

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

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C10000046
v.	:	
	:	HEARING PANEL DECISION
QUENTIN T. QUINTANA	:	
(CRD #2317118)	:	Hearing Officer - SW
Brooklyn, NY,	:	
	:	
	:	August 3, 2001
Respondent.	:	

A former registered representative was barred and ordered to pay restitution in the amount of \$1,707.50 plus interest for executing four unauthorized trades in two customer accounts in violation of Rule 2110. Respondent was also suspended for 90 days and fined \$10,000 for issuing a false and misleading document to a third customer in violation of Rule 2110. The Hearing Panel also directed Respondent to pay \$6,275.38 for the costs of the Hearing.

Appearances

Jay Lippman, Esq., Assistant Chief Counsel, and Jon Batterman, Esq., Regional Counsel, New York, New York, for the Department of Enforcement.

Alan P. Fraade, Esq., New York, New York, for Quentin T. Quintana.

DECISION

I. Introduction

A. Complaint and Answer

The NASD Regulation, Inc. Department of Enforcement (“Enforcement”) filed a five-count Complaint on March 29, 2000, alleging that Respondent Quintana, while associated with

Global Equities Group, Inc. (“Global Equities”): (1) effected two unauthorized transactions in the joint account of SW and DW, in violation of Rule 2110; (2) failed to execute customer KM’s sell request in violation of Rule 2110; (3) issued a false and misleading document to KM in violation of Rule 2110; (4) effected two unauthorized transactions in the joint account of KS and FS, in violation of Rule 2110; and (5) effected two unauthorized transactions in the joint account of SF and FF in violation of Rule 2110.

With respect to the allegations of unauthorized transactions, Respondent initially answered, in his pre-hearing submission, that all the transactions were effected with the express permission of the clients and within the investment strategy approved by the clients. With respect to the failure to execute KM’s sell order and issuance of a false and misleading document, Respondent argued that he completed and submitted the sell order, and authorized sending the pre-confirmation letter to KM only after it was approved by his manager Damiano Coraci and with the belief that the sell order would be executed.

B. The Hearing

The Parties presented evidence to a Hearing Panel, consisting of two current members of the District 10 Committee and the Hearing Officer, on March 13 and 14, 2001, at a Hearing in New York, New York.¹ Enforcement presented exhibits labeled CX-1--CX-10 and CX-12--CX-38² and the testimony of seven witnesses: (i) four customer witnesses, SW, KM, KS, and SF; (ii) two NASD employees, Rosalyn Marcus, Senior Compliance Examiner, District 10,

¹ References to the testimony set forth in the transcript of the March 13 and 14, 2001 Hearing will be designated as “Tr.” References to exhibits presented by Respondent will be designated as “RX-,” and references to exhibits presented by Enforcement will be designated as “CX-.”

² The Hearing Officer did not admit exhibit CX-36.

and Donald Thomas, Senior Compliance Examiner, District 10; and (iii) Respondent's former co-worker, Morris Clement. Respondent testified on his own behalf and presented two exhibits labeled RX-1 and RX-2.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Article V, Section 4 of the NASD's By-Laws creates a two-year period of retained jurisdiction over former associated persons, covering misconduct that began before their association was terminated. Respondent was registered with Global Equities, a former NASD member, as a general securities representative from September 1996 to December 1997. (CX-1, p. 18).

Respondent became associated with International Bond and Share, Inc. on January 15, 1998. (CX-1, p. 11). His association with the NASD member was terminated without registration on March 31, 1998.³ (*Id.*). Enforcement filed its Complaint on March 29, 2000, within two years of the termination of Respondent's association, and the Complaint alleged that Respondent's misconduct occurred before his association was terminated. The NASD thus has jurisdiction over this proceeding.⁴

B. Allegations of the Complaint

The allegations of the Complaint rest primarily on the testimony of the customer witnesses.

³ Respondent executed a Form U-4 for International Bond and Share, Inc. on January 15, 1998; however, it was not approved by the NASD. (CX-1A; CX-1, p. 11).

