

**NASD REGULATION, INC.  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PETER D. RAGOFSKY  
(CRD #2066034)

Brooklyn, NY,

Respondent.

Disciplinary Proceeding  
No. C10000086

Hearing Officer—Andrew H. Perkins

**Hearing Panel Decision**

January 31, 2001

*Digest*

The Complaint charged the Respondent, a formerly registered representative, with effecting 10 unauthorized transactions in five separate customer accounts in violation of NASD Conduct Rule 2110. The Respondent failed to appear at the hearing, and the Hearing Panel determined that the Respondent had committed the alleged violations, for which the Hearing Panel determined that the Respondent should be barred from associating with any member firm in any capacity and ordered to pay restitution and costs.

*Appearances*

David Newman, Esq., Philadelphia, Pennsylvania (Rory C. Flynn, Chief Litigation Counsel, Washington, DC, of counsel) for the Department of Enforcement.

Peter D. Ragofsky appeared *pro se*.

## DECISION

### I. Introduction

The Department of Enforcement (“Enforcement”) filed the Complaint in this proceeding on May 25, 2000, alleging that, between approximately April 1996 and December 1997, Peter D. Ragofsky (“Ragofsky”) effected 10 unauthorized transactions in five separate customer accounts. On July 28, 2000, the Office of Hearing Officers received a copy of Ragofsky’s hand-written response to the Complaint. Ragofsky had sent his letter to counsel for Enforcement without filing it with the Office of Hearing Officers. The Hearing Officer accepted the letter as Ragofsky’s Answer, and, at an Initial Pre-Hearing Conference on August 23, 2000, set this case for a hearing on December 5 and 6, 2000, in New York City. On October 11, 2000, the Hearing Officer served the Parties with a Notice of Hearing informing them of the time and place for the hearing.

On December 5, 2000, the Hearing Panel, composed of two current members of the District Committee for District 11 and the Hearing Officer, convened the hearing.<sup>1</sup> Ragofsky did not appear. Accordingly, the Hearing Officer directed counsel for Enforcement to telephone Ragofsky and determine if he intended to appear. Following two telephone calls with Ragofsky, counsel for Enforcement reported that Ragofsky had forgotten about the hearing, and, on reflection, he had decided not to attend.<sup>2</sup>

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<sup>1</sup> References to the hearing transcript are cited as “Tr. \_\_\_\_.”

<sup>2</sup> In the first telephone conversation, counsel for Enforcement indicated that the Hearing Panel would wait for him if he wanted to participate in the hearing. Ragofsky asked that he be given five minutes to consider his options. Counsel for Enforcement therefore called Ragofsky a second time to get his answer, at which time Ragofsky indicated that he would not attend. (Tr. 3-4.)

Once counsel for Enforcement reported that Ragofsky had elected not to attend the hearing, the Hearing Officer found Ragofsky in default and directed Enforcement to proceed with its case. Enforcement offered the testimony of five persons and 58 exhibits, all of which were admitted into evidence.<sup>3</sup>

Following the hearing, the Hearing Officer ordered Enforcement to supplement the record with evidence establishing that the National Association of Securities Dealers, Inc. (“NASD”) has jurisdiction over this proceeding. On December 26, 2000, Enforcement filed a Supplemental Submission comprised of an extract from Ragofsky’s Central Registration Depository record, which is made a part of the record of this proceeding as Exhibit C-59.

## **II. Findings of Fact and Conclusions of Law**

### **A. Ragofsky’s Background in the Securities Industry and Jurisdiction**

Ragofsky has worked in the securities industry since 1991. He started with Investors Associates, Inc. in February 1991 where he was registered as a General Securities Representative and a Corporate Securities Representative. He left Investors in February 1993 and joined Portfolio Asset Management/USA Financial Group, Inc. where he worked for approximately two months before joining La Jolla Capital Corporation (also known as Pacific Cortez Securities Incorporated) (“La Jolla”) on or about March 4, 1994. Ragofsky worked at La Jolla until he voluntarily left on April 29, 1999. While he was employed at La Jolla Ragofsky was registered as a Corporate Securities Representative from June 1994 to April 1999. (C-59) After he left La Jolla, Ragofsky joined Royal Hutton Securities, Corp., an

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<sup>3</sup> Reference to Enforcement’s exhibits are cited as “C-\_\_\_\_.”

