NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. CHARLES A. DaCRUZ (CRD No. 2444684), and THOMAS J. LINDA (CRD No. 2404854), Respondents.	Disciplinary Proceeding No. C3A040001 (Consolidating No. C3A040001 and No. C3A040007) **EXTENDED HEARING PANEL DECISION** Hearing Officer – SW Dated: September 27, 2005

Respondent DaCruz is suspended for one year in all capacities, ordered to requalify as a registered representative within 60 days of the termination of his suspension, and fined $67,000 for violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110, as alleged in counts one and two of the Complaint.

Respondent Linda is suspended for one year in all capacities, ordered to requalify as a registered representative within 60 days of the termination of his suspension, and fined $200,000 for violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110, as alleged in counts one and two of the Complaint.

Appearances

Jacqueline D. Whelan, Esq., Regional Counsel, Denver, CO, and Sylvia M. Scott, Esq., Regional Counsel, Los Angeles, CA, for the Department of Enforcement.

Lawrence R. Gelber, Esq., Brooklyn, NY, for Respondent Charles A. DaCruz.

Martin P. Unger, Esq., East Meadow, NY, for Respondent Thomas J. Linda.

DECISION

I. PROCEDURAL BACKGROUND

The Department of Enforcement ("Enforcement") filed similar Complaints against Respondent Charles A. DaCruz and Respondent Thomas J. Linda (collectively, the "Respondents") on January 20, 2004, and February 17, 2004, respectively.

On July 12, 2004, Enforcement filed a motion to consolidate the DaCruz and Linda Complaints and the Complaints against three other respondents. On July 22, 2004, after considering Enforcement's and the Respondents' arguments, the Chief Hearing Officer issued an order consolidating the DaCruz and Linda Complaints, but denying the request to consolidate the Complaints against the three other respondents.[1]

Each two-count Complaint alleges that the Respondent, while associated with NASD member firm First Providence Financial Group, LLC ("First Providence") during 1998 and 1999, solicited his customers to purchase the common stock of National Health Trends Corp. ("NHTC" or the "Company"), in violation of (i) the anti-fraud provisions of the federal securities laws and NASD Conduct Rule 2120, and (ii) NASD Conduct Rule 2110's requirement to observe high standards of commercial honor and just and equitable principles of trade.

Specifically, the Complaints allege that the Respondents (i) fraudulently or negligently failed to disclose material information when they failed to disclose to their customers that they would receive a portion of sales credits as additional compensation on the sale of the NHTC

[1] In response to Respondent DaCruz and Respondent Linda's objections to the consolidation order, on August 4, 2004, the Hearing Officer provided the Respondents with copies of the relevant Complaints and Answers, and gave the Respondents 14 days in which to file a motion for reconsideration. Respondent Linda and Respondent DaCruz chose not to file a motion for reconsideration.

stock (count one), and (ii) made baseless, fraudulent price predictions for the NHTC stock (count two).

With respect to count one of the Complaints, the Respondents denied that they violated either (i) the anti-fraud provisions of the federal securities laws and NASD Conduct Rule 2120, or (ii) NASD Conduct Rule 2110's requirement to observe high standards of commercial honor and just and equitable principles of trade. The Respondents argued that there was no violation because at the time that they recommended the purchase of NHTC they did not definitively know that they would receive a portion of sales credits.

With respect to count two of the Complaints, the Respondents admitted that they provided some of their customers with price targets when soliciting them to purchase the NHTC stock, but they argued that there is a distinction between a target price and price prediction. Accordingly, the Respondents denied that they violated the anti-fraud provisions of the federal securities laws and NASD Conduct Rules 2120 and 2110.[2]

The Extended Hearing Panel, consisting of (i) a former member of the Board of Governors and of the District 4 and District 5 Committees, (ii) a former member of the District 10 Committee, and (iii) the Hearing Officer, conducted a Hearing in New York, NY, from November 30, 2004, through December 3, 2004, and continued the Hearing on March 22 and 23,

---

[2] The Respondents also argued that NASD Conduct Rules 2110 and 2120 were applicable only to NASD members, and not to associated persons of NASD members. However, NASD Rule 0115 explicitly states that "[t]hese Rules shall apply to . . . persons associated with a member." Pursuant to Rule 0115, persons associated with a member "have the same duties and obligations as a member under these Rules." Accordingly, the Extended Hearing Panel finds that the Respondents are subject to the requirements of NASD Conduct Rules 2110 and 2120.

In addition, Respondent Linda argued that NASD Conduct Rule 2110 is vague. However, the Securities and Exchange Commission and the courts have repeatedly held that NASD Conduct Rule 2110 is sufficiently specific and provides an adequate standard of compliance. See Stephen J. Gluckman, Exchange Act Release No. 41,628, 70 SEC Docket 418, 427 n. 30 (July 20, 1999), citing Benjamin Werner, 44 S.E.C. 622, 629 & n. 11 (1971), and Vail v. S.E.C., 101 F.3d 37, 39 (5th Cir. 1996) (predecessor to Conduct Rule 2110 was not unconstitutionally vague).

2005, for this consolidated proceeding.

II. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent DaCruz first became associated with an NASD member in January 1994.[3] (CX-24, p. 15). Respondent DaCruz was registered with First Providence as a general securities representative from July 13, 1998, to July 23, 1999.[4] (CX-24, p. 6). Respondent DaCruz has been registered with Trident Partners Ltd. as a general securities representative since February 6, 2001, and as a general securities principal since January 9, 2004. (CX-24, p. 2).

Respondent Linda first became associated with an NASD member in November 1993. (CX-41, p. 19). Respondent Linda was registered with First Providence as a general securities representative from July 14, 1998, to July 19, 2000.[5] (CX-41, p. 9). Respondent Linda has been registered with Brookstreet Securities Corporation as a general securities representative since August 4, 2004. (CX-41, p. 5).

Accordingly, NASD has jurisdiction over the Respondents.

B. Background

From October 1998 to 1999, the Respondents solicited their customers to purchase the stock of NHTC, a speculative company. When soliciting NHTC purchases, the Respondents failed to disclose to their customers a potential conflict of interest by not telling their customers

[3] Although Respondent DaCruz became associated with an NASD member in 1994, he did not become registered until 1997 after several prior unsuccessful attempts to pass the Series 7 exam. (CX-24, p. 20; Tr. pp. 1058, 1061-1062).

