

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CARMINE DePALMA
(CRD No. 1838261),

Respondent.

Disciplinary Proceeding
No. ELI20040233-01

Hearing Officer – DRP

DEFAULT DECISION

August 7, 2006

Respondent is barred from association with any NASD member firm in any capacity for making unsuitable recommendations, in violation of NASD Conduct Rules 2310 and 2110. In light of the bar, no further sanctions are imposed for engaging in private securities transactions, in violation of Conduct Rules 3040 and 2110; failing to disclose outside business activities, in violation of Conduct Rules 3030 and 2110; and falsifying records, in violation of Conduct Rule 2110.

Appearances

Jeff Kern, Regional Counsel, New York, NY (Mark P. Dauer, New Orleans, LA, and Rory C. Flynn, Washington, DC, Of Counsel) for Complainant.

No appearance by or for Carmine DePalma.

DECISION

I. Background

On November 17, 2005, the Department of Enforcement filed a four-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Carmine DePalma (Respondent or DePalma): (i) made unsuitable recommendations, in violation of NASD Conduct Rules 2310 and 2110; (ii) engaged in private securities transactions without providing his employer prior written notice, in violation of NASD Conduct Rules 2110 and

3040; (iii) failed to disclose outside business activities, in violation of NASD Conduct Rules 3030 and 2110; and (iv) falsified records, in violation of NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

Accordingly, on March 3, 2006, Enforcement filed a motion for entry of default decision supported by the declaration of counsel and five exhibits.¹ For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On November 17, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail to Respondent's residential address, as reflected in the Central Registration Depository (the CRD address),³ another residential address Respondent provided to Enforcement during the investigation (alternate address),⁴ and to Respondent's business address.⁵ Respondent did not file an Answer.⁶

¹ The Hearing Officer issued an Order on February 1, 2006, setting a March 3 deadline for Enforcement's motion for entry of default decision, which was served on Respondent at his CRD and business addresses. Respondent phoned the Office of Hearing Officers (OHO) on March 2, 2006, and said that he might file a response to the forthcoming motion for entry of default decision. He did not file a response or contact OHO again.

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

³ Respondent's CRD address is [REDACTED]

⁴ The alternate address Respondent provided is [REDACTED]

⁵ The business address, 487 East Main Street, Suite No. 340, Mount Kisco, NY 10549, is where Dynamic Motion Imaging Partners LLC (DMI) is located.

⁶ The receipt from the certified mailing to the CRD address was returned bearing an illegible signature; the first-class mailing was not returned. The certified mailing to the alternate address was returned marked "UTF" (Unable to Forward), and "Forwarding Order Expired." The first-class mailing was not returned. The receipt from the certified mailing to the business address was returned, signed "Robert C. Miller." The first-class mailing was not returned.

On or about December 27, 2005, Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class and certified mail sent to the same three addresses. As before, Respondent did not file an Answer.⁷

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, along with copies to the residential address he provided and to the address for the business with which he was affiliated. Respondent thus had constructive notice of this proceeding.⁸ Moreover, as evidenced by his telephone call to OHO, Respondent had actual notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent, who is not currently associated or registered with any NASD member, entered the securities industry in March 1989 and was registered with several firms before joining NASD member Ryan Beck & Co. (Ryan Beck or the firm) in September 2001. Respondent was registered as a general securities representative and general securities principal with Ryan Beck until his registration was terminated on September 25, 2003. On November 18, 2003, Ryan Beck filed an amended Form U-5 (Uniform Termination Notice) to disclose

⁷ The receipt from the certified mailing to the CRD address was returned bearing a different illegible signature; the first-class mailing was not returned. Both mailings to the alternate address were returned, marked "Forwarding Order Expired." The receipt from the certified mailing to the business address was returned, signed "P. Pappas," while the first-class mailing was not returned.