NASD member, but he did not register before he left the firm in August 1999. Ragofsky is not currently employed in the securities industry, and his last registration with the NASD terminated effective April 29, 1999.<sup>4</sup> (C-59.)

**B. Unauthorized Transactions**

Each of the account holders injured by Ragofsky's unauthorized trading testified at the hearing. Their testimony and the corroborating exhibits introduced at the hearing clearly establish that Ragofsky committed the violations charged in the Complaint.

**1. Customer LP**

LP testified that in June 1996 his account at La Jolla was transferred from his former broker to Ragofsky. (Tr. 10.) The New Account Form signed by Ragofsky on June 6, 1996, shows that the account came to him as a "branch referral." (C-23.)

Once Ragofsky was assigned to the account, he recommended that LP invest in some penny stocks, such as Dynamic American Corp., which was trading for about 15 to 16 cents per share at the time. (Tr. 11.) LP also invested in some more established companies that he directed Ragofsky to purchase. One such stock was Chiron Corporation, which LP purchased in August 1996. (Tr. 12.)

On August 28, 1996, LP directed Ragofsky to sell 4000 shares of Chiron stock. (Tr. 12-13.) The next day LP telephoned Ragofsky about an unrelated matter, at which time Ragofsky told LP that he had bought back 3000 shares of Chiron stock. (Tr. 13.) LP had not authorized this repurchase. (Tr.

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<sup>4</sup> The NASD has jurisdiction over this proceeding pursuant to Article V, Section 4 of the NASD's By-Laws. The Complaint charges misconduct while Ragofsky was registered with La Jolla, a former NASD member, and the Complaint was filed within two years after the effective date of termination of Ragofsky's registration.

14.) When LP questioned Ragofsky about the repurchase, he told LP that he had thought he would be doing LP a favor by buying it back because he had seen a lot of activity in the stock. (Id.)

When LP learned that Ragofsky had bought back the Chiron stock, LP directed him to sell the stock. (Tr. 14.) Ragofsky did not comply immediately with LP's order. (Tr. 15.) It was not until September 6, 1996, that Ragofsky finally sold the Chiron stock. (Id.) When confronted about the delay in selling the stock, Ragofsky said he had waited to see if the stock price would come back up so that there would not be a realized loss on the transactions. (Tr. 16.)

LP lost approximately \$6,000 as a result of Ragofsky's unauthorized repurchase of the Chiron stock. (Tr. 16.) Of that amount, La Jolla eventually reimbursed LP \$3,000. (Id.)

## **2. Customer JB**

JB testified that, on August 12, 1996, he opened an account at La Jolla with Ragofsky after Ragofsky solicited him to buy Guinness stock. (Tr. 21.) On Ragofsky's recommendation, JB purchased 500 shares of Guinness. Shortly thereafter Ragofsky recommended that JB sell the stock. (Tr. 25.) Although Ragofsky was very persistent, JB refused to authorize the sale. (Tr. 25.) JB and Ragofsky did not speak again until December 1996, when JB received his account statement that reflected that the 500 shares of Guinness had been sold and that 500 shares of Koala Capital had been purchased in his account. (Tr. 27.) JB had not authorized either of those transactions. Accordingly, he complained to La Jolla, which eventually restored the 500 shares of Guinness stock to his account. (Tr. 29.)

