NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JOHN BRIGANDI (CRD No. 1388900), Greenvale, NY, Respondent.	Disciplinary Proceeding No. C10040025 Hearing Officer—Andrew H. Perkins **HEARING PANEL DECISION** January 14, 2005

Respondent barred from associating with any firm in any capacity for making unsuitable recommendations, in violation of NASD Conduct Rules 2310 and 2110.

Appearances

Adam Lipnick and Linda Kolodny, New York, NY (Rory C. Flynn, NASD Chief Litigation Counsel, Washington, DC, Of Counsel) for the Department of Enforcement.

Frank A. Norris, Jr., Esq., Glen Cove, NY, for John Brigandi.

DECISION

I. INTRODUCTION

The Department of Enforcement (the "Department") filed a Complaint on April 2, 2004, charging that from January 2000 through August 2000 the Respondent John Brigandi ("Brigandi" or the "Respondent"), while associated with member Roan-Meyers Associates, LP ("Roan-Meyers"), made unsuitable recommendations to customers FG and RG, in violation of NASD Conduct Rules 2310 and 2110.

The Respondent filed an Answer on May 26, 2004,[1] in which he denied the charge and requested a hearing. The Respondent asserted that the trades were suitable given FG's financial resources and circumstances.

The hearing was held on October 27, 2004, at NASD's offices in New York City before a hearing panel composed of the Hearing Officer and two members of NASD's District 10 Committee. The Department called four witnesses: customer FG;[2] his daughter MG; Frank Italiano, the NASD investigator on this case; and the Respondent.[3] The Department also introduced 16 exhibits in evidence.[4] The Respondent called two witnesses: Douglas Evans, the Chief Compliance Officer at Roan-Meyers; and Michael Walsh, an expert witness. The Respondent also introduced nine exhibits in evidence.[5]

II. FINDINGS OF FACT

A. The Respondent

Brigandi has been in the securities industry for 16 years over which period he has been associated with a number of member firms. Currently, Brigandi is registered with NASD member Kern, Suslow Securities, Inc. as a General Securities Representative.[6] Between January

[1] Brigandi filed the Answer on his own behalf. On June 7, 2004, Frank A. Norris, Jr. entered his appearance on the Respondent's behalf. He filed an Amended Answer on June 21, 2004.

[2] FG testified by telephone from his home in Italy with the assistance of an interpreter.

[3] The hearing transcript is referred to as "Tr."

[4] Exhibits CX1 through CX16.

[5] Exhibits R1 through R9.

[6] Ex. CX1, at 2.

2000 and December 2000, he was associated with Roan-Meyers as a General Securities Representative.[7]

B. The Underlying Investigation and Background

In July 2001, MG, FG and RG's daughter, sent NASD a complaint letter she had drafted for her parents' signature.[8] Because her parents were not fluent in English, MG assisted them with many of their affairs. In summary, FG and RG's complaint letter stated that, without their consent, their account at Roan-Meyers had been subjected to excessive and unreasonably risky trading after it was opened in December 1999 through Joseph Ali ("Ali"), a close family friend. They stated further that for several months they had been trying to close the account without success. MG forwarded copies of her parents' account statements with the complaint letter.[9]

In May 2002, Frank Italiano, a Special Investigator in NASD's New York City office, began an investigation into the activity in FG and RG's Roan-Meyers account ("FG's Account"). The investigation revealed that at the time FG opened the Roan-Meyers account he was 60 years old living in Bagheria, Italy. FG had moderate financial resources and limited investment experience. He had owned a family-operated dry cleaning business in Brooklyn, NY, for many years. FG had lived in Italy as a child where he attended school through Median school, the equivalent of the eighth grade in the United States.[10]

[7] *Id.* at 5.

[8] Tr. 95; Ex. CX9.

[9] *See* Ex. CX7.

[10] Tr. 20.

In about 1989, FG sold his home and business in Brooklyn and moved back to Italy.[11] Thereafter, he was not employed steadily. In or about 1992, he had an interest in a construction company in Italy with two associates. The company was not successful, but it did construct three sea-side villas, one of which he owned.[12]

In or about 1998, FG was diagnosed with lung cancer.[13] Between 1998 and 2001, FG underwent chemotherapy and surgery, which involved an extended hospital stay in Milan.[14] His poor health disabled him from further employment after 1998. FG's wife also is partially disabled due to kidney disease.[15] Accordingly, since about 1998, they had limited income.

FG and his wife had three investment accounts. They opened the first with their daughter's help in about September 1998 at A.G. Edwards. The A.G. Edwards account holdings consisted of various bonds and two mutual funds and had a total opening value of approximately $100,000.[16] In approximately May 1999, MG advised her father that Ali, their long-time friend and next-door neighbor in Brooklyn, was working in the securities industry. She suggested that Ali should handle her parents' account, and FG agreed. He therefore moved some investments from the A.G. Edwards account to Royal Hutton Securities, where Ali worked in an unregistered capacity. Then, when Ali was about to move to Roan-Meyers,[17] he asked MG to transfer her

[11] *Id.;* Ex. CX–10.

[12] TR. 40.

[13] *Id.* at 21.

[14] *Id.* at 77–78.

[15] *Id.* at 22.

[16] Ex. CX–10, at ¶ 3.