⁸ It is well settled that NASD Procedural Rule 9134(b)(1) provides for constructive notice by mailing a complaint to the respondent's most recent address. *See, e.g., Lubeck v. SEC*, 156 F.3d 1237 (9th Cir. 1998) (NASD complied with notice requirements by mailing complaint to respondent's last known address); *Eric M. Diehm*, 51 S.E.C. 938, 941 n.14 (1994). Furthermore, it was Respondent's responsibility to provide CRD with any new address, even after he left the industry. *Dep't of Enforcement v Hodde*, No. C10010005, 2002 NASD Discip LEXIS 4, at *12 (NAC Mar. 27, 2002). In any event, Enforcement served Respondent at the address he provided and a business address.

allegations by customer GP that, while registered with Ryan Beck, Respondent made unsuitable recommendations.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the filing of the amended Form U-5, alleges misconduct that occurred while he was registered.

IV. Findings of Fact and Conclusions of Law

In or about October 2002, a family member introduced GP to Respondent. At the time, GP was a 46-year-old widow whose husband had been killed the previous year when a commercial airliner crashed into their home in Queens, New York. GP had an annual income of approximately \$80,000 from her salary as a public school special education teacher. Her liquid net worth of \$700,000 primarily consisted of the combined proceeds from her late husband's life insurance policy and their homeowner's policy. GP had little investment experience.

GP told Respondent she was interested in a safe, short-term investment that would provide a higher return than the 2% she was earning in a money market account. GP wanted the principal and interest to be readily available in the coming year to allow her to rebuild her home or purchase a new one.

Based on Respondent's recommendation, GP opened a brokerage account at Ryan Beck. Respondent also recommended that GP invest in a private placement for Dynamic Motion Imaging Partners LLC (DMI), a start-up company that provided mobile video imaging services to diagnose cervical and spinal disorders. Respondent, who was CEO, Chairman and President of DMI, received periodic compensation for managing, and raising capital to support, DMI's operations. Respondent did not disclose his role in DMI to GP, nor did he provide written notice to, or receive approval from, Ryan Beck regarding his employment with, and compensation

from, DMI. In fact, in December 2002, Respondent submitted to Ryan Beck a completed compliance questionnaire in which he wrote “no” when asked whether he maintained a business or was employed outside of the firm.

Based on Respondent’s recommendation, GP invested \$200,000 in DMI in October 2002, through a purchase of membership shares of the company’s Series A 8 3/8% Notes (DMI Notes). Respondent required GP to execute an eight-page purchase agreement that did not describe any risk factors associated with this investment. Respondent told GP that she would receive her principal plus 8.375% interest in one year and wrote “1 yr. Commitment 10/03” on a “confirmation” he provided. *The so-called confirmation was written on the letterhead of International Wealth Management, Ltd., a corporation Respondent had formed that was unrelated to DMI.*

Shortly thereafter, Respondent recommended that GP purchase more DMI Notes. In December 2002, she invested another \$200,000 in DMI Notes with an interest rate of 6.25%, which were to mature in six or seven months. Respondent again wrote the terms of the transaction on the letterhead of International Wealth Management, Ltd. and provided this document to GP as a confirmation. Both DMI purchases were made outside of GP’s Ryan Beck account. Respondent did not provide prior written notice to the firm describing the proposed transactions and stating whether he received any selling compensation in connection with GP’s participation in the DMI private placement.

When GP contacted Respondent in the spring of 2003 to say that she would soon need her funds, Respondent replied that he was not in a position to return her investment. After he failed to comply with her subsequent requests to return her funds, GP lodged a formal complaint against Respondent with Ryan Beck in October 2003.

A. Unsuitable Recommendations

The first cause of the Complaint charges that Respondent violated NASD Conduct Rules 2310 and 2110 by recommending unsuitable transactions to customer GP.

A registered representative must have a reasonable basis for believing that a recommended securities transaction is in the customer's best interests and is appropriate in light of that customer's investment objectives and financial situation.⁹ To ensure that a representative can make this determination, NASD Conduct Rule 2310(b) requires reasonable efforts to obtain information concerning, among other things, the customer's financial status and investment objectives.

Respondent knew that GP, an inexperienced investor, wanted a conservative, short-term investment because she needed the funds to rebuild her residence or purchase a new home in the coming year. He nevertheless recommended that GP lend \$400,000 to a start-up company without disclosing any risks attendant to such an investment.¹⁰ Respondent's recommendation was unsuitable in light of the customer's financial status, investment objective and risk tolerance. Accordingly, the allegations in the first cause of the Complaint, which are deemed admitted, are

⁹ NASD Conduct Rule 2310; *Wendell D. Belden*, No. C05010012, 2002 NASD Discip. LEXIS 12, at *13 (Aug. 13, 2002), *aff'd*, Exchange Act Release No. 47,859, 2003 SEC LEXIS 1154 (May 14, 2003).

