

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SALAM ABURAS  
(CRD No. 2969004),

Berwyn, IL,

Respondent.

Disciplinary Proceeding  
No. C8A010014

Hearing Officer—Andrew H. Perkins

**Hearing Panel Decision**

August 20, 2001

**Formerly Registered Representative effected an unauthorized transaction, in violation of NASD Conduct Rule 2110. Respondent is suspended from association with any member firm in any capacity for ten business days and fined \$5,000.**

**Appearances**

Richard S. Schultz, Esq., Chicago, Illinois (Rory C. Flynn, Chief Litigation Counsel, Washington, DC, of counsel) appeared for the Department of Enforcement.

Salam Aburas appeared on his own behalf.

**DECISION**

**I. INTRODUCTION**

The Department of Enforcement (“Department”) filed the Complaint in this proceeding on February 28, 2001. The Complaint alleges that on May 29, 1998, Salam Aburas (“Aburas” or the “Respondent”) effected an unauthorized purchase of 1000 shares of United Financial Mortgage

Corp. (“United Financial”) common stock in DH’s account at Mills Financial Services, Inc. (“Mills Financial”), a former member of the National Association of Securities Dealers, Inc. At the time, Aburas was associated with the firm as a General Securities Representative.

Aburas filed an Answer to the Complaint in which he denied the charge against him and waived his right to a hearing.

On April 5, 2001, the Hearing Officer held an Initial Pre-Hearing Conference at which Aburas confirmed that he did not desire a hearing, and the Hearing Officer determined that a hearing was not necessary. (Conference Tr. 5-7.) On April 5, 2001, the Hearing Officer issued an Order Following Initial Pre-Hearing Conference and Establishing Schedule for Filing Written Submissions. In accordance with the schedule set by the Hearing Officer, the Department filed a written submission on May 8, 2001, which included supporting affidavits from customer DH (“DH Aff.”) and from NASD Regulation, Inc. Field Supervisor David Moody (“Moody Aff.”). On June 4, 2001, Aburas filed a one-page response in which he reiterated his denial of any wrongdoing and affirmed that he stood by his “admissions that [he has] made in the past regarding this case.” Aburas further stated that he strongly believed that the documents from Mills Financial attached to the Departments written submission were inaccurate and false, but he could not and would not attempt to prove his contention.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Aburas’s Background in the Securities Industry**

Aburas entered the securities industry in October 1997 when he joined Mills Financial. (Moody Aff., Ex. A at 2.) He registered as a General Securities Representative on December 8, 1997. (Id.) In April 1999, Aburas left Mills Financial and joined NASD member firm American

Fronteer Financial Corporation as a General Securities Representative. His association with American Fronteer terminated in August 1999. (*Id.* at 1.) Aburas is not currently employed in the securities industry, and his last registration with the NASD terminated effective September 1, 1999. (*Id.*)

### **B. Jurisdiction**

The NASD has jurisdiction over this proceeding pursuant to Article V, Section 4 of the NASD's By-Laws, which provides a two-year period of retained jurisdiction over formerly registered persons, covering conduct which began before the respondent's registration terminated. In this case, the Respondent's registration terminated effective September 1, 1999, and Enforcement filed the Complaint within two years of that date. Moreover, the Complaint alleges misconduct that occurred while the Respondent was registered through Mills Financial as a General Securities Representative. (Compl. ¶¶ 1, 3.)

### **C. Unauthorized Transaction**

The Hearing Panel<sup>1</sup> finds that the Respondent effected an unauthorized purchase of securities in DH's account on May 29, 1998, as alleged in the Complaint, in violation of NASD Conduct Rule 2110. The underlying facts largely are undisputed.

According to DH, Aburas called him in March or April 1998, introduced himself and his firm, and asked if DH would be interested in purchasing shares in an initial public offering through Mills Financial. DH responded that he had purchased shares in initial public offerings in the past and that he might be interested. (DH Aff. ¶ 2.)

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<sup>1</sup> The Hearing Panel is comprised of the Hearing Officer and two current members of the District 8 Committee of NASD Regulation.

On or about April 21, 1998, Aburas again called DH and told him about the United Financial initial public offering. According to DH, Aburas told him that it was a great investment and that he needed to know right away if DH wanted to purchase any shares in the initial public offering. DH told Aburas that he would be interested in receiving a prospectus, and, if it looked like a good investment, he would consider purchasing some shares. (DH Aff. ¶ 3.) DH did not give Aburas the authority to purchase any shares of United Financial stock. (Id. ¶ 5.) Indeed, once DH received a copy of the prospectus for the United Financial initial public offering, he decided against purchasing any of its stock. (Id. ¶ 6.)

On or about May 29, 1998, Aburas telephoned DH and requested that he send \$6,500 to purchase 1000 shares of United Financial in its initial public offering. DH was not interested, and he told Aburas that he was not going to purchase the stock. (Id. ¶ 7.) Nevertheless, a few days later, DH received a confirmation for his account at Mills Financial showing that 1000 shares of United Financial common stock had been purchased in his account at a cost of \$6.50 per share. Then, a few days later, DH received a second confirmation showing that the purchase had been canceled. (Id. ¶ 8; Ex. A.) DH's account statements for the months of May and June 1998 reflect these transactions. (Ex. B.)