### **3. Customer BG**

BG testified that she and her husband, MG, opened a joint account at La Jolla in October 1994. After doing some initial transactions in 1995, they conducted no other business in the account. (Tr. 40.) But, in April 1996, they received an account statement in the mail that indicated that they had sold two securities and purchased shares of a company by the name of Golf West. Neither BG nor MG had authorized these transactions. (Tr. 41.)

BG immediately called La Jolla, and she was connected to Ragofsky who informed her that he was now their account representative. (Tr. 41.) BG had never heard of Ragofsky before that call. (Id.) Ragofsky claimed that BG's son had authorized the transactions. Her son, however, was not an authorized party to the account, and he denied that he had told Ragofsky to effect the transactions. (Tr. 42.)

In June 1996, BG sent a complaint letter to La Jolla concerning the unauthorized trades. (C-6.) As a result, La Jolla eventually canceled the trades and restored the account to its original status. (Tr. 48-49; C-9.)

BG and MG suffered a net loss of \$2,114 as a result of Ragofsky's unauthorized trading. The value of the two securities was \$3,498, and they received \$1,384 after the securities were restored to their account. (C-2.)

### **4. Customer AB**

AB testified that in April 1996 he and his wife, LB, opened an account at La Jolla. (Tr. 55; C-40.) Early on, AB and LB had a problem with their account representative. As a result, between June

1997 and December 1997, they had no contact with anyone at La Jolla. (Tr. 58.) Then, on or about December 12, 1997, Ragofsky called AB to recommend that he sell the stock in his and his wife's joint account because they were losing value. (Tr. 58-59.) AB had never before heard of Ragofsky. Acting on his advice, AB told Ragofsky to sell everything in the account. (Tr. 59-60.) Ragofsky also solicited AB to make some purchases, but AB told him that he had a pending complaint against La Jolla. AB explained that because he had lost over \$200,000 due to La Jolla's actions, he did not want to do any further business with La Jolla. (Tr. 60.) Nevertheless, on December 22, 1997, AB received two confirmations for the purchase of 10,000 and 2,700 shares of Advantage Life Products. (Tr. 61.) Neither AB nor his wife had authorized these trades. The total cost of these securities was \$8,781. (C-41, at 29.)

Upon receiving the confirmation showing these unauthorized trades, AB immediately called Ragofsky and informed him that they had not been authorized. (Tr. 61.) Ragofsky, however, claimed that AB had authorized the purchases. Consequently, AB sent a complaint letter to La Jolla's compliance department. (Tr. 62-63; C-46.) La Jolla never responded to the letter. (Tr. 63.)

Because the purchases had not been authorized, AB did nothing with the Advantage Life Products stock. It remains in his account and is currently worth about \$60.<sup>5</sup> (Tr. 64; C-42, at 5.) AB and LB lost \$8,721 as a result of Ragofsky's unauthorized purchase of Advantage Life Products stock.

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<sup>5</sup> The account is currently carried by Centex Securities, which took over La Jolla's accounts when La Jolla filed for bankruptcy protection. (Tr. 64.)

## **5. Customer CG**

CG testified that he opened an account with La Jolla in March 1997. (Tr. 68-69; C-15.) After he opened the account he purchased stock in ARXA. (Tr. 69.) Although he did not authorize the sale of his ARXA stock, in September 1997, he received notice that it had been sold and stock in AXXESS International had been purchased in his account. (Tr. 69.) CG had not authorized either of these transactions. (Id.)

Upon learning of these unauthorized transactions, CG called La Jolla to inquire what was happening in his account. He was told that his broker had left La Jolla. (Tr. 69.) Ragofsky then returned CG's telephone call. (Tr. 69-70.) Although Ragofsky did not admit that he had made the questioned trades, he said that he had taken over from CG's former broker, and the trade tickets show Ragofsky's registered representative number at La Jolla.<sup>6</sup> (Tr. 70; C-18.) CG eventually sold the AXXESS International stock on November 24, 1997. (Tr. 71.)