[4] Subsequently, Respondent DaCruz was associated with First Montauk Securities Corp. from July 1999 to June 2000, Trident Partners Ltd. from May to October 2000, and J.P. Turner & Company, LLC from November 2000 to January 2001. (CX-24, pp. 3-4).

[5] Respondent Linda was then associated with Trident Partners, Ltd. from June to July 2000, Taylor Stuart Financial from July 2000 to March 2001, and Gilford Securities Incorporated from March 2001 to August 2004. (CX-41, pp. 5-7).

that they had been offered, and they expected to receive, additional compensation in the form of a portion of the sales credits on each NHTC purchase. In addition, to induce the purchase of the speculative NHTC stock, the Respondents provided their customers with price targets, which are the equivalent of price predictions.

1. Natural Health Trends Corporation

NHTC was a small-cap company trading on the NASDAQ stock market. (CX-9, p. 19). Prior to the Respondents recommending the Company, the Company had reinvented itself several times.[6] (CX-13). Before July 1997, the Company's business consisted entirely of operating medical clinics and vocational schools. (CX-11, pp. 7-8). With the acquisition of Global Health Alternatives, Inc. on July 23, 1997, the Company began to market and distribute natural, over-the-counter homeopathic pharmaceutical products. (Id.). During the third quarter of 1997, the Company ceased operating its medical clinics, and it sold the vocational schools in August 1998. (CX-11, p. 8).

NHTC financed its operations, in large part, by issuing convertible securities.[7] (CX-14, p. 9). The Company's outstanding and issued shares increased almost ten times from its 1997 year-end to its 1998 year-end.[8] (CX-9, p. 26; CX-13, p. 25). In both the 1998 and 1999 annual reports, the Company's management identified the issuance of convertible preferred stock as a significant

[6] The Company incorporated in December 1988 and changed its name to NHTC in June 1993. (CX-13, p. 4).

[7] For example, in June 1997, the Company issued 2,200 shares of Series A preferred stock, which were redeemed for $3.5 million in 1998. (CX-13, pp. 32-33). In February 1998, the Company issued 300 shares of Series B preferred stock, which later in 1998 were all converted to the Company's common stock. (CX-13, p. 33). In April 1998, the Company issued 4,000 shares of Series C preferred stock, which later in 1998 were all converted to the Company's common stock. (Id.). In July 1998, the Company issued 75 shares of Series D preferred stock, which were redeemed for $91 thousand in August 1998. (Id.).

[8] The Company increased its 758 thousand shares of issued and outstanding shares of NHTC common stock as of December 31, 1997, to 6.2 million issued and outstanding shares as of December 31, 1998, despite a 1 to 40 reverse stock split in April 1998. (CX-9, p. 26; CX-13, pp. 25, 34).

source of operating capital and stated its belief that additional financing would be required to sustain the Company's operations over the upcoming 12 months. (CX-9, p. 24; CX-13, pp. 16-17).

In 1997, 1998, and 1999, the Company generated revenue, but suffered chronic financial problems.[9] (CX-9; CX-13; CX-14). In the third quarter of 1998, NASDAQ notified the Company that it was at risk of being delisted. (CX-8, pp. 127-128). NHTC's NASDAQ listing was conditional for a period of approximately four months, from October 30, 1998, to February 26, 1999, due to a concern about the Company's ability to remain in compliance with NASDAQ's net tangible assets requirements. (CX-8, p. 127; CX-3; Stip. at ¶1).

For the year ending December 31, 1997, NHTC reported revenues of $6,992,516, but reported a net loss of $7,725,120. (CX-9, p. 27). For the year ending December 31, 1998, NHTC reported revenues of $1,191,120, but reported a net loss of $1,288,012. (CX-13, p. 26). In February 1999, the Company acquired Kaire International, Inc. and began marketing and distributing a separate line of natural herbal-based dietary supplements and personal care products. (CX-14, p. 7).

For the third quarter of 1999, the Company reported year-to-date revenues of $11,826,722, but reported a year-to-date net loss of $3,122,604. (CX-16, pp. 1, 4-5). In March 1999, the Company reported that it would need additional financing for the next 12 months to fund Kaire's operations. (CX-14, p. 24).

[9] The Company's 1997 and 1998 annual reports both included a "going concern" opinion by the auditors. (CX-9, p. 25; CX-13, p. 24).

2. The Respondents received as compensation on NHTC purchase transactions not only a portion of the mark-up but also a portion of a sales credit

Beginning in October 1998, First Providence began encouraging its brokers to recommend the purchase of NHTC stock.[10] (CX-19, p. 1; Tr. p. 734). First Providence sold NHTC stock to its customers in principal transactions from its own account at the inside ask price quoted on NASDAQ, plus a mark-up. (JX-1; JX-2; CX-6; Tr. pp. 814, 1170).

When encouraging its brokers to recommend the purchase of NHTC stock, First Providence management also routinely advised the brokers that, in addition to receiving some portion of the mark-up as compensation, they could also receive a portion of a sales credit. (Tr. pp. 831-832, 847). Typically, at either a regular daily morning or afternoon meeting of the sales force, or through impromptu announcements during the day, Paul Wasserman or John Meyers, First Providence principals, announced the availability of the sales credits subject to the achievement by the sales force of sales targets or objectives, i.e., if the sales force sold a specific number of shares of NHTC stock within a specific time period, additional funds would be added to the representatives' compensation for each NHTC transaction. (Tr. pp. 696, 698, 831-834). The representatives would not know for certain whether they actually would receive a portion of the sales credit until the customers paid for the transactions. (Tr. pp. 831-832, 860). Evidence that sales credits were paid appeared on the particular representative's commission run. (Tr. pp. 826, 1197).

To process a customer's NHTC purchase, the Respondents wrote an order ticket showing, among other things: (i) the name of the customer; (ii) the description of the security;

---

[10] As of October 1, 1998, NHTC was included on First Providence's list of the stocks in which it made a market. (CX-19, p. 1). As of October 1, 1998, the closing price on the NHTC stock was $1.9375 per share. (CX-2, p. 11).

(iii) the amount of the transaction; (iv) the reported price of the stock; (v) whether the purchase was a market or a limit order; and (vi) the amount of the mark-up. (Tr. pp. 716, 1097-1098).

The Respondents admitted that they decided the amount of the mark-up on their NHTC transactions. (Tr. pp. 810, 1195). Respondent Linda varied the mark-up for each client depending on the client relationship. (Tr. pp. 810-811, 817). Respondent DaCruz determined the amount of the mark-up based on the length of time of the client relationship, the size of the trade, and the frequency that the client executed transactions.[11] (Tr. pp. 1302-1304).