Aburas's own statement that he gave to NASDR staff in November 1999 supports DH's claim that he had not authorized the purchase. In response to a request for information from NASD Regulation staff dated November 17, 1999 (Moody Aff., Ex. G), Aburas provided a written statement regarding the alleged unauthorized purchase of United Financial stock in DH's account. (Id.) In his letter, Aburas states:

I first contacted [DH] around mid to late April 1998. At the time, he told me he invested regularly in IPOs. I mentioned to him that our firm (Mills Financial) was planning to do an IPO, called United Financial Mortgage and asked if he would be interested in receiving a prospectus on the company. He said he was interested and requested a prospectus, so I sent it to him. I called him back about two weeks later [and asked him] if he was still interested in the security and if he would like to make an indication of interest. He said yes and indicated for 2,000 shares of the security. I took down the indication and said I would call him back when the day of the offering came. On May 29, 1998, the day of the offering, I called him back in the late afternoon when the security went public. I informed him the security started trading in the secondary market, opened at 8 7/16 . . . and is currently around 7 ½. I told him I was able to allocate to [him] 2,000 shares. [DH] thought for a couple of seconds and said he just wanted to buy 1,000 shares of the security and said he would send a check for \$6,500 to [Mills Financial that day].

By this account, Aburas received the indication of interest from DH no later than the middle of May, but did not call DH back to “firm up” his interest until the United Financial initial public offering was complete and the stock had commenced trading in the secondary market. Thus, by his admission, which Aburas affirmed in his Answer, the purchase at the initial public offering price was unauthorized.

Generally, Section 5 of the Securities Act of 1933 (the “1933 Act”), requires that every non-exempt offering of securities be registered with the SEC before any offer or sale of the securities. Registration requires filing a registration statement with the SEC, which statement becomes effective after it is reviewed by the SEC. The period between the filing of the registration statement with the SEC and its effective date is referred to as the “waiting period.” During this period, while the issuer is waiting for the SEC to declare the registration statement effective, Section 5 permits the securities to be offered but not sold.<sup>2</sup> Hence, a broker who receives an

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<sup>2</sup> See SEC v. Carriba Air, Inc., 681 F.2d 1318, 1324 (11<sup>th</sup> Cir. 1982); Dist. Bus. Conduct Comm. v. Tidd Lackey & Co., Inc., No. SF-1180, 1988 NASD Discip. LEXIS 28, at \*45 (NASD Aug. 26, 1988).

indication of interest to purchase before the effective date of the registration statement must “firm up” that interest after the registration statement becomes effective.<sup>3</sup>

Here, the undisputed facts reflect that DH indicated his interest in the United Financial initial public offering, which Aburas sought to “firm up” when he called DH on May 29, 1998. But, by that time, the initial public offering had concluded and the stock was trading in the secondary market. Thus, even if Aburas’s version of the facts is accepted as true, by the time Aburas telephoned DH to “firm up” his indication of interest, the United Financial initial public offering had concluded. Therefore, the purchase of 1000 shares of United Financial stock at the initial public offering price must have occurred before the call without DH’s authorization.

Based on the foregoing findings, the Hearing Panel concludes that Aburas 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 NASD Conduct Rule 2110.<sup>4</sup>

### **III. SANCTIONS**

The Hearing Panel concludes that the appropriate sanction in this case is a ten business-day suspension and a \$5,000 fine, the minimum suggested in the NASD Sanction Guidelines.<sup>5</sup> Applying the factors identified in District Bus. Conduct Comm. v. Hellen, No. C3A970031, 1999 NASD Discip. LEXIS 22 (NAC June 15, 1999), the Hearing Panel finds that this is not an

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<sup>3</sup> See, Armstrong, Jones and Co., 43 S.E.C. 888, 899, n.28 (1968) (an indication of interest does not amount to an offer to buy and it therefore must be “firmed up” after the registration statement becomes effective).

<sup>4</sup> See, e.g., Keith L. DeSanto, Exchange Act Release No. 35,860, 1995 SEC LEXIS 1500 (June 19, 1995), aff’d, 101 F.3d 108 (2d Cir. 1996) (table).

<sup>5</sup> NASD Sanction Guidelines 102 (2001 ed.)

egregious case. There was only one unauthorized transaction, and DH did not suffer a loss. There also is no evidence in the record from which the Hearing Panel can determine the Respondent's motives in effecting the unauthorized transaction. Accordingly, the Hearing Panel will impose the minimum suggested sanction, as requested by Enforcement.

#### **IV. ORDER**

Therefore, having considered all the evidence,<sup>6</sup> the Hearing Panel orders that Salam Aburas be suspended from associating with any member firm in any capacity for ten business days and that he be fined \$5,000. Aburas also is ordered to pay an administrative fee of \$750.

These sanctions shall become effective on a date set by the Association, but not earlier than 30 days after this Decision becomes the final disciplinary action of the Association, except that if this Decision becomes the final disciplinary action of the NASD, Respondent's suspension shall become effective with the opening of business on October 15, 2001, and end at the close of business on October 26, 2001.

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies to:

Salam Aburas (by FedEx and first-class mail)  
Richard S. Schultz, Esq. (by first-class and electronic mail)  
Rory C. Flynn, Esq. (by first-class and electronic mail)

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<sup>6</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.