¹⁰ The Complaint alleges, and Respondent is deemed to have admitted, that the DMI Notes were securities, because Respondent solicited GP's investment to fund the company's general business operations, and GP bought the DMI Notes to generate a profit. There is no evidence to suggest that these notes were not securities. See *Dep't of Enforcement v. Nugent*, No. C01040010, 2006 NASD Discip LEXIS 1 (NAC Feb. 23, 2006); *Dist. Bus. Conduct Comm. v. Goldsworthy*, C05940077, 2000 NASD Discip LEXIS 13 (NAC Oct. 16, 2000); *Reves v. Ernst & Young*, 494 U.S. 56, 62-63 (1990).

sufficient to establish for purposes of this default decision that Respondent violated NASD Conduct Rules 2310 and 2110.¹¹

B. Private Securities Transactions (Selling Away)

The second cause of the Complaint charges that Respondent violated NASD Conduct Rules 3040 and 2110 by failing to provide written notice to, and obtain written authorization from, Ryan Beck prior to engaging in private transactions involving the DMI Notes.

Before participating in a private securities transaction, an associated person must provide prior written notice to his or her member firm, describing in detail the proposed transaction and the person's proposed role in it. Furthermore, the written notice must state whether the person has received, or may receive, selling compensation in connection with the transaction.¹²

Rule 3040 defines a "private securities transaction" as "any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission." Under Rule 3040, "selling compensation" is defined as "any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, but not limited to commissions, finders, fees ... rights of participation in profits ... as a general partner or otherwise, or expense reimbursements."

¹¹ A violation of NASD Conduct Rule 2310 also constitutes a violation of Conduct Rule 2110's ethical obligation to observe high standards of commercial honor and just and equitable principles of trade. *See Steven J. Gluckman*, Exchange Act Release No. 41,628, 1999 LEXIS 1395, at *22 (July 20, 1999) (citations omitted).

¹² NASD Conduct Rule 3040. The purpose of Rule 3040 is to ensure that member firms adequately supervise the suitability and due diligence responsibilities of their registered persons. *See Dep't of Enforcement v. Carcaterra*, No. C10000165, 2001 NASD Discip. LEXIS 39 (NAC Dec. 13, 2001). The rule also serves to "protect employers against investor claims arising from an associated person's private transactions and to prevent customers from being misled as to the employing firms' sponsorship of the transactions." *Id.* at *8-9.

Respondent twice induced GP to buy DMI Notes away from her account at Ryan Beck without providing prior written notice to the firm describing these transactions. Though it is unclear whether Respondent received any selling compensation, “receipt of a benefit or compensation is not a required element of a Conduct Rule 3040 violation.”¹³ Accordingly, the allegations in the second cause of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated NASD Conduct Rule 3040, as well as Conduct Rule 2110.¹⁴

C. Outside Business Activities

The third cause of the Complaint alleges that Respondent violated NASD Conduct Rules 3030 and 2110, by failing to provide Ryan Beck with prompt written notice of his employment by, and compensation from, DMI.

A person associated with a member firm may not be “employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such notice shall be in the form required by the member.”¹⁵

Here, Respondent failed to provide written notice to his member firm that he received compensation from DMI for his activities as President, CEO and Chairman, and that he solicited, accepted and processed investments on behalf of the company. In fact, in response to a compliance questionnaire he completed in December 2002, Respondent falsely denied that he

¹³ *Dep’t of Enforcement v. Kapara*, No. C10030110, 2005 NASD Discip. LEXIS 41, at *16 (NAC May 25, 2005), citing *Keith L. Mohn*, 54 S.E.C. 457, 464 (1999).

¹⁴ *Gluckman*, 1999 LEXIS 1395, at *22.