Next, the Respondents took the completed order ticket to be initialed by a First Providence principal and then to the trading department to be executed.[12] (Tr. pp. 718, 1100). Upon execution of the order, the sales credit was indicated on the order ticket in two places. (JX-1; JX-2; Tr. p. 836). First, in a box labeled "gross credit," the sum of the mark-up and the sales credit was expressed as a fraction per share, and, again, on the bottom of the order ticket, where the gross credit was written as a dollar amount.[13] (JX-1; JX-2; Tr. p. 1203). The gross credit was marked on the order ticket with the executed price of the transaction when the representative's sales assistant received the order ticket back from the trading department.[14] (CX-25, p. 16 at tr. p. 59).

---

[11] In some NHTC transactions, the Respondents set the mark-up as zero. (CX-27, pp. 1, 2, 5, 8-11; CX-44, pp. 3-4, 7-9).

[12] Respondent DaCruz was subject to heightened supervision during this period, which involved his supervisor reviewing his business practices, order tickets, and customer communications. (Tr. pp. 1071, 1220-1221). Other than as a requirement of two states, Respondent DaCruz testified that he did not remember exactly why he was subject to heightened supervision. (Tr. p. 1071).

[13] First Providence paid the Respondents 50% of the sales credit marked on the ticket. (CX-27; CX-44). The Respondents' total compensation per transaction equaled 50% of the gross credit, which was the mark-up plus the sales credit, minus the ticket charges. (CX-26; CX-43; Tr. pp. 194, 367).

[14] Respondent Linda confirmed that the information regarding the gross credit was not on the order ticket when he took it to the trading department. (Tr. pp. 939-940).

Both Respondents Linda and DaCruz denied reviewing the returned order tickets on a regular basis, each stating that he relied on his sales assistant to review the order tickets and post the amounts in his book. (Tr. pp. 719, 895, 1044, 1103-1104). Respondent Linda stated that he kept abreast of his compensation by reviewing his posting book. (Tr. p. 729). In his testimony to the NASD staff during his June 2001 on-the-record interview, Respondent DaCruz stated that he periodically reviewed his record of trades. (CX-25, p. 17 at tr. p. 62).

In almost every case in the twelve months between October 1, 1998 and October 30, 1999, when a customer purchased NHTC in a principal transaction with First Providence, First Providence credited and paid its registered representatives, including the Respondents, compensation that was based on the mark-up plus the sales credit noted on the order ticket.[15] (CX-84). The Respondents routinely disclosed the mark-up to the customer, but they did not disclose the possibility, indeed the likelihood, of a sales credit.

3. The Respondents were offered and expected to receive NHTC sales credits

Respondent Linda claimed that, at no time between October 1998 and November 1999, did he expect to earn or receive a sales credit on his customers' purchases of NHTC stock. (Tr. pp. 898-899). Respondent DaCruz denied that he heard Mr. Wasserman offer a sales credit on the NHTC stock at any time, and claimed that, at no time between October 1998 and June 1999, did he expect to earn or be paid a sales credit on his NHTC transactions.[16] (Tr. pp. 1203, 1207-1208). Although, the Hearing Panel finds that Respondent DaCruz was generally candid about

---

[15] Although the executed tickets for November 1999 indicated sales credits on NHTC purchase transactions, there was no evidence that the sales credits were paid to First Providence representatives for those transactions. (CX-84, p. 10).

[16] In his June 2001 NASD on-the-record interview, Respondent DaCruz admitted that First Providence held meetings every day, one in the morning and another in the afternoon at the close of the market. (CX-25, p. 7 at tr. p. 22). Respondent DaCruz testified that a number of times he came to the office late or not at all, and that while at the office he wore headphones with a sound-dampening feature. (Tr. pp. 1113, 1244).

his disclosures or lack of disclosures to his customers, the testimony that he was unaware of the offer of sales credits was inherently incredible given the facts.

The Hearing Panel finds that Respondent Linda was particularly candid and forthright in his testimony about his disclosures or lack of disclosures to his customers, and about his reasons for recommending the purchase of NHTC.[17] Nevertheless, taking into consideration that the Respondents earned and were paid sales credits on virtually every NHTC purchase that they executed, the Hearing Panel does not credit the Respondents' claims that they did not expect to receive sales credits on the NHTC purchases.[18] (CX-27; CX-44).

Accordingly, the Hearing Panel finds that the Respondents were aware that sales credits were being offered, and that they, at least by November 1, 1998, expected to earn and receive a sales credit on the NHTC purchase transactions that they recommended.[19]

a. Respondent DaCruz

For example, on October 8, 1998, Respondent DaCruz's customer R purchased 1,000 shares of NHTC at $2.34 per share for a cost of $2,343.75.[20] (JX-1, p. 8; CX-27, p. 1). Respondent DaCruz would have advised his customer of the 9 cents per share mark-up on the

---

[17] After First Providence discontinued paying sales credits on NHTC purchase transactions, Respondent Linda continued to recommend the purchase of NHTC stock to his customers. (Tr. pp. 850-851). Respondent Linda viewed NHTC as presenting a potentially profitable turnaround situation; he was impressed with the past track record of NHTC's chief executive officer, and believed in the chief executive officer's ability to implement successfully NHTC's business plan. (Tr. pp. 706, 784-785).

[18] During the nine-month period from October 1998 to June 1999 for Respondent DaCruz, and during the eleven-month period from October 1998 to November 1999 for Respondent Linda, the Respondents earned sales credits on virtually every NHTC purchase that they executed. (CX-26; CX-43). The Respondents were aware that they were receiving sales credits because they received a pay run with their monthly paychecks that showed all of their transactions, commissions, and expenses. (Tr. pp. 1106, 1109-1110; CX-26; CX-43).

[19] Respondent DaCruz and Respondent Linda appeared to have less than a rudimentary understanding of how or why First Providence would pay a sales credit for a particular security. (Tr. pp. 844-845, 876-877, 1248).