1. Unauthorized Transactions

Counts one, four, and five of the Complaint allege that Respondent effected unauthorized transactions in three customer accounts. Specifically, Count one alleges that Respondent effected two unauthorized transactions in the joint account of SW and DW (“SW”), by causing the purchase of 4,000 shares of common stock of SyQuest Technologies, Inc. (“SyQuest”) for their account, without their authorization. Count four alleges that Respondent effected two unauthorized transactions in the joint account of KS and FS (“KS”) by causing the purchase of 1,400 shares of preferred stock of Cluckcorp International, Inc. (“Cluckcorp”)⁵ and causing the sale of 100 shares of American Express, without their authorization.

Count five alleges that Respondent effected two unauthorized transactions in the joint account of SF and FF (“SF”), by causing the purchase of 5,000 Harvest Restaurant Group, Inc. (“Harvest”) preferred stock warrants and 6,200 shares of Harvest preferred stock, without their authorization.

According to IM-2310-2, unauthorized trading is “[c]ausing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon.”⁶ The Securities and

⁴ That the alleged misconduct occurred earlier at another firm is of no significance for purposes of jurisdiction. “The ‘termination’ which begins the running of the two-year period . . . is the termination from a person’s last job in the industry.” Gurfel v. SEC, 205 F.3d 400, 402 (D.C. Cir. 2000).

⁵ In October 1997, Cluckcorp reported that it changed its name to Harvest Restaurant Group, Inc. (CX-3, p. 6; Tr. p. 337). Global Equities was the primary market maker for Cluckcorp and then Harvest. (Tr. p. 337).

⁶ IM-2310-2(b)(4)(A)(iii).

Exchange Commission (“SEC”) has affirmed that unauthorized trading in a customer’s account is a violation of Conduct Rule 2110’s requirement to observe just and equitable principles of trade.⁷

a. SW Account

SW opened a joint account at Global Equities through Respondent on January 27, 1997. (Tr. p. 28; CX-8, pp. 1, 4). Respondent was the only broker who handled the SW Global Equities account. (Tr. p. 31). On November 6, 1997, a purchase of 2,000 shares of Syquest was made in the SW joint account. (CX-7, p. 11). Subsequently, in a second transaction, on the same day, an additional 2,000 shares of SyQuest were purchased in the SW joint account. (Id.).

SW testified that neither he nor his wife authorized the purchases of the SyQuest shares. (Tr. pp. 29, 33). Upon receipt of the confirmations for the SyQuest purchases, SW called Respondent. (Tr. p. 35). SW testified that Respondent indicated that it was a mistake and would be corrected.⁸ (Tr. p. 35). SW was a credible witness.⁹

At the Hearing, contrary to his initial answer, Respondent testified that he did not remember the circumstances surrounding the SyQuest trades. (Tr. p. 471). Respondent was

⁷ In re Robert Lester Gardner, Securities Exchange Act Release No. 35899, 1995 SEC LEXIS 1532, at 1 n.1 (1995).

⁸ On November 6, 1997, 2000 shares of SyQuest were purchased at \$4 7/32 per share and then canceled by the clearing agent, and an additional 2,000 shares of SyQuest were purchased at \$4 3/16 per share and then canceled by the clearing agent. (CX-6, p. 14). On the same day, Global Equities rebilled SW for another 2,000 shares of SyQuest at \$4 7/32 per share and a second 2,000 shares at \$4 3/16 per share according to Respondent’s commission run. (Id.).

⁹ SW is 47 years old and a managing director of a consulting firm, working in the telecommunications area. (Tr. p. 26).

credited with commissions for the purchase of the 4,000 shares of SyQuest on November 6, 1997 in the SW joint account. (Tr. pp. 355-356). The SW joint account sustained a loss of \$1,353.50 on the SyQuest purchases and subsequent sell-out. (CX-29, p. 1).

