) agreed to repay PB and JB a total of \$400,000 through monthly payments of \$40,000. This amount included the \$300,000 investment plus the \$100,000 in expected interest income from the investment.

30. Respondent failed to make any payments pursuant to his agreement to pay \$400,000 to PB and JB.

31. Respondent took all of these actions to settle PB's and JB's complaint without the knowledge or consent of Delta.

By reason of the foregoing, in each and every action he took to settle PB's and JB's complaint, Respondent violated NASD Conduct Rule 2110.

FIFTH CAUSE OF COMPLAINT

Failure to Respond

(Violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

32. Paragraphs 1 through 31 are re-alleged and incorporated herein by reference.

33. On September 24, 2004, an arbitration panel rendered an award in NASD Arbitration Case No. 03-07133 against Respondent in the amount of \$167,000.00, plus interest. The arbitration case, brought by customer Longmead Properties, LTD., alleged various improper activities, including unauthorized trading, churning and fraud by Respondent in connection with trading in an account at Delta.

34. On November 17, 2004, NASD commenced a proceeding pursuant to NASD Procedural Rule 9554 seeking to suspend Respondent's registration based on his failure to satisfy the arbitration award. On January 10, 2005, this proceeding was dismissed without prejudice based on Respondent's demonstrated inability to pay the arbitration award.

35. In connection with Respondent's stated inability to pay, NASD staff in District 2 (the "Staff") sought more current information from Respondent, pursuant to

NASD Procedural Rule 8210, through requests for information to ascertain whether Respondent was now able to satisfy the arbitration award.

The First Request

36. On or about October 4, 2005, the Staff forwarded to Respondent, a request pursuant to NASD Procedural Rule 8210, to determine Respondent's current financial status and his ability to pay the arbitration award (the "First Request").
37. The request was sent by certified and regular first class mail to [REDACTED] [REDACTED] which is Respondent's current residential address as reflected on the Central Registration Depository ("CRD Address").
38. A response to the First Request was due on or before October 31, 2005. Respondent failed to respond.

The Second Request

39. On or about November 18, 2005, the Staff forwarded, pursuant to NASD Procedural Rule 8210, a second request that Respondent provide financial information (the "Second Request").
40. The Staff sent the Second Request by certified and regular first class mail to the CRD Address.
41. A response to the Second Request was due on or before December 2, 2005. On December 2, 2005, the Staff received a partial response to the Second Request which failed to include documents pertaining to two of Respondent's bank accounts.

The Third Request

42. On or about December 13, 2005, the Staff forwarded, pursuant to NASD Procedural Rule 8210, a third request that Respondent provide the missing bank documents (the "Third Request").
43. The Staff sent the Third Request by certified and regular first class mail to the CRD Address.
44. A response to the Third Request was due on or before January 12, 2006. Respondent failed to respond.

The Fourth Request

45. On or about January 18, 2006, the Staff forwarded, pursuant to NASD Procedural Rule 8210, a fourth request again asking that Respondent provide the missing bank documents (the "Fourth Request").
46. The Staff sent the Fourth Request by certified and regular first class mail to the CRD Address.
47. A response to the Fourth Request was due on or before February 6, 2006. Respondent failed to respond.
- By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;

- B. An order imposing sanctions upon Respondent in accordance with NASD Rule 8310;
- C. An order requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: May 15, 2006



Vaishali S. Shetty, Regional Counsel
David Jaffe, Regional Chief Counsel
NASD Department of Enforcement
Two Jericho Plaza
Jericho, New York 11753
(516) 949-4237; Fax No. (516) 949-4201

NASD Deputy District Director

Patricia A. Cappeto
NASD, District 10, Long Island
Two Jericho Plaza
Jericho, New York 11753
(516) 949-4237; Fax No. (516) 949-4201

Of Counsel

Rory C. Flynn, Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974; Fax No. (202) 721-8318

Roger D. Hogoboom, Of Counsel
NASD Department of Enforcement
370 17th Street, Suite 2900
Denver, CO 80202
(303) 446-3114; Fax No. (303) 620-9540