[20] The closing price of NHTC stock rose from $2.3438 on October 8, 1998 to $3.4375 on November 2, 1998; subsequently, the closing price peaked at $5.625 on March 9, 1999, declined to $3.375 on June 30, 1999, and declined further to $2.6562 on October 29, 1999. (CX-2, pp. 2, 5, 8, 11). By December 31, 1999, the price closed at $1.75 (CX-2, p. 1).

reported price of $2.25 per share, which resulted in a total mark-up on the transaction of $93.75. (JX-1, p. 8; CX-27, p. 1). However, Respondent DaCruz did not advise customer R that First Providence had offered him, and he expected to receive, additional compensation in the form of a portion of the sales credit. (Tr. pp. 1218-1219). Instead of being paid $46.88 (50% of the $93.75 mark-up) on the 1,000 share transaction, Respondent DaCruz was paid $89.38, half of the $218.75 gross credit ($93.75 mark-up plus $125 sales credit) minus the ticket charges.[21] (CX-27, p. 1; CX-26, p. 2; Tr. p. 194). Accordingly, in addition to his share of the mark-up, Respondent DaCruz received $62.50 (50% of the sales credit) on the transaction as additional compensation before subtracting the ticket charges. (Id.).

Respondent DaCruz admitted that from October through December 1998, and from January through June 1999, he did not execute any purchase transactions in NHTC, excluding sellouts and corrections, for which he did not earn and receive a sales credit. (CX-27; Tr. pp. 1202, 1205). Respondent DaCruz did not disclose to any of the customers whom he solicited that First Providence had offered and he expected to receive sales credits on the NHTC transactions. (Tr. pp. 1218-1219).

During the relevant period from October 1998 to June 1999, the NHTC transactions constituted a substantial portion of Respondent DaCruz's payout from First Providence. (CX-27). During the fourth quarter of 1998, Respondent DaCruz earned a payout of $39,136.19, of which $31,907.62 or 81.5% was attributable to NHTC transactions. (CX-27, p. 12). During the first quarter of 1999, Respondent DaCruz earned a payout of $50,895.19, of which $41,007.00 or

---

[21] Similarly, Respondent DaCruz solicited customer SP who purchased NHTC in four transactions: (i) 2,000 shares on October 6, 1998; (ii) 1,000 shares on October 9, 1998; (iii) 7,000 shares on October 15, 1998; and (iv) 2,000 shares on January 26, 1999. (JX-1, pp. 4, 9, 15, 71). Each of the transactions earned an undisclosed sales credit for Respondent DaCruz. (CX-27, pp. 1, 6).

80.5% was attributable to NHTC transactions. (Id.). Respondent DaCruz's payout for the second quarter of 1999 was $36,435.14, of which $20,761.59 or 56.9% was attributable to NHTC transactions.[22] (Id.).

b. Respondent Linda

On October 19, 1998, Respondent Linda's customer D purchased 1,000 shares of NHTC at $3.44 per share for a cost of $3,437.50. (JX-2, p. 10; CX-44, p. 1). The customer was advised through his confirmation and generally by Respondent Linda of the 13 cents per share mark-up on the reported price of $3.31 per share, which resulted in a total mark-up on the transaction of $125. (Tr. p. 816; JX-2, p. 10). Respondent Linda did not advise Customer D that he expected to receive a sales credit as additional compensation. (Tr. pp. 816, 874). Instead of being paid $62.50 (50% of the $125 mark-up) on the 1,000 share transaction, Respondent Linda was paid $167.50, half of the $375 gross credit ($125 mark-up plus $250 sales credit) minus the ticket charges.[23] (CX-43, p. 1; CX-44, p. 1; Tr. p. 367). Accordingly, in addition to his share of the mark-up, Respondent Linda received $125 (50% of the sales credit) on the transaction before subtracting the ticket charges. (Id.).

Respondent Linda admitted that in October through December 1998, and in January through October 1999, he did not execute any purchase transactions in NHTC stock, excluding sellouts and corrections, for which he did not receive a sales credit. (Tr. pp. 855-859, 864-871).

---

[22] Respondent DaCruz stated that First Providence did not pay him for his June 1999 transactions. (CX-25, p. 35 at tr. p. 135). Respondent DaCruz was paid monthly on the 15th of the month for the prior month's production. (Tr. p. 186; CX-26, pp. 6, 10, 14, 18, 22, 26, 30). Enforcement provided copies of checks for Respondent DaCruz through 1999, except for Respondent DaCruz's June 1999 production. (CX-26).

[23] Similarly, customer RWH purchased shares of NHTC in five separate transactions: (i) 1,000 shares on November 19, 1998; (ii) 1,000 shares on December 11, 1998; (iii) 2,000 shares on December 22, 1998; (iv) 3,500 shares on September 16, 1999; and (v) 2,500 shares on November 15, 1999. (Stip. at ¶50). Although Respondent Linda earned a sales credit for each of the transactions, he did not disclose to customer RWH that he had been offered and expected to receive such credits. (CX-44, pp. 3-4, 13, 15).

During the relevant period from 1998 to 1999, the NHTC transactions constituted a substantial portion of Respondent Linda's payout from First Providence. During the fourth quarter of 1998, Respondent Linda earned a payout of $76,745.65, of which $68,808.76 or 89.6% was attributable to NHTC transactions. (CX-44, p. 16). During the first quarter of 1999, Respondent Linda earned a payout of $73,485.97, of which $62,162.84 or 84.6% was attributable to NHTC transactions. (Id.). Respondent Linda's payout for the second quarter of 1999 was $78,661.14, of which $33,743.80 or 42.9% was attributable to NHTC transactions, and for the third quarter of 1999 his payout was $38,155.63, of which $22,837.50 or 59.8% was attributable to NHTC transactions. (Id.). For October and November 1999, Respondent Linda's earned payout was $62,315.01, of which $21,395.74 or 34.3% was attributable to NHTC transactions. (Id.). Respondent Linda admitted that his payout from NHTC was larger than it was for other stocks. (Tr. p. 959).

C. When Soliciting Their Customers, the Respondents Recklessly Failed to Disclose Their Financial Interest in the NHTC Transactions by Failing to Disclose that They had been Offered and Expected to Receive a Sales Credit as Additional Compensation

Count one of each Complaint alleges that the Respondents violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), SEC Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110, by making the recommendation to purchase NHTC stock without disclosing to their retail customers that they were receiving additional compensation in the form of sales credits.

Section 10(b) of the Exchange Act,[24] SEC Rule 10b-5, Section 15(c) of the Exchange Act, SEC Rule 15c1-2 thereunder, and NASD Conduct Rule 2120[25] are anti-fraud provisions that prohibit any fraudulent scheme or device, or the making of material misrepresentations and omissions, in connection with the offering, purchasing, or selling of securities.

