

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee  
For District No. 9,

Complainant,

vs.

Brian D. Angiuli  
Port Washington, NY,

and

Port Washington, NY,

Respondent.

DECISION

Complaint No. C9B960032

District No. 9 (DC)

Dated: January 13, 1999

Respondent Brian D. Angiuli ("Angiuli") has appealed an April 28, 1998 decision of the District Business Conduct Committee for District No. 9 ("DBCC") pursuant to Procedural Rule 9310. We find that Angiuli executed three unauthorized trades in the account of a customer, and we order that he be censured, fined \$15,000, suspended for one year, ordered to requalify by examination, and assessed hearing costs.

Background

Angiuli entered the securities industry in 1988, when he became registered as a general securities representative with an NASD member firm. From March 1994 to April 1995, he was registered as a general securities representative with Stratton Oakmont, Inc. ("Stratton Oakmont").<sup>1</sup> Angiuli has not been associated with a member firm since December 1997.

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<sup>1</sup> Angiuli also had been registered with Stratton Oakmont between April of 1989 and November of 1992.

## Discussion

The complaint alleged that in February of 1995, in violation of Conduct Rule 2110, Angiuli executed three unauthorized transactions in the account of customer RC:<sup>2</sup>

- a February 14, 1995 purchase of 200 units of DualStar Technologies Corporation ("DualStar");
- a February 16, 1995 purchase of 7,000 shares of United Leisure Corporation ("United Leisure"); and
- a February 16, 1995 sale of 5,500 shares of The Care Group, Inc. ("Care Group").<sup>3</sup>

Angiuli did not answer the complaint, although an attorney whom Angiuli was retaining at that time was in communication with the NASD.<sup>4</sup> Although Angiuli did not request a hearing, the staff scheduled a hearing before a DBCC hearing panel for February of 1998 and sent notice of the hearing to him. Because Angiuli did not answer the complaint, offer exhibits or participate in the DBCC hearing, the staff's evidence was unrebutted.<sup>5</sup>

RC, an engineering professor, testified by telephone at the DBCC hearing. According to RC, he opened an account at Stratton Oakmont with Angiuli in September of 1994 and voluntarily executed some trades in United Leisure and Care Group. RC testified that Angiuli had proposed buying DualStar and that he (RC) had rejected the suggestion. RC testified that in February 1995, upon returning from

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<sup>2</sup> The staff's investigation of this matter appears to have originated with Stratton Oakmont's filing of a Form U-5 Uniform Notice of Termination disclosing RC's complaint against Angiuli.

<sup>3</sup> According to trade tickets and confirmations in the record, the total amount of the DualStar purchase was \$1,400, the total amount of the United Leisure purchase was \$34,135, and the total amount of the Care Group sale was \$35,052.50.

<sup>4</sup> Because the DBCC did not serve a second notice of the complaint on Angiuli, it is not appropriate to deem the allegations of the complaint admitted. See NASD Code of Procedure (1996) Article II, Section 3(c); see also NASD Procedural Rule 9215(f) (1988).

<sup>5</sup> In May of 1997, NASD Regulation staff had conducted an on-the-record interview of Angiuli. The transcript of the interview was introduced as an exhibit. During the interview, Angiuli generally denied the allegations, but noted that he did not recall details about RC's account.

traveling, he received three confirmations of trades that he had not authorized. RC telephoned Angiuli on the morning of February 22, 1995, and accused him of having executed unauthorized trades.

According to RC, Angiuli responded that he had been unable to reach RC and that he had acted in RC's interest. Angiuli also attempted to "soften[] it" by stating that no commission should have been charged on two of the transactions and that he would deduct an eighth of a point from them. Angiuli also falsely represented that the DualStar shares were a free "gift" to RC. RC testified that "[Angiuli] didn't disagree that he had made the purchases without [RC's] authorization, but he kept trying to convince [RC] that they were good purchases and good sales and that [RC] should stay with them."<sup>6</sup>

Angiuli's manager, Michael Albino ("Albino"), also testified by telephone at the DBCC hearing. He had been a branch manager and compliance officer at the Bethesda, Maryland office of Stratton Oakmont where Angiuli worked. Albino stated that Stratton Oakmont taped all of its telephone calls, and that he had listened to the tape recording of the February 22, 1995 telephone conversation between Angiuli and RC. Albino testified that on the tape recording, Angiuli had admitted to RC that he had not called him but claimed to have been acting "in [RC's] interest." Stratton Oakmont later terminated Angiuli.

RC had contacted Albino to complain about the transactions, and, after some discussion, Albino agreed to reverse the United Leisure and DualStar transactions. In April of 1995, Stratton Oakmont reimbursed RC in the amount of \$36,409 for the unauthorized transactions.

