

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CARMINE DEPALMA
(CRD No. 1838261),

Respondent.

**Disciplinary Proceeding
No. ELI20040233-01**

Hearing Officer

COMPLAINT

The Department of Enforcement ("Complainant") alleges as follows:

JURISDICTION

1. Respondent Carmine DePalma (CRD No. 1838261) ("Respondent") first became registered with NASD as a General Securities Representative in March 1989 through a former NASD member firm.
2. During the time period March 1989 to September 2003, Respondent has been registered with NASD as a General Securities Representative through several NASD member firms. From September 2001 through September 2003, Respondent was registered as a General Securities Representative through Ryan Beck & Co., LLC ("Ryan Beck" or "the firm") (BD No. 3248), where he was associated during the time of the alleged misconduct.
3. On September 25, 2003, the firm filed a Form U-5 Uniform Termination Notice for Securities Industry Registration reflecting Respondent's voluntary termination from the firm. On November 18, 2003, the firm filed a Form U-5 Amendment disclosing its receipt of a customer complaint containing the allegations that form the basis of this Complaint.

4. Respondent is not currently registered with NASD and upon information and belief, is not employed in the securities industry. Pursuant to Article V, Section 4 of its By-Laws, NASD retains jurisdiction over Respondent.

BACKGROUND

5. In October 2002, GP was a 46-year-old widow, whose husband was tragically killed on November 12, 2001, when American Airlines Flight 587, bound for the Dominican Republic from Kennedy Airport, crashed into the home of GP and her husband in Belle Harbor, Queens, New York.
6. At that time, Respondent, who had been introduced to GP by her deceased husband's cousin, recommended to GP that she open an account with him at Ryan Beck, which she did on October 18, 2002.
7. GP was employed as a public school special education instructor with an annual income of approximately \$80,000. She had no investment experience or any traditional brokerage accounts. Her liquid net worth at the time was approximately \$700,000, about \$500,000 of which consisted of the combined proceeds of her husband's life insurance policy and their homeowner's policy. The proceeds from her husband's life insurance policy were invested in a money market type account at another NASD Member Firm.
8. In the discussions leading up to GP's account opening, GP explained to Respondent that she was interested in finding a safe, totally riskless investment for the insurance proceeds that would provide her with a rate of return higher than the marginal interest she was currently earning from her money market type account and her bank. She further

explained to Respondent that she would need these proceeds sometime during 2003 to either rebuild her house or buy a new one.

9. During their discussions, Respondent recommended to GP that, in conjunction with opening her Ryan Beck account, she invest in a private placement for a company called Dynamic Motion Imaging Partners LLC ("DMI"), a provider of mobile video imaging services used to diagnose cervical and spinal ailments.
10. Respondent was the President, Chief Executive Officer and Chairman of the Board of DMI. Respondent received periodic compensation from DMI for executing his responsibilities, which included managing DMI's operations and raising capital to support the firm's operations.
11. As a result of Respondent's recommendation, GP decided to invest \$200,000 in DMI through a purchase of "Membership Shares of the Company's Series A 8 3/8% Notes" ("the DMI Notes"). Respondent explained to GP that under the terms of her purchase, in one year's time she would receive her principal plus the stated interest of 8.375%.
12. In order to effectuate the purchase of the DMI Notes, Respondent required GP to execute an eight page Purchase Agreement that contained numerous provisions of a boilerplate nature relating to the terms and conditions of the purchase but did not contain any language describing the risk factors associated with the purchases.
13. On October 18, 2002, the same day she opened her Ryan Beck account, GP executed the Purchase Agreement in her home in Respondent's presence. Shortly thereafter, she arranged to have her bank wire the \$200,000 purchase price to DMI.

14. On December 6, 2002, Respondent persuaded GP to make a second \$200,000 investment in DMI notes. The terms of this investment included interest of 6.25% due in six or seven months.
15. Both of GP's \$200,000 private placement investments in the DMI notes were made outside of her Ryan Beck account.
16. On December 16, 2002, Respondent completed, executed and submitted to Ryan Beck a compliance questionnaire that contained a question asking firm employees whether they maintained employment or a business outside of Ryan Beck. In response, Respondent checked the "No" box.

FIRST CAUSE OF COMPLAINT
(Qualitative Unsuitability)
(Violation of NASD Conduct Rules 2310 and 2110)

17. Paragraphs 1 through 16 are re-alleged and incorporated herein by reference.
18. In recommending the above-referenced DMI Notes, Respondent lacked reasonable grounds to believe the purchases of such notes were suitable for GP, in light of her financial situation, investment objectives and needs
19. GP sought a riskless investment that would preserve her principal and provide her with a rate of return greater than what she had currently been earning. Instead, Respondent recommended that she invest in DMI, a start up venture whose future profitability and ability to fulfill its debt obligations under the Notes were speculative at best, and which presented substantial risks.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2310 and 2110.

SECOND CAUSE OF COMPLAINT
(Private Securities Transaction)
(Violation of NASD Conduct Rules 2110 and 3040)

20. Paragraphs 1 through 19 above are re-alleged and incorporated herein by reference.
21. During the period encompassing the activities described in paragraphs 1 through 16 above, Respondent solicited, accepted and processed investments in DMI on behalf of DMI from GP.
22. The DMI Notes constitute securities in that Respondent solicited investments in the DMI Notes from GP to fund DMI's general business operations and GP invested in the DMI Notes primarily to generate a profit.
23. Respondent did not provide written notice to, nor receive written approval from, Ryan Beck prior to engaging in the private securities transactions involving the DMI Notes.

By reason of the foregoing, Respondent violated NASD Conduct Rule 2110 and NASD Conduct Rule 3040.

THIRD CAUSE OF COMPLAINT
(Failure to Disclose Outside Business Activities)
Violation of NASD Conduct Rules 3030 and 2110

24. Paragraphs 1 through 23 above are re-alleged and incorporated herein by reference.
25. During the period encompassing the activities described in paragraphs 1 through 16 above, Respondent owned and operated and was the President, Chief Executive Officer and Chairman of the Board of DMI. He solicited, accepted and processed investments on behalf of DMI and received compensation from DMI.
26. Respondent did not provide Ryan Beck with any written notice of the activities described in paragraph 25, above.

By reason of the foregoing, Respondent violated NASD Conduct Rules 3030 and 2110.

FOURTH CAUSE OF COMPLAINT
(Falsification of Records)
Violation of NASD Conduct Rule 2110

27. Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.
28. On October 21, 2002 and December 6, 2002, Respondent provided GP with confirmations that purported to reflect the relevant terms of her two investments in DMI Notes and that bore the corporate insignia of an entity named International Wealth Management, Ltd. ("IWM") when, in fact, IWM had no connection to these transactions, thereby creating a false record. IWM is a New York corporation that Respondent founded for the sole purpose of facilitating the acquisition of a lease.

By reason of the foregoing, Respondent violated NASD Conduct Rule 2110.

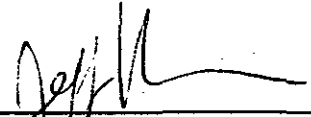
PRAYER FOR RELIEF

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. An order imposing sanctions upon Respondent in accordance with NASD Rule 8310;

- 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.

Dated: November 17, 2005

DEPARTMENT OF ENFORCEMENT



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