

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant.

v.

SCOTT HOWARD ROSS
(CRD No. 2399201),

Respondent.

Disciplinary Proceeding

No. **ELI2004022002**

Hearing Officer _____

COMPLAINT

Upon information and belief, Complainant, the Department of Enforcement, alleges the following:

JURISDICTION

1. Respondent Scott Howard Ross ("Ross" or "Respondent"), 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.
2. 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").
3. Ross is not currently associated with any NASD member firm. However, he remains subject to NASD's jurisdiction pursuant to Article V, Section 4 of NASD's By-Laws.

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FIRST CAUSE OF COMPLAINT
(Unauthorized Transactions)
(Violation of NASD Conduct Rule 2110)

4. Paragraphs one through three are re-alleged and incorporated herein by reference.
5. 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.
6. 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.
7. 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.

SECOND CAUSE OF COMPLAINT
(Failure to Provide Testimony)
(Violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

8. Paragraphs one through seven are re-alleged and incorporated herein by reference.
9. 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.

10. 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.
11. 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.
12. 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, 2004, 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.

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 imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330;

- D. An order requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- E. An order imposing any other fitting sanction.

Dated: August 8, 2005

DEPARTMENT OF ENFORCEMENT



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