In general, to find a violation of these anti-fraud provisions there must be a showing[26] that (1) misrepresentations and/or omissions were made in connection with the purchase or sale of securities,[27] (2) the misrepresentations and/or omissions were material, and (3) the misrepresentations and/or omissions were made with the requisite intent, i.e., scienter. On the other hand, evidence of scienter is not required to establish that a misrepresentation and/or omission violated NASD Conduct Rule 2110.[28]

---

[24] Section 10(b) of the Exchange Act provides:
"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest for the protection of investors."

[25] Conduct Rule 2120 parallels SEC Rule 10b–5 and provides that no member shall effect any transactions, or induce the purchase or sale of any security, by means of any manipulative, deceptive, or fraudulent device. Prime Investors, Inc., Exchange Act Release No. 38,487, 1997 SEC LEXIS 761, at *24 (Apr. 8, 1997) (making material misstatements of fact in connection with a sale of a security is a violation of Conduct Rule 2120).

[26] Unlike a private litigant, NASD need not show justifiable reliance upon the alleged misrepresentation, omission or fraudulent device, or damages resulting from such reliance. See DBCC v. Coastline Financial, Inc., No. C02950059, 1997 NASD Discip. LEXIS 9 (Mar. 5, 1997).

[27] For the federal securities laws, the transactions must also involve interstate commerce or the mails, or a national securities exchange. The Respondents used a means and instrumentality of interstate commerce when they communicated with their customers via telephone across state lines and when they used the mails to send confirmations and account statements to their customers. See SEC v. Hasho, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992), 1992 U.S. Dist. LEXIS 1322, at **148-149 (1992).

[28] Michael Alan Leeds, Exchange Act Release No. 32,437, 1993 SEC LEXIS 1423 (June 9, 1993).

1. The Respondents' failure to disclose the offer, expectation, and receipt of NHTC sales credits constituted material omissions made in connection with the purchase of securities

Facts are material if there is a substantial likelihood that a reasonable investor would consider them important in making an investment decision and would view disclosure of them as significantly altering the total mix of information made available.[29] The duty to disclose may encompass a present intent, opinion, or expectation.[30]

Liability for omissions of a material fact arises only if, under the circumstances, such failure to disclose is misleading. Specifically, a duty to disclose occurs when, in light of the statements made and the surrounding circumstances, disclosure of particular facts is necessary to avoid misleading impressions.[31] A registered representative, as a securities professional, has an obligation to disclose known material facts or material facts that were "reasonably ascertainable."[32] Misrepresentations occur when a member firm or a registered representative provides a customer with information which is misleading, incomplete, inaccurate, without any reasonable basis, or simply false, to induce the purchase or sale of a security.

The "in connection with" requirement of Section 10(b) of the Exchange Act has been construed broadly to include any statement that is reasonably calculated to influence the average investor to purchase or sell a security.[33]

---

[29] Basic Inc. v. Levinson, 485 U.S. 224, 231-232 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

[30] Basic Inc. at 231-32.

[31] Brody v. Transitional Hospitals Corp., 280 F.3d 997, 1006 (9th Cir. 2002).

[32] Hanley v. SEC, 415 F.2d 589, 597 (2nd Cir. 1969).

[33] Hasho at 1110 ("any statement that is reasonably calculated to influence the average investor satisfies the 'in connection with' requirement of Rule 10b-5").

In this case, Enforcement argued that Respondent DaCruz and Respondent Linda were offered and expected to receive sales credits on the NHTC transactions, which were material facts that the Respondents were obligated to disclose. The Respondents' expectations were based on (i) the announcements by First Providence management at the morning meetings, afternoon meetings, or during impromptu meetings, of the availability of the credits, (ii) the notations of the credits on the order tickets, and (iii) the Respondents' actual receipt of a sales credit on each NHTC purchase transaction beginning in October 1998 that was not later canceled or adjusted.

Respondent DaCruz earned and was paid sales credits for 96 separate customer purchases of NHTC between October 1, 1998, and June 30, 1999. (CX-27). Respondent DaCruz admitted that he solicited his customers to purchase NHTC stock without telling them that First Providence had offered, and he expected to earn, a sales credit on the transactions. (Tr. pp. 1218-1219). Respondent DaCruz knew, or reasonably should have known, that his customers would receive confirmations that did not disclose the sales credits.[34]

Respondent Linda earned and was paid sales credits on 161 separate NHTC customer purchases between October 1, 1998, and October 31, 1999. (CX-44). Although he often advised his customers of the amount of the mark-up that First Providence would charge when he solicited his customers to purchase NHTC stock, Respondent Linda admitted that he did not tell his customers that First Providence had offered, and that he expected to earn, a sales credit. (Tr. pp. 816, 874). Further, Respondent Linda knew, or reasonably should have known, that the

[34] The confirmations provided by First Providence to their customers did not disclose that First Providence offered or paid sales credits on the NHTC transactions. (Tr. p. 181). The confirmations were in compliance with SEC Rule 10b-10, which sets forth the minimum disclosures required to be provided to a customer in a securities transaction. However, SEC Rule 10b-10 specifically states that its disclosure requirements are not determinative of a broker-dealer's obligations under the general anti-fraud provisions of the federal securities laws.

confirmation sent to his customers for each purchase would not disclose the sales credit, which was material.

The Respondents argued that they were unaware when they solicited a customer's particular NHTC transaction whether First Providence would pay a sales credit on the purchase transaction, or, if paid, the amount of the sales credit. The Respondents argued that the mere possibility that they might be paid a sales credit was not material information that they were required to disclose.[35] In addition, the Respondents argued that they were not soliciting their customers to purchase the NHTC stock because of the possibility that they would be paid a sales credit.

The Hearing Panel accepts the Respondents' testimony that they were not absolutely one hundred percent certain that they would be paid the sales credit at the time they solicited customers to purchase NHTC. However, in light of the Respondents' continuous actual receipt of the sales credits, the Hearing Panel does not find credible the Respondents' testimony that they did not expect to receive the sales credit. Accordingly, the Hearing Panel finds that Respondent DaCruz and Respondent Linda knew that they had been offered a sales credit and that, at least by November 1, 1998, they expected to receive a sales credit on each NHTC purchase transaction. The Hearing Panel also finds that, at least by November 1, 1998, the Respondents expected that the sales credits for NHTC transactions would constitute a substantial portion of their total compensation.[36]

---

[35] Respondent DaCruz further argued that he was not aware of the possibility of the payment of a sales credit at the time that he solicited his customers' purchases of NHTC stock because he had no recollection of First Providence management advising the representatives that a sales credit was being offered. But, as discussed earlier, the Hearing Panel does not find it credible that Respondent DaCruz did not know at any time between November 1998 and June 1999 that First Providence was offering a sales credit on his customers' purchases of NHTC.

