

NASD

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Fox & Company Investments, Member
CRD No. 18517,

and

James W. Moldermaker, Registered Principal
CRD No. 858894,

Respondent.

Disciplinary Proceeding
No. E3A20030032-01

Hearing Officer: AWH

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: March 27, 2006

INTRODUCTION

Disciplinary Proceeding No. E3A20030032-01 was filed on July 22, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondents Fox & Company Investments, Inc. ("FOXX" or "the firm") and James W. Moldermaker ("Moldermaker") submitted an Offer of Settlement ("Offer") to Complainant on March 14, 2006. 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.

Under the terms of the Offer, Respondents have 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 understand that this Order will become part of their permanent disciplinary records and may be considered in any future actions brought by NASD.

BACKGROUND

FOXX. became a member of NASD in July 1987 and its membership is current. The firm was the subject of NASD Disciplinary Proceeding No. C3A030017 in which the Securities and Exchange Commission, in an October 2005 decision, affirmed NASD findings that the firm conducted a securities business while failing to maintain the minimum net capital, failed to maintain accurate books and records, submitted FOCUS Reports that contained materially inaccurate computations of net capital and did not timely file an amendment to a former representative's Form U-5. The firm was fined \$35,000 and censured.

Moldermaker became associated with FOXX in July 1987 and was registered in various representative and principal capacities until February 2005, when he terminated his principal registrations. He remained registered as a representative and is currently associated with FOXX in that capacity. Moldermaker was the firm's designated Financial and Operations Principal during the period relevant to this Complaint. He was named in the Disciplinary Proceeding described above and, as a result of the SEC's affirmance of NASD's findings and sanctions, he is barred as a financial and operations principal.

FINDINGS AND CONCLUSIONS

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

1. On or about March 15, 2002, Moldermaker obtained \$300,000.00 by drawing down a personal line of credit at a bank and caused the transfer of the funds to an account in the firm's name at the same bank. On or about July 30, 2002, Moldermaker caused the bank to transfer \$300,000.00 from the FOXX account to the line of credit account, reducing the line of credit balance to zero.
2. During the period from approximately March 15, 2002 until approximately July 31, 2003, Moldermaker made and maintained, caused to be made and maintained, or failed to prevent others from making and maintaining, materially inaccurate entries on the books and records of FOXX with respect to the \$300,000.00 line of credit transactions referenced above. The material inaccuracies consisted of the failure to record a deposit in the appropriate cash account, the erroneous characterization of the funds as paid-in capital, the failure to reduce an asset account to reflect the withdrawal of funds to repay the line of credit and the continued characterization of the \$300,000.00 as an asset of the firm after repayment.
3. As a result of the inaccuracies in the firm's books and records described above, its monthly FOCUS Reports for the period March 2002 – July 2003 were materially inaccurate.
4. Establishing and maintaining materially inaccurate books and records, as described above, constituted violations of SEC Rule 17a-3 and NASD Conduct Rules 2110 and 3110 by the firm and a violation of NASD Conduct Rules 2110 and 3110 by Moldermaker. The submission of materially inaccurate FOCUS Reports, as described above, constituted violations of SEC Rule 17a-5 and NASD Conduct Rule 2110 FOXX and violations of NASD Conduct Rule 2110 by Moldermaker.
5. Between October 31, 2001 and January 3, 2003, FOXX, acting through Moldermaker, submitted three Form U-5 amendments from 27 to 434 days late. Further, two of the amendments inaccurately characterized the nature of the occurrence that caused the

amendment and inaccurately described the substance of the allegations against the representative in question.

6. Filing late and inaccurate Forms U-5, as described in paragraphs above, constituted violations of NASD Conduct Rule 2110 by FOXX and Moldermaker.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent 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:

FOXX shall be censured;

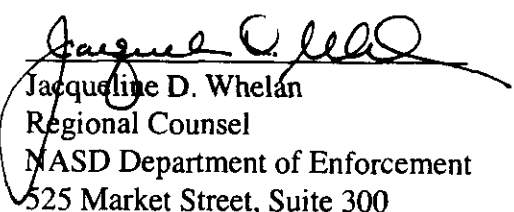
FOXX and Moldermaker shall be fined jointly and severally in the amount of \$20,000.00 and

Moldermaker shall be barred from association with any member of NASD in any principal capacity and suspended from association with any member of NASD in any capacity for a period of 60 days.

SO ORDERED.

NASD

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


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