Based on SW's testimony and the documentation, the Hearing Panel finds that Enforcement proved by a preponderance of the evidence that Respondent effected two unauthorized purchase transactions in the SW joint account.

b. KS Account

On August 29, 1996, KS opened a joint account at Global Equities through Raihan Siddique. (Tr. p. 79; CX-20, p. 1). In 1996, KS authorized Mr. Siddique to purchase 4,000 common stock warrants of Cluckcorp.¹⁰ (Tr. p. 83; CX-32, p. 1).

Global Equities was one of the managers of the July 1996 initial public offering of Cluckcorp units consisting of one share of common stock and two warrants to purchase common stock. (CX-3, p. 2). Subsequently, on June 11, 1997, Cluckcorp commenced a secondary offering of units consisting of preferred stock and preferred stock warrants.¹¹ (CX-3, p. 3).

In 1997, Respondent became KS's broker. (Tr. p. 81). Respondent testified that he was already losing money on the Cluckcorp stock and had no interest in investing further in Cluckcorp. (Tr. pp. 87-88). On August 26, 1997, Respondent purchased 1,400 Cluckcorp preferred stock warrants for the KS Global Equities account. (Tr. p. 87). KS testified that the

¹⁰ Cluckcorp owned and operated a quick service restaurant chain. (CX-3, p. 2).

¹¹ The NASDAQ symbols for the four classes of Cluckcorp stock were ROTI, ROTIW, ROTIP and ROTIZ. (CX-3, p. 4).

purchase was without his or his wife's approval. (Id.). KS did not send money to pay for the purchase of the 1,400 Cluckcorp preferred stock warrants. (Tr. p. 87). KS's testimony was credible.¹²

Respondent admitted that he solicited his clients to purchase Cluckcorp securities. (Tr. p. 542). Respondent admitted that KS had a Cluckcorp position that "was down." (Tr. p. 485). Respondent admitted that on August 26, 1997, he caused the execution of the purchase of 1,400 Cluckcorp warrants. (Tr. pp. 539-540). Respondent denied that the purchase was unauthorized; he claimed that KS had authorized him "to work with the funds that were in the account." (Tr. p. 485). The purchase appeared on Respondent's commission run. (CX-6, p. 4).

On September 4, 1997, 100 shares of American Express were sold from the KS joint account. (CX-18, p. 4). KS testified that neither he nor his wife authorized the sale of the American Express shares. (Tr. p. 90). Contrary to his initial answer, Respondent admitted that he had no discussions with KS regarding selling the American Express stock and admitted that he may have sold the American Express shares to cover the Cluckcorp purchase.¹³ (Tr. pp. 485-486). Respondent was credited with a commission for the sale of 100 shares of American Express from the KS joint account. (Tr. p. 360; CX-6, p. 4).

¹² KS was a retired assistant principal with a BA from the University of Michigan and a master's degree from Montclair State. (Tr. pp. 75-77).

¹³ In a March 1998 letter to the NASD, Respondent wrote that the clearing firm had no other choice but to sell out the position of American Express to cover the trade on Cluckcorp. (Tr. p. 541).

Subsequently, KS moved his account and sold the Cluckcorp preferred stock warrants for a loss of \$350. (Tr. pp. 97-98; CX-29, p. 2). KS did not to repurchase American Express. (Tr. p. 128).

Based on KS's testimony, Respondent's testimony, and the documentation, the Hearing Panel finds that Enforcement proved by a preponderance of the evidence that Respondent executed two unauthorized transactions in the KS joint account.¹⁴

c. SF Account

In September 1997, SF opened a joint account at Global Equities with Morris Clement. (Tr. p. 211). In connection with the opening of the account, SF authorized Mr. Clement to purchase 500 shares of Compaq Computer for his account. (Tr. p. 402). Subsequently, several MCI transactions were authorized for the account. (CX-31, p. 2).

