

NASD
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SCOTT HOWARD ROSS
(CRD No. 2399201),

Respondent.

Disciplinary Proceeding
No. ELI20040220-02

Hearing Officer -- RSH

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: September 26, 2005

INTRODUCTION

Disciplinary Proceeding No. ELI020040220-02 was filed on August 8, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Scott Howard Ross ("Ross") submitted an Offer of Settlement ("Offer") to Complainant on September 20, 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.

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Under the terms of the Offer, Respondent Ross 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 his permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent Ross first became registered with NASD as a General Securities Representative ("GSR") on or about December 15, 1993, through his association with an NASD member firm. From August 22, 2003 through June 28, 2004, Ross was registered with NASD as a GSR through his association with his last employer firm, LH Ross & Company, Inc. (BD No. 37920) ("LH Ross"). Ross is not currently registered with any NASD member firm. However, he remains subject to NASD's jurisdiction pursuant to Article V, Section 4 of NASD's By-Laws.

FINDINGS AND CONCLUSIONS

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

- (1) From on or around March 23, 2004, through on or around April 13, 2004, while registered with NASD through member firm LH Ross, Respondent effected or caused to be effected the following five transactions in the joint account of LH Ross customers SP and CP:
 - (a) the purchase of 5,000 shares of TIBCO Software, Inc. ("TIBX") on March 23, 2004;
 - (b) the sale of 2,500 shares of TIBX on April 12, 2004;
 - (c) the purchase of 9,000 shares of Tegal Corp. ("TGAL") on April 12, 2004;
 - (d) the sale of 9,000 shares of TGAL on April 13, 2004;
 - (e) the purchase of 5,500 shares of Kopin Corp. ("KOPN") on April 13, 2004.

Respondent effected or caused to be effected each of these five transactions without the prior knowledge, authorization, or consent of LH Ross customers SP and CP. The five unauthorized transactions resulted in total commission charges to SP and CP in the amount of \$6,525.

Based on the foregoing, Respondent violated NASD Conduct Rule 2110.

(2) The staff of NASD ("the Staff") sent Ross a request on November 1, 2004, pursuant to NASD Procedural Rule 8210, to appear for an on-the-record interview ("OTR") on November 23, 2004. The request was sent via first class mail and certified mail to his residential address as reflected on the Central Registration Depository ("CRD"), as confirmed by an Equifax search: [REDACTED] ("the CRD Address"). The Staff received confirmation that the certified mailing was received by Ross. Ross failed to contact the Staff by the close of business on November 9, 2004, to confirm that he would appear for the scheduled OTR.

The Staff sent Ross a second request on November 10, 2004, pursuant to NASD Procedural Rule 8210, to appear for an OTR on November 23, 2004. The request was sent via first class mail, Federal Express, and certified mail to the CRD Address. The Staff received confirmation that the Federal Express mailing was received by Ross. Ross failed to contact the Staff by the close of business on November 19, 2004, to confirm that he would appear for the scheduled OTR. On November 23, 2004, the date of the scheduled OTR, at 8:30 a.m., Ross left a voicemail message indicating that his attorney had a last minute scheduling conflict and that, at the advice of counsel, he would not be appearing for the scheduled OTR that day. The Staff contacted Ross at the telephone

number that he left for the Staff and re-scheduled the OTR for December 17, 2004, at 9:30 a.m.

The Staff sent to Ross a third request on December 8, 2004, pursuant to NASD Procedural Rule 8210, confirming that Ross was required to appear for an OTR on December 17, 2004, at 9:30 a.m. The request was sent via first class mail, Federal Express, and certified mail to the CRD Address. Once again, the Staff received a confirmation that the Federal Express mailing was received by Ross. Ross failed to contact the Staff by the close of business on December 14, 2004, to confirm that he would appear for the OTR re-scheduled for December 17, 2004. The Staff left Ross voicemail messages on December 14, 15, and 16, 2003, requesting him to contact the Staff in order to confirm that he would appear for the re-scheduled OTR on December 17, 2004. Ross failed to contact the Staff and failed to appear for the OTR on December 17, 2004.

By reason of the foregoing, Ross violated NASD Procedural Rule 8210 and NASD Conduct 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 Ross 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 Ross is barred from associating with any member firm in any capacity.

Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval of this Order by the NAC.

SO ORDERED.

NASD

Signed on behalf of the
Director of ODA, by delegated authority



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