CG lost \$2,121 as a result of Ragofsky's misconduct. He purchased the AXXESS International stock for \$2,935 and sold it for \$814. (C-16.)

### **C. Discussion**

Based on the foregoing findings, the Hearing Panel concludes that Ragofsky violated NASD Conduct Rule 2110, as alleged in the Complaint. A registered representative who effects unauthorized transactions in a customer's account violates the obligation to observe just and equitable principles of trade required by Rule 2110. See, e.g., In re Keith L. DeSanto, Exchange Act Release No. 35860,

1995 SEC LEXIS 1500 (June 19, 1995), aff'd, 101 F.3d 108 (2d Cir. 1996) (table). Here, the evidence clearly establishes that Ragofsky effected 10 unauthorized transactions in five accounts over a period of many months. There is no evidence suggesting that these trades were made as a result of a misunderstanding or a miscommunication. In each case, the customers promptly complained to La Jolla as soon as they discovered the unauthorized trades. Without question, Ragofsky intentionally executed these trades for his own economic benefit.

### **III. Sanctions**

Based on the NASD Sanction Guideline for unauthorized trading<sup>7</sup> and the decision in District Bus. Conduct Comm. No. 10 v. Hellen, No. C3A970031, 1999 NASD Discip. LEXIS 22 (NAC June 15, 1999), the Hearing Panel has determined to bar Ragofsky and order that he pay restitution to those customers who suffered losses as a result of his improper conduct.<sup>8</sup>

The Hearing Panel has determined that Ragofsky should be barred because his conduct was egregious under the criteria the National Adjudicatory Council (“NAC”) set forth in Hellen. In that decision the NAC, citing prior decisions, delineated three categories of egregious unauthorized trading. First, there is “quantitatively egregious” unauthorized trading which is characterized by a large number of

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<sup>6</sup> The registered representative number on the trade tickets is “K7,” which is the same number appearing on the tickets for the other accounts in issue.

<sup>7</sup> NASD Sanction Guidelines 86 (1998 ed.).

<sup>8</sup> In accordance with NASD Notice to Members 99-86 (Oct. 1999), Enforcement did not ask that Ragofsky be fined because this case does not involve widespread customer harm.

unauthorized transactions.<sup>9</sup> The existence of numerous unauthorized transactions “often constitutes compelling circumstantial evidence that the [trades] were not the result of miscommunications or mistakes.”<sup>10</sup>

Second, there is unauthorized trading that is “egregious because it is accompanied by certain aggravating misconduct.” This type of egregious unauthorized trading includes those cases where a respondent attempts to conceal the conduct or to evade NASD investigative efforts, or where there is a history of prior unauthorized trading.<sup>11</sup>

Third, there is “qualitatively egregious” unauthorized trading. Typically, unauthorized trading is deemed to be “qualitatively egregious” where the respondent was motivated to make money at the customer’s expense, or executed unauthorized trades after using high-pressure sales tactics designed to intimidate and induce the customers to authorize the trades.<sup>12</sup> In Hellen, the NAC identified two factors as relevant to a determination of whether the unauthorized trading was or was not qualitatively egregious: (1) “the strength of the evidence that the trades at issue were unauthorized”;<sup>13</sup> and (2) “the evidence relating to the respondent’s motives.”<sup>14</sup>

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<sup>9</sup> See also, District Business Conduct Committee for District No. 2 v. Granath, No. C02970007, 1998 NASD Discip. LEXIS 19, at \*19-20 (NAC Mar. 6, 1998) (imposing a bar when the Respondent executed 24 unauthorized transactions); District Business Conduct Committee for District No. 7 v. Levy, No. C07960085, 1998 NASD Discip. LEXIS 22, at \*12 (NAC Mar. 6, 1998) (imposing a bar when the Respondent executed 16 unauthorized transactions).

<sup>10</sup> Hellen, 1999 NASD Discip. LEXIS at \*16 (“In addition, the volume of the violations significantly increases the gravity of the respondent’s transgression.”).