On October 8, 1997, 5,000 Harvest preferred stock warrants were purchased for SF's account, and on October 10, 1997, 6,200 shares of Harvest preferred stock were purchased for SF's account. (CX-26). SF testified that neither he nor his wife authorized the transactions. (Tr. pp. 215, 219).

The SF confirmation statements indicated that (i) Respondent effected the purchase of 5,000 Harvest preferred stock warrants, and (ii) Mr. Clement effected the purchase of 6,200

¹⁴ In District Business Conduct Committee for District 7 v. Vallegjo, et al., 1994 NASD Discip. LEXIS 27 (July 19, 1994), the National Business Conduct Committee found a respondent liable for unauthorized trading in connection with a sell-out, which was a reasonable foreseeable consequence of the initial unauthorized purchase.

shares of Harvest preferred stock for SF's account. (CX-26). The original order tickets for the two transactions were not available to the Hearing Panel.¹⁵

Respondent denied executing the purchase of 5,000 Harvest preferred stock warrants in SF's account; he admitted soliciting SF to purchase 6,200 shares of Harvest preferred stock, but he denied executing the transaction. (Tr. pp. 491-492, 543-544). Respondent argued that someone else at Global Equities might have executed the transactions. (Tr. pp. 491-493). Global Equities was a major market maker in Harvest.¹⁶ (CX-3, p. 8).

Mr. Clement denied that he was SF's broker at the time of the unauthorized trades. (Tr. p. 406). Mr. Clement testified that he did not effect the purchase of the 5,000 Harvest preferred stock warrants in SF's account. (Tr. pp. 409-410). Mr. Clement further testified that he could not have effected the October 10, 1997 purchase of 6,200 shares of Harvest preferred stock because he left the office prior to the reported time of the transaction to prepare for Yom Kippur, a Jewish holiday.¹⁷ (Tr. pp. 410-412).

At the Hearing and in earlier statements, SF offered inconsistent statements about the relevant events. In a December 30, 1997 complaint letter to the SEC, SF wrote that Mr. Clement was his broker and was responsible for both unauthorized transactions. (CX-24). In contrast, SF's July 30, 1998 sworn declaration stated that Respondent was his broker and was responsible for the unauthorized trades. (CX-28 at ¶3). At the Hearing, SF testified that he

¹⁵ The principals of Global Equities did not respond to an NASDR request for the order tickets. (Tr. pp. 340-341).

¹⁶ In 1999, Harvest merged into TRC Acquisition Corporation, the operator of Rick Tanner's Original Grill Restaurants. (CX-3, p. 13).

¹⁷ Mr. Clement testified that he did not know if Respondent had executed the transactions in SF's account. (Tr. p. 411).

viewed Mr. Clement as his broker. (Tr. p. 236). SF testified that his belief that Respondent was responsible for the unauthorized transactions was based on the letter that he received from Mr. Clement. (Tr. p. 227).

SF also testified that that he had dealt with Mr. Clement for approximately one year prior to the unauthorized trades. (Tr. p. 248). In fact, however, the account was actually opened in September 1997, less than one month before the unauthorized trades. (Tr. p. 257; CX-25, p. 4).

At the Hearing, SF testified that he did not know that his account had been transferred from Mr. Clement to Respondent, and he testified that Mr. Clement told him if he were not available, he could contact Respondent. (Tr. pp. 223-226, 262). Mr. Clement claimed that he spoke to SF regarding the transfer on October 7 or 8, 1997, when SF indicated that he was happy with how his account was being handled by Respondent. (Tr. p. 416).

SF testified that he spoke to Mr. Clement a few times a week. (Tr. p. 250). SF testified that Mr. Clement would call him and say, "I bought you this" in small \$5,000 or \$10,000 deals. SF described the eight authorized MCI transactions executed in his account on October 8 and 9, 1997 as examples of the small transactions executed by Mr. Clement. (Tr. pp. 222; CX-31, p.2). Subsequently, SF testified that he spoke to Respondent about the "small stocks also."¹⁸ (Tr. p. 225).