[36] On other transactions, the Respondents generally earned commissions ranging from $50 to $175, of which the Respondents netted $5 to $55. (CX-26; CX-43).

In the absence of the sales credit disclosure, the customer reasonably believed that the Respondents were not being offered and paid more money for selling NHTC in contrast to other stock.[37] The Hearing Panel finds that any customer would have wanted to know of the Respondents' possible bias arising from their financial interest[38] in recommending NHTC. Under these circumstances, the Hearing Panel finds that the Respondents had a duty to disclose to their customers at the time that the Respondents solicited purchases of NHTC stock that they had been offered, and expected to receive, significant additional compensation in the form of a sales credit on each transaction. The Hearing Panel further finds that the information meets the "in connection" requirement of Section 10(b) of the Exchange Act because such information is reasonably calculated to influence the average investor to purchase or sell a security.

Therefore, the Respondents' failure to disclose that First Providence offered sales credits and their expectation that they would receive sales credits constituted material omissions made in connection with the purchase of securities.

2. The Respondents acted with scienter when they failed to disclose that they had been offered, and expected to receive, a sales credit as additional compensation

In order to find a violation of the anti-fraud provisions, Enforcement must prove that the Respondents acted with scienter. Scienter is established by a showing that the Respondents acted intentionally or recklessly.[39] Recklessness has been defined as highly unreasonable

[37] Customer JHH testified that he assumed Respondent DaCruz would be receiving the standard brokerage commission. (Tr. p. 75). JHH testified that he would have wondered whose interest Respondent DaCruz was serving if he had known of the sales credit. (Tr. p. 77). Customer AD testified that he would have been suspicious of anyone receiving an additional benefit. (Tr. p. 137).

[38] The Respondents had a financial interest in recommending NHTC stock because their receipt of a sales credit in connection with the NHTC stock caused their compensation to exceed the compensation that they would have received from First Providence if they had recommended the purchase of a different security.

[39] Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976); Tuchman v. DSC Communications Corp., 14 F.3d 1061, 1067 (5th Cir. 1994), 1994 U.S. App. LEXIS 3326 at **14 (1994).

conduct involving not merely simple or excusable negligence, but an extreme departure from the standards of ordinary care that presents a danger of misleading buyers or sellers, and which is either known to the defendant or is so obvious that the defendant must have been aware of it.[40]

The Respondents argued that they lacked the requisite scienter because, although the payment of sales credits is common in the securities industry, there is no established rule, standard, or practice requiring disclosure. In Platsis v. E. F. Hutton & Co.,[41] the court stated with respect to failure to disclose certain mark-ups and credits:

> Since very few brokers disclose these credits at the time these events took place and there was no established regulatory duty to disclose these items, an intent to deceive or an 'extreme departure from the standards of ordinary care' could not be established merely by the omission of this information in the absence of special circumstances.

This case, however, involves special circumstances. The sales credits were paid over an extended period of time for the purpose of motivating the Respondents to recommend a particular speculative stock to their customers, and the sales credits amounted to a substantial component of the Respondents' gross commissions. There was no evidence presented that the Respondents' customers were sophisticated investors. Indeed, the fact that, in some instances, First Providence paid its representatives sales credits for selling NHTC stock that were in excess of the mark-up[42] on the NHTC stock raised a red flag that would be of concern to any reasonable purchaser and should have been of concern to the Respondents. Despite Respondent DaCruz's claim that he was not motivated to recommend NHTC stock because of the sales credits, the

---

[40] See, e.g., DWS Securities Corp., 51 S.E.C. 814 (1993); Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990).

[41] 946 F.2d 38, 41 (6th Cir. 1991); see also Shivangi v. Dean Witter Reynolds, Inc., 637 F. Supp 1001 (S.D. Miss. 1986), aff'd 825 F.2d 885 (5th Cir. 1987).

[42] On several NHTC transactions, First Providence paid the Respondents sales credits that exceeded the amount of the mark-up. (CX-27; CX-44).

Hearing Panel notes that more than 76% of the purchase transactions that Respondent DaCruz executed between October 1998 and June 1999 involved NHTC purchases. (CX-26).

Even if the Hearing Panel accepts Respondent Linda's claim that he was not motivated by the sales credit because less than 37% of his purchase transactions were NHTC transactions (CX-43), the Hearing Panel finds that Respondent Linda realized that the information regarding the sales credit would have been material to the customers because Respondent Linda acknowledged that a customer could view his receipt of a sales credit as evidence of his bias.[43]

The Respondents deprived their customers of information leading to a possible conclusion that the Respondents might be recommending the purchase of NHTC based upon their own financial interest, rather than the investment value of the security. This potential conflict of interest was not negated because the Respondents received that additional compensation from First Providence rather than from the customers or a stock promoter.[44]

The Hearing Panel finds that the Respondents did not view the sales credit as impacting either the cost of the security to their customers[45] or the Company's future prospects, and finds that the Respondents did not have a clear understanding of how First Providence was paying the sales credit. These factors, however, do not relieve the Respondents of their obligation to disclose the material information that they expected to receive a sales credit. As discussed previously, any customer when evaluating the Respondents' recommendation to purchase

---

[43] Respondent Linda argued that, if the customer decided not to buy a stock because of a concern about bias, the customer might miss an opportunity to make a profit. (Tr. pp. 878-880).

[44] Kevin Eric Shaughnessy, Exchange Act Release No. 40244, 1998 SEC LEXIS 1507 (July 22, 1998) (finding that Respondent violated Conduct Rule 2120 by soliciting sales of, and selling securities to, individual customers without informing them that he would be paid by a stock promoter for the sales).

[45] The NASD investigator confirmed that, if a customer had purchased NHTC stock from another market maker, assuming the transaction was executed at the same time, the customer would have paid the same price as was paid to First Providence. (Tr. p. 212).

NHTC, would have wanted to know of the Respondents' possible bias arising from their anticipated financial interest in the NHTC transaction.