¹⁵ NASD Rule 3030. The rule was “intended to improve the supervision of registered personnel by providing information to member firms concerning outside business activities of their representatives.” NASD Notice to Members 88-86 (Dec. 1988).

was employed by or maintained a business outside of the firm. Accordingly, the allegations in the third cause of the Complaint, which are deemed admitted, are sufficient to establish for the purposes of this default decision that Respondent violated Conduct Rule 3030, as well as Conduct Rule 2110.¹⁶

D. Falsification of Records

The fourth cause of the Complaint alleges that Respondent violated NASD Conduct Rule 2110 by falsifying records, namely the confirmations for both DMI transactions.

NASD Conduct Rule 2110 requires “high standards of commercial honor and just and equitable principles of trade.” Deliberate falsification of documents violates NASD Conduct Rule 2110.¹⁷ Here, Respondent provided confirmations of GP’s investment in DMI that bore the corporate insignia of International Wealth Management, Ltd., an entity that had no connection to GP’s transactions. The allegations in the fourth cause of Complaint, which are deemed admitted, are thus sufficient to establish for the purposes of this default decision that Respondent violated NASD Conduct Rule 2110.

V. Sanctions

For making unsuitable recommendations, NASD Sanction Guidelines recommend a fine of \$2,500 to \$75,000, along with a suspension of ten business days to one year.¹⁸ In egregious cases, a longer suspension up to two years or a bar should be considered. Enforcement argues that Respondent’s misconduct was egregious and recommends a bar.

Though the Guidelines list no explicit factors for an adjudicator to consider when imposing sanctions for unsuitable recommendations, the Hearing Officer concurs that

¹⁶ *Gluckman*, 1999 SEC LEXIS 1395, at *22.

¹⁷ *See, e.g., Dist. Bus. Conduct Comm. v. Mangan*, No. 10960162, 1998 NASD Disc. LEXIS 33, at *10 (NAC Jul. 28, 1998).

¹⁸ *NASD Sanction Guidelines* (2006 ed.) at 99.

Respondent's misconduct was egregious. Respondent clearly placed his own interests ahead of those of his inexperienced customer when recommending that GP invest \$400,000 in a start-up company, without disclosing either the risky nature of the investment or his own interest in DMI. Respondent's misconduct is compounded by his failure to disclose his outside business activity to Ryan Beck and his selling away from the firm, thus ensuring that these transactions would not be subject to scrutiny. These separate violations are thus aggravating factors that demonstrate Respondent's intent to conceal his misconduct. Accordingly, Respondent will be barred in all capacities for making unsuitable recommendations.¹⁹

Enforcement also recommends a separate bar for the other violations. Because Respondent will be barred in all capacities for making unsuitable recommendations, additional sanctions would be redundant and serve no additional remedial purpose.²⁰ Accordingly, no additional sanctions will be imposed for selling away, outside business activities, or falsifying documents.

VI. Conclusion

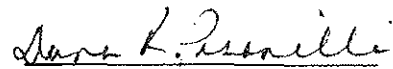
Respondent Carmine DePalma is barred from association with any NASD member firm in any capacity for making unsuitable recommendations, in violation of NASD Conduct Rules 2310 and 2110. In light of the bar, no additional sanctions are imposed for participating in private securities transactions, in violation of NASD Conduct Rules 2110 and 3040; failing to disclose outside business activities, in violation of NASD Conduct Rules 3030 and 2110; and falsifying records, in violation of NASD Conduct Rule 2110.

¹⁹ For reasons not known to the Hearing Officer, Enforcement does not seek restitution for the customer's losses.

²⁰ See *Dep't of Enforcement v. Castle Securities Corp.*, No. C3A010036, 2004 NASD Discip LEXIS 1, at *36-37 (NAC Feb. 19, 2004); *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Dana R. Pisanelli
Hearing Officer

Dated: August 7, 2006
Washington, DC

Copies to: Carmine DePalma (*via overnight and first class mail*)
Jeff Kern, Esq. (*via electronic and first class mail*)
Mark P. Dauer, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

EXHIBIT A

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CARMINE DEPALMA
(CRD No. 1838261),

Respondent.

**Disciplinary Proceeding
No. EL120040233-01**

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.

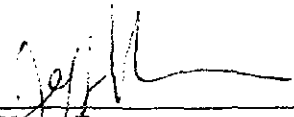
PRAYER FOR RELIEF

- 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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