Mr. Clement testified that, prior to the unauthorized transactions, he spoke to SF when he solicited SF to open an account and then on October 7 or 8, 1997 to discuss the transfer of

¹⁸ The small stocks were described as those appearing on page 2 of Enforcement's Exhibit 31, i.e., the MCI transactions. (Tr. p. 225).

the account to Respondent. (Tr. pp. 400, 415). Mr. Clement testified that he did not discuss the MCI transactions with SF. (Tr. pp. 437-438). Contrary to SF's testimony, the MCI transactions were listed on Respondent's commission runs. (CX-6, pp. 7-8). Respondent testified that he did not effect MCI transactions for SF or any of his clients during this period and that the commission runs were often inaccurate. (Tr. p. 491).

Respondent's testimony that the records of Global Equities were in disarray was not contradicted. Mr. Clement's testimony verified that there were often many mistakes on the commission runs. (Tr. p. 397).

Subsequently, SF transferred his account and sold the preferred stock warrants and the shares of preferred stock of Cluckcorp over a period of time based on the advice of his broker at the NASD member firm, Kensington Capital Corp. (Tr. p. 232).

The Hearing Panel determined that because of the inconsistencies in SF's testimony, the contradictory testimony of Mr. Clement and Respondent, and the probable inaccuracy of some of Global Equities' records, Enforcement failed to prove by a preponderance of the evidence that Respondent effected the two unauthorized transactions in SF's account.

2. False and Misleading Document

In Count two of the Complaint, Respondent was alleged to have failed to execute KM's request to sell 5,000 shares of Harvest preferred stock, and, in Count three, he was alleged to have issued a false and misleading document to KM indicating that the stock had been sold.

KM opened an account at Global Equities through Respondent in November 1997. (Tr. pp. 149-150). KM authorized the purchase of 5,000 shares of Harvest preferred stock on

November 7, 1997. (Tr. p. 152; CX-13, p. 2). On November 24, 1997, KM called Respondent and directed that he sell the Harvest preferred stock. (Tr. pp. 153-154).

It is uncontradicted that Respondent completed a sale ticket for KM's Harvest shares and submitted the ticket to the firm for execution. (Tr. p. 586). On the date of the supposed sale, Global Equities purchased Harvest shares from retail customers. (Tr. pp. 298-299; CX-27A). However, Global Equities did not purchase, or sell elsewhere, KM's Harvest stock. Subsequently, KM transferred the account to Chatfield and Company and sold the stock at a loss. (Tr. pp. 167-168).

Respondent admitted that he caused a fax to be sent to KM indicating that the shares of Harvest preferred stock had been sold. (Tr. pp. 564-565). Although Respondent anticipated that the stock would be sold, he knew when he caused the letter to be faxed to KM that the stock had not yet been sold. (Tr. p. 565). Respondent testified that he believed that the principals of Global Equities would be forced to execute the sell order once the document had been sent to KM. (Tr. p. 566).

The Hearing Panel finds that Enforcement failed to prove by a preponderance of the evidence that Global Equities' failure to execute the order to sell KM's Harvest preferred stock was, as alleged in Count two of the Complaint, because of Respondent's misconduct. However, the Hearing Panel finds that Respondent did issue a false and misleading document to customer KM as alleged in Count three.

III. Sanctions

A. Unauthorized Transactions

The Sanction Guidelines for unauthorized transactions suggest a fine between \$5,000 and \$75,000, a suspension of 10 to 20 business days, in cases involving customer loss, and a longer suspension of up to two years or a bar, in egregious cases.¹⁹ The Guidelines also provide that adjudicators may order restitution when an identifiable person has suffered a quantifiable loss as a result of a respondent's misconduct.²⁰ Enforcement argued that Respondent's execution of the unauthorized transactions was egregious.