In the absence of such disclosure, the customer would have reasonably believed that the Respondents were not being offered and paid more money for selling NHTC than for other stocks. Accordingly, the failure to make such disclosure presented a danger of misleading the customers that was so obvious that the Respondents must have been aware of it. The Hearing Panel finds that the Respondents were, at the very least, reckless in determining that their customers would not have wanted to know such information, i.e., the existence of the offer of sales credits and that the Respondents, in fact, had received and expected to receive sales credits on each and every sale of securities that they made.[46]

Accordingly, the Hearing Panel concludes that the Respondents' conduct violated Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Conducts Rule 2120, as alleged in count one of each Complaint. By this conduct, the Respondents also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

D. When Soliciting Their Customers, the Respondents Fraudulently Made Baseless Price Predictions

1. The Respondents provided price targets to their customers

Count two of each Complaint alleges that the Respondents violated the anti-fraud provisions of Section 10(b) of the Exchange Act, SEC Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110 by predicting the future price of NHTC to their customers in order to induce them to make a purchase.

---

[46] Hasho at 1110.

a. Respondent Linda

Count two of Respondent Linda's Complaint alleges that in order to induce 16 customers—JB, GB, RC, SD, AD, PF, CG, MK, KK, DM, SM, RP, SS, DS, MV, and GTX—to purchase NHTC stock, Respondent Linda predicted the future price of NHTC stock when recommending NHTC to his customers. Five of Respondent Linda's customers testified at the Hearing, PF, CG, SS, DS, and GTX.

Respondent Linda admitted that he discussed a target range of prices with his customers as part of his regular presentation. (Tr. p. 1025). Respondent Linda also reported that he calculated NHTC's appropriate target range to be $7 to $10, based in part on NHTC's projected $100 million in revenue, and that his projected target range was consistent with the target range that First Providence provided to its registered representatives. (Tr. pp. 931-932, 940, 1026). In fact, Respondent Linda testified that he felt confident in his price targets, in part, because his independent calculation was consistent with the price targets provided by First Providence. (Tr. p. 942).

Two customers, PF and DS, testified that Respondent Linda provided a target range between the $7 and $10 per share. (Tr. pp. 334, 422-423, 940-941). Customer GTX testified that Respondent Linda told him the stock would double, which would have resulted in a price within the $7 to $10 range. (Tr. p. 488). Two customers, MK and KK, provided affidavits stating that Respondent Linda indicated he could double their money, which would have resulted in a price within the $7 to $10 range. (CX-58; CX-59). Six other customer questionnaires indicated that Respondent Linda had provided price predictions within the $7 to $10 target range. (CX-47, p. 6; CX-48, p. 6; CX-49, p. 25; CX-60, pp. 1, 5; CX-61, p. 5; CX-67, p. 5).

On the other hand, customer SS testified that he received a target price of $12 to $15 per share from Respondent Linda. (Tr. pp. 452-453). Customer CG testified that he received a $20 price target from Respondent Linda, but he had no recollection of Respondent Linda providing a time period in which the target would be reached. (CX-54, p. 4; Tr. p. 269).

The Hearing Panel finds that Respondent Linda provided his customers with target prices in connection with his recommendations that his customers purchase NHTC stock.

b. Respondent DaCruz

Count two of Respondent DaCruz's Complaint alleges that Respondent DaCruz predicted the future price of NHTC to eight customers--SC, AD, JHH, JEH, LJ, PL, SP, and SS--in order to induce them to follow his recommendation to purchase NHTC stock. Three of Respondent DaCruz's customers testified at the Hearing, AD, JHH, and PL.

Respondent DaCruz admitted that he advised his customers of the target prices provided by First Providence of $7 to $8. (Tr. p. 1258). Customer AD testified that Respondent DaCruz told him the stock would double. (Tr. pp. 139-140). JHH testified that Respondent DaCruz provided him with prices ranging between $6 and $8. (Tr. p. 73). PL testified that Respondent DaCruz provided him with a target range of $11 to $12. (Tr. pp. 380-381). The Hearing Panel finds that the customers' testimony that Respondent DaCruz provided price targets to them was credible.

Respondent DaCruz admitted that he did not conduct independent research to determine the reasonableness of First Providence's price targets. Specifically, Respondent DaCruz

admitted that he never reviewed NHTC's SEC filings.[47] (Tr. p. 1162; CX-25, p. 23 at tr. p. 89).

The Hearing Panel finds that Respondent DaCruz provided his customers with target prices in connection with his recommendations that his customers purchase the NHTC stock.

2. Price targets constitute price predictions and are prohibited for speculative securities

The Courts have held that predictions of substantial price increases are actionable as fraudulent misrepresentations absent a reasonable basis for the prediction.[48] In addition, the SEC has repeatedly held that specific predictions of the future value of a speculative or unseasoned security are inherently fraudulent because there can be no basis for predicting the future value of a speculative or unseasoned security.[49]

There is no dispute that NHTC stock was speculative, as shown by (i) NHTC's financial condition, and (ii) First Providence's listing of the stock as a speculative buy.[50] While admitting that they provided some of their customers with price targets when soliciting the purchase of NHTC stock, the Respondents argued that providing a price target is not the equivalent of a specific price prediction. Respondent Linda also argued that his target range was reasonable because he believed that NHTC would be capable of executing its business plan to meet its revenue projection of $100 million.

Considering the Company's continuing losses and need for additional financing to continue operations, the Hearing Panel finds that there was no reasonable basis to predict when,

---

[47] Respondent DaCruz provided letters from three of his customers, including SP and LJ, which stated that Respondent DaCruz did not guarantee the price target. (RX-CD-1; RX-CD-2; RX-CD-3). Customer SC wrote a letter indicating that he did not specifically recall which broker at First Providence provided him with the target price of $9 to $10. (RX-CX-5).

[48] DBCC v. Michael R. Euripides, No. C9B950014, 1997 NASD Discip. LEXIS 45 (July 28, 1997); DBCC v. Goodman, No. C9B960013, 1999 NASD Discip. LEXIS 34 (Nov. 9, 1999).

[49] Donald A. Roche, Exchange Act Release No. 38,742, 1997 SEC LEXIS 1283, at *5 nn. 2-3 (1997).

[50] Respondent Linda admitted that he knew NHTC was a speculative security. (Tr. p. 931).

or if, the Company could successfully effect a turnaround. Accordingly, the Respondents lacked a reasonable basis to provide the proposed price targets to their customers, and, therefore, the Respondents were reckless in providing targets.[51]

As set forth above, the Respondents admitted that they provided price targets to certain of their customers. It is irrelevant that the Respondents expressed their price predictions as a matter of opinion or possibility rather than as a guarantee, or as a target or range of prices rather than a specific price.[52] It is also irrelevant to the finding of liability that the Respondents provided target ranges of $7 to $8, $8 to $10, $12 to $15 or $20 to their customers.