Based on the testimony of RC and Albino and the exhibits, the DBCC found that Angiuli had violated Conduct Rule 2110 by executing three unauthorized transactions in the account of RC and that Angiuli's conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade.

We affirm the DBCC's findings, which Angiuli did not challenge on appeal.

### Procedural Issues

On appeal, Angiuli stated that he was appealing the DBCC's decision because it was the "second decision." He stated that in a "first" decision, he had agreed to lower sanctions, and he raised the possibility of unfair retribution, stating "I would hate to think that because of my monetary condition and my request for a payment plan be [sic] the reason for the almost double fine and all the other penalties." He

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<sup>6</sup> RC also had executed a declaration, which was consistent with his testimony, in April of 1996.

attached to this statement a copy of an Offer of Settlement purportedly signed by him in November of 1997 and a form showing his election of installment payment plan for the fine to be imposed under the settlement. He claimed to have sent it in "last year" and never to have received a payment schedule in response.

In response, the regional attorney noted that he had engaged in settlement negotiations with Angiuli's then-attorney in 1997 and that he had forwarded the blank form to that attorney in September of 1997. The regional attorney noted, however, that: (1) the form represented staff's proposal for proposed settlement terms to be presented to the DBCC, not a "decision"; and (2) the signed form had never been returned to him and, in fact, Angiuli's then-attorney had told him late in January 1998, in the course of resigning from his representation of Angiuli, that Angiuli had not executed the form.

We find, based on these facts, that Angiuli's reference to the possible settlement provides no basis for appeal. We note that parties have no right to settlement and that, under the Code of Procedure, no settlement would have been effective until approved by the DBCC and us. Thus, Angiuli has no basis for relying on the proposal. Moreover, we discredit Angiuli's claim to have believed the matter to be settled, since notice of the DBCC hearing was sent to him, and he should have objected at that point if he believed that the matter had settled.

### Sanctions

Angiuli's main argument on appeal was that the sanctions imposed by the DBCC were too harsh in view of his lack of a prior disciplinary history. He argued that the fine was "completely excessive" and that the suspension and requalification requirements were "completely unjust and unfair."

The DBCC ordered that Angiuli be censured, fined \$16,694, required to requalify by examination as a general securities representative, and suspended for 30 days from association in any capacity with any Association member. The DBCC also ordered Angiuli to pay DBCC hearing costs of \$573.95. The DBCC noted that unauthorized trading constitutes serious misconduct. The DBCC also observed, however, that Angiuli had no prior disciplinary history. The DBCC decided to impose a fine calculated by adding \$15,000 to the \$1,694 in commissions that the DBCC found that Angiuli had earned on the unauthorized trades.

The applicable NASD Sanction Guideline ("Guideline")<sup>7</sup> suggests imposition of a five- to 30-business-day suspension for cases involving customer losses and/or sizeable commissions arising out of unauthorized transactions, and it notes that requalification by examination should be considered. It also recommends fining away the amount of any commissions, plus \$5,000 to \$50,000. We find, upon reviewing the factors enumerated in the Guideline, that very serious sanctions are necessary, in spite of Angiuli's previously clean disciplinary history, because: more than one trade was involved; Angiuli earned commissions on the trades; substantial customer injury resulted (Stratton Oakmont having reimbursed the customer in the amount of \$36,409); Angiuli, who has not acknowledged any remorse, is likely to pose a threat to the investing public if the gravity of his misconduct is not impressed upon him; Angiuli attempted to lull his customer into accepting the trade; the misconduct was not the mistake of an honest misunderstanding; Angiuli did not make restitution to the customer; and the customer's complaint was timely. Given these factors, we find that a one-year suspension should be imposed in lieu of the 30-day suspension that the DBCC imposed.

We do, however, find it appropriate to reduce the fine imposed by the DBCC from \$16,694 to \$15,000, based on the lack of evidence in the record indicating the amount of commissions earned by Angiuli. We affirm the requalification requirement imposed by the DBCC. We believe that requalification by examination will serve to impress upon Angiuli the importance of strict adherence to all regulatory requirements.

Accordingly, we order that Angiuli be censured, fined \$15,000, suspended for one year from association with any member in any capacity, and ordered to pay

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<sup>7</sup>

See Guidelines (1996 ed.) at 56 (Unauthorized Transactions).

\$573.95 in costs. In addition, Angiuli is ordered to requalify by association as a general securities representative before again becoming associated as such. The Chief Hearing Officer shall set the date on which the suspension shall begin.<sup>8</sup>

On Behalf of the National Adjudicatory Council,

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Joan C. Conley, Corporate Secretary

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<sup>8</sup> We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.