In Business District Conduct Committee for District No. 10 v. Daniel S. Hellen, Complaint No. C3A970031, (NAC, June 15, 1999), the National Adjudicatory Council defined three categories of egregious unauthorized trading: (1) quantitative egregious unauthorized trading; (2) unauthorized trading that is egregious because it is accompanied by certain aggravating conduct, and (3) qualitatively egregious unauthorized trading as determined by the strength of the evidence that the trades were unauthorized and the evidence relating to respondent's motives.

The Hearing Panel agrees that Respondent's conduct was egregious based on Respondent's having effected four unauthorized transactions for two different joint accounts accompanied by aggravating misconduct, i.e., telling SW the transactions were a mistake and would be corrected and executing the Cluckcorp purchase for KS even though KS was not

¹⁹ NASD Sanction Guidelines, p. 102 (2001). The Guidelines also provide that if an individual is barred and only one or a small number of customers are harmed, restitution will be ordered where appropriate, but generally a fine will not be imposed.

²⁰ NASD Sanction Guidelines, p. 6 (2001).

interested in purchasing any more Cluckcorp securities. Respondent's various explanations for the transactions have raised significant questions regarding his veracity. Accordingly, the Hearing Panel accepts Enforcement's recommendation and bars Respondent from associating with any member firm in any capacity for the unauthorized transactions, and orders restitution of \$1,707.50, plus interest (\$1,357.50 for customer SW, plus interest from November 3, 1997, the date of the purchase of the securities, and \$350 for customer KS plus interest from August 26, 1997, the date of the purchase of the securities).²¹

B. False and Misleading Document

For intentional or reckless misrepresentations or material omissions of fact, the NASD Sanction Guidelines recommend a fine ranging from \$10,000 to \$100,000, a suspension for a period of 10 business days to two years, or, in egregious cases, a bar.²²

The Hearing Panel finds that Respondent intentionally issued a document he knew was false that indicated that KM's stock had already been sold. The Hearing Panel, however, does not find that Respondent issued the document in order to further his personal interest. Rather, he anticipated the stock would be sold, and intended that the issuance of the document would help ensure the sale. Nevertheless, there is no excuse for intentionally issuing a false statement for a customer to rely upon and there is no excuse for not quickly correcting the false statement when he became aware that the sale had not occurred. Consequently, the Hearing Panel

²¹ The Hearing Panel determined that at the time customer KS sold the Cluckcorp stock, he had the opportunity to repurchase American Express, at a cost less than what it had been sold for originally. (RX-2). There was no additional loss from the time the stock was sold and when KS could have repurchased the American Express stock. Customer KS made an investment decision not to repurchase the stock and is not entitled to be reimbursed for losses incurred after making an independent investment decision.

²² NASD Sanction Guidelines, p. 96 (2001).

suspends Respondent for 90 days and fines him \$10,000 for issuing the false statement.

IV. Order

For the four unauthorized transactions, Respondent Quintana is barred from association with any NASD member firm in any capacity and ordered to make restitution to two of his customers, as set forth in Attachment A, in the amount of \$1,707.50, plus interest from the dates set forth in this Decision and calculated in accordance with the rate set forth in Section 6621 of the Internal Revenue Code (26 U.S.C. §6621(a)(2)). For the issuance of the false statement the Respondent is suspended for 90 days and fined \$10,000. The Hearing Panel also directs Respondent to pay \$6,275.38 for the costs of the Hearing, consisting of a \$750.00 administrative fee and \$5,525.38 for the cost of the Hearing transcript.

The fine and the costs are due and payable upon Respondent's re-entry into the industry. The restitution order shall become effective on a date set by the Association but not earlier than 30 days after the date this Decision becomes the final disciplinary action of the NASD. The bar will become effective immediately upon this Default Decision becoming the final disciplinary action of the NASD.²³

SO ORDERED.

HEARING PANEL

by: Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
August 3, 2001

²³ 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.

Copies to:

Christopher T. Quintana²⁴ (via Airborne Express and first class mail)

Alan P. Fraade, Esq. (via facsimile and first class mail)

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²⁴ Respondent reported that he legally changed his first name from Quentin to Christopher.