BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of District Business Conduct Committee For District No. 1 Complainant, vs. Gregory Paul Maggipinto San Jose, CA, Respondent.	DECISION Complaint No. C01970025 District No. 1 Dated: April 19, 1999,

Where registered representative effected unauthorized transactions in a customer's account, held, DBCC's findings of violations and the sanctions it imposed upheld.

Gregory Paul Maggipinto ("Maggipinto") has appealed a May 13, 1998 decision of the District Business Conduct Committee for District No. 1 ("DBCC"). After a review of the entire record in this matter, we affirm the findings of the DBCC that Maggipinto effected unauthorized transactions in a customer's account. We impose a censure, a $25,000 fine, a six month suspension in all capacities, the requirement to requalify by examination as a general securities representative, and costs.

Background

Maggipinto entered the securities industry in 1982. From November 1990 to December 1995, he was registered as a general securities representative with Quest Securities, Inc. ("Quest" or the "Firm"). Maggipinto is currently registered as a general securities representative with Thomas F. White & Co.

Facts

One of Maggipinto's customers (✌Customer FO✍) met Maggipinto in 1992 and opened an account with him at Quest shortly thereafter. From October 17 through October 20, 1995, Maggipinto effected six options transactions, three purchases and three sales, in Customer FO's account. Customer FO did not authorize any of these transactions; he was on vacation from October 12 to 21,

1995. Customer FO had not opened an options account with Quest and he testified that he had never traded in options.[1]

The transactions in Customer FO's account occurred as follows:

Trade Date	Buy/Sell	Security
10/17/95	Buy	20 Puts Hewlett Packard @ 90 exp. 10/21/95
10/18/95	Buy	20 Puts Stratacom @ 60 exp. 10/21/95
10/19/95	Sell	20 Puts Stratacom @ 60 exp. 10/21/95
10/19/95	Buy	20 Puts Stratacom @ 60 exp. 10/21/95
10/20/95	Sell	20 Puts Stratacom @ 60 exp. 10/21/95
10/20/95	Sell	20 Puts Hewlett Packard @ 90 exp. 10/21/95

Customer FO testified that Maggipinto called him shortly after the trades took place. He could not recall, however, whether Maggipinto called him or whether he saw the confirmations first. Maggipinto told Customer FO that the trades were in error and that they belonged in another account. Maggipinto said that he would take care of the problem.

Customer FO further testified that in the weeks that followed, he spoke again with Maggipinto. Maggipinto said that he was working with Quest's clearing firm, but the clearing firm was holding up the process of removing the trades from Customer FO's account.

In November 1995, Customer FO sold an unrelated stock in his account in order to make a tax payment that was due in December 1995. When the proceeds of his stock sale did not materialize, Customer FO called Quest on December 6, 1995. Maggipinto was out of the office, so he spoke with Maggipinto's supervisor, Helga Malmstedt ("Malmstedt"), who agreed to handle the problem.

Malmstedt called Quest's clearing firm on December 7, 1995, and discussed the problem. On December 8, 1995, the clearing firm wired Customer FO's money to him. Malmstedt explained that she was able to have the trades in question moved into Quest's error account without needing written authorization.

The parties dispute whether Maggipinto intentionally effected the options transactions in Customer FO's account. Maggipinto claims that the transactions belonged to another customer and that he simply made a mistake in purchasing the Hewlett Packard and Stratacom puts in Customer FO's account. He testified that he occasionally would call Quest's clearing firm and transmit an order without having written a trade ticket. He would wait for a confirmation from the clearing firm and then would write an order ticket to match. As to the first transaction, a purchase of 20 Hewlett Packard puts on October 17, 1995, Maggipinto testified that he did not write the order ticket on that day, but he wrote it either 24 or 48 hours later and, when the confirmation arrived, he completed the order ticket to match the confirmation. Maggipinto admitted that it did not matter to him that he was completing a trade ticket for the wrong account. He stated that he did not want to be questioned in the office about the trade, so he wrote Customer FO's name on the trade ticket. Maggipinto testified that when he received the confirmation of the purchase of the Stratacom puts, he realized that they were in the wrong account.

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[1] Quest filed a Uniform Termination Notice for Securities Industry Registration, a Form U-5, which disclosed that Customer FO complained that Maggipinto had effected unauthorized transactions in his account. Quest's Form U-5 filing prompted an investigation of Maggipinto.

Maggipinto further testified that on October 19, the Stratacom puts had increased in price from 2 5/8 to 4 5/8. In order to lock in the two points of profit, Maggipinto immediately sold the 20 Stratacom puts. He intended to place the trades in the correct account at a later time. Maggipinto then became confused about whether he had closed out the Stratacom position and, believing that Customer FO was short 20 puts, he purchased another 20 puts at noon on the 19th. On the 20th, Maggipinto learned that he was long 20 Stratcom puts and entered a transaction to close out the position. Also on October 20, he sold the 20 Hewlett Packard puts, in order to close out that position.