The Hearing Panel concludes that the Respondents' conduct violated Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Conduct Rule 2120, as alleged in count two of the Complaints. By this conduct, the Respondents also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

III. SANCTIONS

For intentional or reckless misrepresentations or material omissions of fact, including price predictions, the NASD Sanction Guidelines recommend fines ranging from $10,000 to $100,000, suspensions of 10 business days to two years, and, in egregious cases, a bar.[53] In addition, a fine may be increased by the amount of the respondent's financial benefit.[54]

Arguing: (i) that the Respondents' conduct was reckless or intentional; (ii) that the conduct resulted in substantial financial benefit to the Respondents; (iii) that the conduct involved

[51] Micah C. Douglas, Exchange Act Release No. 37,865, 1996 SEC LEXIS 3008, at *1 n.1 (1996).

[52] Dept. of Enforcement v. John J. Katsock, Jr., No. C9A020018, 2003 NASD Discip. LEXIS 39 (Sept. 4, 2003); Millennium Group of New York, Exchange Act Release No. 44,919, 2001 SEC LEXIS 2121 (Oct. 11, 2001); Henry Gellis, Admin. Proc. File No. 33156, 1973 SEC LEXIS 3469 (Jan. 19, 1973).

[53] NASD Sanction Guidelines, p. 93 (2005).

a large number of transactions; and (iv) that the conduct continued for a substantial period of time, Enforcement recommended that each Respondent be barred for his fraudulent misrepresentations and omissions, and that each be ordered to disgorge the payout portions of his compensation for the NHTC transactions.

The Hearing Panel finds that the Respondents did not attempt to disguise their conduct from their employer, that First Providence did not direct them to disclose the sales credits, and that First Providence provided the Respondents with price targets for NHTC to be shared with their customers. Finding that the Respondents' omissions regarding the sales credits and the price predictions were reckless rather than intentionally deceptive, the Extended Hearing Panel does not find that a bar is warranted for either Respondent. Moreover, because the Respondents' failure to disclose the sales credits and their baseless price predictions were both made in connection with the same sales of NHTC stock, the Hearing Panel finds that a single set of sanctions is appropriate to address both violations.

A. Respondent Linda

In determining the appropriate sanction for Respondent Linda, the Hearing Panel considered the likelihood that he would engage in similar conduct in the future. The Hearing Panel concludes that had Respondent Linda clearly understood the ramifications of the offer of the sales credits, he would have disclosed them to his customers. The Hearing Panel further concludes that had Respondent Linda understood the principle that target prices for speculative securities are never reasonable, he would not have provided his customers with target prices. A requirement to requalify could arguably remediate Respondent Linda's lack of knowledge.

---

[54] Id. at 6.

However, considering the number of customers harmed, the 10-month period of time over which the misconduct occurred, the substantial benefit he received,[55] the importance of Respondent Linda appreciating his professional obligation to disclose material information to his customers, and the need to deter others from engaging in similar misconduct, the Hearing Panel finds that a substantial suspension and a fine encompassing the financial benefit earned for Respondent Linda are warranted.

Accordingly, for violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and Conduct Rules 2120 and 2110 as alleged in counts one and two of the Linda Complaint, Respondent Linda is suspended for one year in all capacities, ordered to requalify as a registered representative within 60 days of the termination of his suspension, and fined $200,000.[56]

B. Respondent DaCruz

In assessing the likelihood that Respondent DaCruz would engage in similar misconduct in the future, the Hearing Panel considered Respondent DaCruz's belief that because he did not attempt to conceal his conduct from his employer, and because he was subject to heightened supervision during the relevant time period, that his supervisor would have advised him of any problems with his conduct. Nevertheless, considering the number of customers harmed, the eight-month period of time over which the misconduct occurred, the substantial benefit Respondent DaCruz received, and Respondent DaCruz's failure to exercise independent professional judgment in these transactions, the Hearing Panel finds that a substantial suspension

[55] Id.

[56] The approximate amount of compensation received by Respondent Linda on the NHTC transactions.

is warranted. The Hearing Panel further finds that a sufficient fine should be imposed to deprive Respondent DaCruz from any financial benefit of his misconduct.

Accordingly, for violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and NASD Conduct Rules 2120 and 2110 as alleged in counts one and two of the DaCruz Complaint, Respondent DaCruz is suspended for one year in all capacities, ordered to requalify as a registered representative within 60 days of the termination of his suspension, and fined $67,000.[57]

IV. CONCLUSION

Respondent Thomas J. Linda is suspended for one year in all capacities, ordered to requalify as a registered representative within 60 days of the termination of his suspension, and fined $200,000 for violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and Conduct Rules 2120 and 2110, as alleged in counts one and two of the Linda Complaint.

Respondent Charles A. DaCruz is suspended for one year in all capacities, ordered to requalify as a registered representative within 60 days of the termination of his suspension, and fined $67,000 for violating Section 10(b) of the Exchange Act, SEC Rule 10b-5 thereunder, and Conduct Rules 2120 and 2110, as alleged in counts one and two of the DaCruz Complaint.

The Hearing Panel also orders Respondents Linda and DaCruz to each pay $8,837.88, which amount equals half of the total costs of the Hearing.[58] The costs and fines shall be due and payable when, and if, the Respondents seek to return to the securities industry.

The sanctions shall become effective on a date determined by NASD, but not sooner than thirty days from the date this Decision become the final disciplinary action of NASD, except

---

[57] The approximate amount of compensation received by Respondent DaCruz on the NHTC transactions.

[58] The total cost of the Hearing equals $17,675.76, consisting of a $750 administrative fee and $16,925.76 in transcript fees.

that, if this Decision becomes the final disciplinary action of NASD, Respondent Linda's suspension in all capacities shall commence on November 21, 2005 and conclude on November 20, 2006, and Respondent DaCruz's suspension in all capacities shall commence on November 21, 2005 and conclude on November 20, 2006.[59]

HEARING PANEL.

By:______________________
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
September 27, 2005

Copies to:
Charles A. DaCruz (via FedEx and first class mail)
Thomas J. Linda (via FedEx and first class mail)
Lawrence R. Gelber, Esq. (via facsimile and first class mail)
Martin P. Unger, Esq. (via facsimile and first class mail)
Sylvia M. Scott, Esq. (via electronic and first class mail)
Jacqueline D. Whelan, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

[59] The Hearing Panel has 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.