

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant

v.

Respondent.

Disciplinary Proceeding No.
E1020010426-04

Hearing Officer – David M. FitzGerald

ORDER DENYING MOTION FOR MORE DEFINITE STATEMENT

Respondent filed a motion for a more definite statement, which the Department of Enforcement opposes. More specifically, as to the First Cause of the Complaint, Respondent asks that Enforcement be required “to state with specificity the acts and conduct of Respondent (separate and apart from any acts and conduct of registered representative ‘C.B.’) that allegedly constitute violations of Conduct Rules 2110 and 2310 ..., and the facts of customer P.D.’s ... situation upon which [Enforcement] bases its allegations that the trading in [P.D.’s] account was unsuitable and excessive.” With respect to the Second Cause of the Complaint, Respondent asks that Enforcement be ordered “to specify ‘the extent’ to which C.B. allegedly ‘recommended and/or executed’ transactions in [P.D.’s] account ..., the manner in which Respondent allegedly ‘assisted C.B. and participated’ ..., the facts that demonstrate Respondent was a ‘cause’ of the allegedly excessive trading and unsuitable transactions ... and the specific violative acts and conduct of Respondent that constitute ‘separate and distinct violations of NASD Conduct Rule 2110 on the part of Respondent”

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The First Cause alleges that in 2000 P.D. opened an account with the NASD member firm with which Respondent was then associated, and that Respondent, who allegedly signed the new account form as the registered representative for the account, and another registered representative, C.B., were responsible for handling the account. It alleges that P.D. gave Respondent and C.B. written discretionary authority to trade the account, and that from November 2000 through February 2001, Respondent and C.B. effected approximately 228 transactions in the account, generating commissions in excess of \$209,000. The First Cause alleges this trading was quantitatively unsuitable for P.D., and therefore violated Rules 2110 and 2310.

The Second Cause alleges that to the extent that C.B. (rather than Respondent) executed any of the allegedly unsuitable trades, C.B. discussed those trades with Respondent before executing them. It also alleges that Respondent received compensation for all the trades; that Respondent signed the new account form as the registered representative on P.D.'s account; that Respondent was identified as the "Account Executive" on P.D.'s monthly account statements; and that Respondent was identified on the trade confirmations for P.D.'s account. Based on this, the Second Cause alleges that Respondent participated in C.B.'s excessive trading in the account, and caused the allegedly excessive and unsuitable trading in the account, in violation of Rule 2110.

The issue presented is whether these allegations "specify in reasonable detail the conduct alleged to constitute the violative activity," as required by Rule 9212(a), and give Respondent "sufficient notice to understand the charges and adequate opportunity to plan a defense." OHO Order 00-06 (C3A990067). Here Respondent's principal objection is that the Complaint fails to clearly delineate the respective roles of Respondent and C.B. in

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effecting the allegedly unsuitable trades. In addition, Respondent objects that the Complaint fails to allege specifically the aspects of P.D.'s "investment experience, financial status and needs, and investment objectives" that made the trading in his account unsuitable.

With respect to Respondent's first objection, the Complaint alleges with sufficient clarity that, for various specified reasons, Respondent bears responsibility for all of the trades in the account, regardless whether those trades were effected by Respondent or C.B. While Respondent may take issue with both the factual predicates and the conclusion, the allegations give adequate notice of Enforcement's contentions, and allow Respondent to plan her defense. With respect to Respondent's second objection, the Complaint clearly alleges that the unsuitable trading encompassed approximately 228 transactions during the period November 2000 to February 2001, and that those trades were quantitatively, rather than qualitatively, unsuitable. Although the Complaint does not specify P.D.'s investment experience, financial status and needs, and investment objectives, those are objective facts that, insofar as relevant to this case, should be known to Respondent, or ascertainable from the materials that Enforcement must make available pursuant to Rule 9251. Indeed, as Enforcement points out, Respondent's Fourth Affirmative Defense sets forth specific allegations regarding P.D.'s employment, assets, and other securities holdings and accounts.

Accordingly, Respondent's motion for a more definite statement is denied.

SO ORDERED.

David M. FitzGerald
Hearing Officer

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December 19, 2005