In sum, Maggipinto argues that he mistakenly placed two trades in Customer FO's account and, although he made an error in the process, closed the positions.

Discussion

We do not credit Maggipinto■s explanation for several reasons. First, Maggipinto did not present persuasive evidence that the trades actually belonged to another customer. Although Maggipinto made several claims about who actually authorized the trades, no customer verified Maggipinto's claim.

Malmstedt testified that after Customer FO called her, she questioned Maggipinto and he told her that the trades actually belonged to a customer named Rollins. Malmstedt testified that she called Rollins, but that he said that the trades were not his.

Maggipinto testified during his on-the-record interview that the trades belonged to either customers Rollins, Gross, Atwell, Muccino, or Beaulieu. At the hearing, NASD Regulation examiner Suzanne Winchester ("Winchester") authenticated a death certificate for Beaulieu. The death certificate showed that Beaulieu died in July 1995, several months before the conduct at issue here. Rollins testified that the Hewlett Packard and Stratacom options trades were not his. Malmstedt testified that, immediately after the trades, Maggipinto had not told her that the trades were actually for either customer Beaulieu or Atwell.

At the hearing, Maggipinto argued that the transactions were for Atwell. Atwell did not, however, testify that he had authorized the trades. Atwell testified that he previously had traded in Hewlett Packard and Stratacom options, but that he did not recall placing trades that were not executed. He testified that it was "possible" that he had bought these options in October 1995.

We find that this testimony, on balance, supports the DBCC's conclusion that Maggipinto effected unauthorized transactions.[2] Maggipinto's naming of five possible customers for whom the trades might have been executed suggests that he did not want to be pinned down as to who ordered these trades.

We also find that Maggipinto's actions are inconsistent with his accidentally putting another customer's trades in Customer FO's account. Maggipinto admits that he closed out the Stratacom position on October 19. He failed to explain why he chose not to close out the Hewlett Packard

[2] Because Maggipinto asserts a defense to the unauthorized transaction allegation, Maggipinto was required to prove, by a preponderance of the evidence, that the trades belonged to another customer. We find that he failed to do so.

position at the same time, given that he knew the trades were not authorized by Customer FO.[3] In short, Maggipinto acted as if he had authority to buy and sell options in Customer FO's account, when in fact, he did not have such authority.

In addition, even after the options expired, instead of transferring the transactions to the correct account, Maggipinto failed to take any action until Customer FO called Malmstedt. We interpret Maggipinto's inaction as further proof that another of Maggipinto's customers had not authorized the trades.

Our second reason for discrediting Maggipinto's explanation is that the DBCC -- which observed Maggipinto's live testimony -- concluded that Maggipinto effected unauthorized trades. An "initial factfinder's assessments of credibility deserve 'special weight.'" Alderman v. SEC, 104 F.3d 285, 288 n.4 (9th Cir. 1997); see also In re Ashvin R. Shah, Exchange Act Rel. No. 37954, at 5 n.12 (Nov. 15, 1996), aff'd, 132 F.3d 36 (7th Cir. 1997)(table case). Here, there is no reason to overturn that credibility determination.

Our third reason for discrediting Maggipinto's explanation is that he had a history of attempting to take profits from Quest's error account. Malmstedt testified that Maggipinto had previously taken trades out of other accounts and entered them into Quest's error account, "as if it were his account." She explained that Maggipinto had repeatedly attempted to convince Quest's President to let him keep the profits that he had transferred into the error account. Malmstedt testified that Maggipinto had been transferring numerous trades into the error account on his own, even though he should have been asking for authorization from the Firm's President.

Our final reason for concluding that Maggipinto engaged in unauthorized trades is that Maggipinto did not tell his supervisor that he had made a mistake in Customer FO's account. Malmstedt testified that Maggipinto had not told her about any purported mistake in Customer FO's account before Customer FO called her. Indeed, Maggipinto affirmatively tried to conceal his supposed mistake when he completed the order ticket for the first transaction by putting Customer FO's name on it, which he knew was incorrect. We find that Maggipinto's failure to be forthcoming about these transactions supports the inference that he was effecting unauthorized transactions.

On appeal, Maggipinto argues that Malmstedt's testimony was false. He contents that she wanted to fire him and take over his accounts. The evidence does not support these assertions. Quest's President, not Malmstedt, terminated Maggipinto. Moreover, Malmstedt was not qualified to handle options accounts, which were the majority of Maggipinto's customers.