<sup>11</sup> Id.

<sup>12</sup> Id. at \*17-18.

<sup>13</sup> Id. at \*18.

<sup>14</sup> Id.

In this case, the Hearing Panel finds that the evidence supports a finding that Ragofsky's unauthorized trading is both quantitatively and qualitatively egregious. As found above, Ragofsky effected 10 trades in five accounts over the course of many months. This is not a case of possible mistake: Ragofsky plainly intended to effect the trades without his customers' authorization. In many cases he had not even spoken to his customer before making the challenged trade. The Hearing Panel finds that Ragofsky acted in bad faith in furtherance of his own economic benefit. Accordingly, the Hearing Panel finds that Ragofsky is not fit to remain in the securities industry. The risk of his committing further serious securities violations is high.

In addition, the Hearing Panel considers it appropriate to enter an order of restitution in this case. Restitution is a traditional equitable remedy designed to "restore the status quo where otherwise a . . . victim would unjustly suffer loss."<sup>15</sup> The NASD Sanction Guidelines generally recognize that, in cases where an identified individual has suffered a quantifiable loss as a result of a respondent's misconduct, it is fitting to order the respondent to pay restitution.<sup>16</sup> The Guidelines also suggest that, when ordering restitution, adjudicators may consider requiring the respondent to pay pre-judgment interest on the base amount, calculated pursuant to 26 U.S.C. § 6621(a)(2), i.e., the interest rate used by the Internal Revenue Service to determine interest due on underpaid taxes.<sup>17</sup> The Guidelines

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<sup>15</sup> In re David Joseph Dambro, 51 S.E.C. 513, 518 (1993).

<sup>16</sup> NASD Sanction Guidelines 6.

<sup>17</sup> Id., at 12. The Internal Revenue Service rate, which is adjusted each quarter, reflects market conditions, and thus approximates the time value of money for each quarter in which the customer lost the use of his or her funds.

recommend that pre-judgment interest should be measured from the date of the occurrence of the violative activity that gave rise to the loss.

The evidence in this case shows that customers BG, MG, AB, LB, and CG lost a total of \$12,956. Thus, the Hearing Panel will order Ragofsky to pay restitution to these customers in the amount of their respective losses, plus pre-judgment interest thereon calculated pursuant to 26 U.S.C. § 6621(a)(2).

#### **IV. Order**

Therefore, having considered all the evidence,<sup>18</sup> on each of the causes in the Complaint the Hearing Panel bars the Respondent Peter D. Ragofsky from associating with any member firm in any capacity. The Hearing Panel further orders Ragofsky to pay the following amounts in restitution to the following customers:<sup>19</sup>

1. \$2,114 to BG and MG, plus interest thereon from April 4, 1996, until paid.
2. \$8,721 to AB and LB, plus interest thereon from December 17, 1997, until paid.
3. \$2,121 to CG, plus interest thereon from November 24, 1997, until paid.
4. \$3,000 to LP plus interest thereon from September 30, 1996, until paid.

Interest on the amount due for restitution shall be calculated at the rate applied to underpayments of federal taxes under 26 U.S.C. § 6621(a)(2).

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<sup>18</sup> The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

<sup>19</sup> The customers are identified on the attached Addendum.

Ragofsky is also ordered to pay costs in the total amount of \$1,712.75, which include an administrative fee of \$750 and hearing transcript costs of \$962.75.

These sanctions shall become effective on a date set by the NASD, but not sooner than 30 days from the date this Decision becomes the final disciplinary action of the NASD, except that if this Decision becomes the final disciplinary action of the Association, the bars shall become effective immediately.

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies to:

Peter D. Ragofsky (by Airborne Express, next day delivery, and first-class mail)  
David Newman, Esq. (by first-class and electronic mail)  
Rory C. Flynn, Esq. (by first-class and electronic mail)