We affirm the findings of the DBCC that Maggipinto effected unauthorized transactions in violation of Conduct Rule 2110.

Cause Two

The DBCC dismissed the second cause, which alleged that Maggipinto provided to Customer FO a letter that contained false information to be provided to NASD Regulation. We agree with the dismissal because Maggipinto transmitted the proposed statement to Customer FO with a cover letter

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[3] By continuing to effect transactions in Customer FO's account, Maggipinto knowingly chose to effect additional unauthorized trades. We find that Maggipinto's decision not to cancel the trades and instead to effect additional unauthorized transactions was itself an unauthorized trading violation.

that stated, "[I]f there is anything in the attached letter to the NASD that is inaccurate, please let me know."

Sanctions

The DBCC imposed a censure, a $25,000 fine, suspended Maggipinto for 60 days, required that he requalify by examination, and assessed hearing costs. We increase the length of Maggipinto's suspension and affirm the remaining sanctions.

Maggipinto has two prior disciplinary actions entered against him. First, in 1990, Maggipinto entered into an offer of settlement with the Chicago Board Options Exchange ("CBOE") whereby he was censured, fined $2,500 and suspended for one week for effecting an unauthorized options purchase in a public customer's account. Second, in 1989, the NASD rendered a decision in which it found that Maggipinto forged the signatures of customers as well as the authorizing signature of his member firm to a margin agreement and forwarded the agreement to his firm's clearing broker. The NASD imposed a censure and a $2,500 fine and suspended Maggipinto from associating with member firms for 30 days.

The relevant NASD Sanction Guideline recommends fining the respondent the amount of any commissions, concessions, or profits, plus $5,000 to $50,000, and requiring restitution of customer losses.[4] In cases involving customer losses and/or sizeable commissions, the Guideline recommends suspending the respondent in all capacities for five to 30 business days. In "egregious" cases, the Guideline suggests that a bar should be considered.

The first factor listed by the Guideline to be considered is "prior or other similar misconduct," a factor that we find is aggravating in this case. Maggipinto's 1990 settlement with the CBOE was for an unauthorized transaction. Because Maggipinto has now repeatedly violated this rule, and because Maggipinto's forgery violation also was very serious, we impose a suspension that is above the guideline range. We impose a six-month suspension on Maggipinto because we intend to deter future misconduct by Maggipinto and other registered persons by progressively increasing sanctions in cases of repeated misconduct.

In deciding on Maggipinto's sanctions, we also considered the following. Maggipinto contacted his customer shortly after the trades occurred and explained that he had made a mistake. Maggipinto, however, took no action to correct the mistake for more than one month and only the customer's persistence caused Maggipinto's supervisor to resolve the problem. In light of the serious nature of Maggipinto's violation, we affirm the DBCC's imposition of a censure and a fine of $25,000. We affirm the requalification requirement because Maggipinto has demonstrated a troubling lack of regard for the rules that regulate the conduct of registered representatives.

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[4] See NASD Sanction Guidelines ("Guidelines") (1996 ed.) at 56 (unauthorized transactions).

Accordingly, Maggipinto is censured, fined $25,000, suspended from associating with any member firm in any capacity for six months, required to requalify by examination in all capacities prior to associating with a member firm, assessed DBCC hearing costs of $2,035.42, and assessed appeal costs of $750.[5] The suspension shall begin 30 days after the date of this decision.

On Behalf of the National Adjudicatory Council,

Joan C. Conley,
Senior Vice President and Corporate Secretary

[5] 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 Procedure 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 sanctions, after seven day's notice in writing, will summarily be revoked for non-payment.

Joan C. Conley
Senior Vice President
and Corporate Secretary

Direct: (202) 728-8381
Facsimile: (202) 728-8894

April 19, 1999

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Gregory Paul Maggipinto
San Jose, CA

Re: Complaint No. C01970025 : Gregory Paul Maggipinto

Dear Mr. Maggipinto:

Enclosed herewith is the Decision of the National Adjudicatory Council in connection with the above-referenced matter. Any fine and costs assessed should be made payable and remitted to the National Association of Securities Dealers, Inc., Department #0651, Washington, D.C. 20073-0651.

You may appeal this decision to the U.S. Securities and Exchange Commission. To do so, you must file an application with the Commission within thirty (30) days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to the NASD Regulation by similar means.

Your application must identify the NASD Regulation case number, and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and NASD Regulation. If you are represented by an attorney, he or she must file a notice of appearance.

The address of the SEC is:
Office of the Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W., Stop 6-9
Washington, D.C. 20549

The address of the NASD is:
Office of General Counsel
National Association of Securities Dealers Regulation, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-942-7070.

Very truly yours,

Joan C. Conley

Enclosure

cc: David A. Watson, Esq.
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San Francisco, California 94105