[17] Ali joined Roan-Meyers in an unregistered capacity on January 8, 2000, the same day Brigandi joined. (Ex. CX–14, at 3; Ex. CX–1, at 5.)

parents' account to Roan-Meyers. Again, FG agreed. In December 1999, he authorized his daughter to wire funds from Royal Hutton into a new account at Roan-Meyers. Two wire transfers were made, one for $13,377.17 and a second for $15,643.89.[18] In April 2000, at Ali's suggestion, FG authorized MG to liquidate the mutual funds in the A.G. Edwards account and wire the proceeds to the Roan-Meyers account. Pursuant to that authorization, on April 20, 2000, A.G. Edwards wired $55,387.88 to FG's Roan-Meyers account.[19] This transfer brought FG's total investment in the Roan-Meyers account to $84,408.94.

Brendan T. Malone ("Malone") opened the Roan-Meyers account on December 15, 1999, using a new account form filled out by Ali.[20] The new account form contained numerous errors. First, FG's first name was misspelled. Second, Ali was described as FG's nephew, which was not true. Ali was not related to FG in any manner. Third, the form incorrectly stated that FG's annual income exceeded $150,000 and that his net worth exceeded $500,000. Fourth, the form incorrectly stated that FG had more than 10 years of investment experience. The form incorrectly stated that FG owned a cleaning business, which he had sold ten years earlier. And, finally, FG's investment objective was stated to be short-term trading. In fact, FG's objective was income and growth, with preservation of capital.[21] Neither Malone nor anyone else at Roan–Meyers spoke to FG, RG, or MG before Malone opened the account. Malone completely relied upon Ali for all of the new account information.

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[18] Ex. CX–10, at ¶¶ 7–8.

[19] Ex. CX–10, at ¶ 9; Ex. CX–7, at 16.

[20] Ex. CX–13; Ex. R–2. The evidence does not explain why the account was assigned to Malone.

[21] *See* R–3 (Royal Hutton new account form).`

In June 2002, Malone wrote to Italiano explaining the circumstances surrounding the opening of FG's account.[22] Malone wrote that he opened the account as an accommodation to his friend Brigandi and Ali, with whom Brigandi worked at the time. According to Malone, Ali had asked Malone to open the account because Ali was concerned that Royal Hutton might go out of business, and he did not want his relative's account left behind when he left the firm. Malone also claimed that Ali told him that he had a power of attorney from FG, although the new account form said the opposite.

After Brigandi and Ali joined Roan-Meyers, FG's account was reassigned to Brigandi because Ali and Brigandi were working together.[23] Brigandi testified that he had worked with Ali at other firms off and on over about four years and that they had become friends.[24] Brigandi described Ali as his cold caller.[25] Ali was responsible for generating leads for Brigandi. Brigandi was the broker of record on FG's account starting in January 2000, and he recommended most, if not all, of the transactions in the account between January and August 2000.[26] Malone never transacted any business or earned any commissions on the account.[27]

C. Trading in FG's Account

Brigandi did not assess FG's financial situation and needs before he implemented a short-

[22] Ex. R–2.

[23] *Id.*

[24] Tr. 134.

[25] *Id.* at 133.

[26] Tr. 105; Ex. CX–8, at 2–3.

[27] Ex. R–2.

term speculative trading strategy for his account. Brigandi made no effort to contact FG. Rather, Brigandi relied on Ali for information about FG's finances and needs. According to Brigandi, Ali told him that FG was a wealthy international businessman who had accounts throughout the United States.[28] Based on this information and a review of one of FG's account statements from Royal Hutton, Brigandi assumed that an aggressive short-term momentum trading strategy was suitable.

In addition, Brigandi testified that he did not see a need to contact FG or his wife because Ali claimed to have had their power of attorney at Royal Hutton and that he was waiting for them to return a new one for the Roan-Meyers account.[29] Contrary to Ali's claim, however, the new account form specifically stated that no one had a power of attorney over the account. Nonetheless, for four or five weeks, Brigandi executed trades in the account before Ali produced a power of attorney that he claimed FG and his wife had signed in Brooklyn on February 7, 2000.[30] At no time did Brigandi question the discrepancy between the new account form that stated no power of attorney existed and Ali's representation that he had authority over the account. Neither did Brigandi question Ali about the date of the power of attorney, which was weeks after Brigandi started trading in the account.[31] Later it was discovered that Ali had forged

[28] Tr. 135–36.

[29] *Id.* at 138.

[30] *Id.* at 139; Ex. R–5.

[31] Brigandi also did not explain why he disregarded the Firm's prohibition against discretionary accounts. (*See* Tr. 154–55.)

FG's and RG's signatures on the power of attorney.[32] In reality, Ali never had a valid power of attorney for their accounts.[33]

Accepting Ali's representation that he had the customers' power of attorney, Brigandi immediately initiated aggressive margin trading in the account. In practice, Brigandi treated Ali as his customer.[34] Brigandi explained that he made all of his investment recommendations to Ali, and Ali made all of the investment decisions in the account.[35] Ali routinely followed Brigandi's recommendations.[36] Brigandi estimated that Ali followed his recommendations as much as 87% of the time.[37]

Between January and August 2000, Brigandi executed 63 purchases and 67 sales in the account.[38] The purchases totaled more than $1.62 million, and the sales totaled more than $1.57 million, while the average month-end equity in FG's account was just $22,411.[39] The majority of securities were held for 15 days or less; the turnover rate was 96.81.[40] Significantly, the break-even ratio or cost-to-equity ration was 267.46%, which meant that the account had to earn

[32] Tr. 66, 177.

[33] In July 2003, Ali entered into a Letter of Acceptance, Waiver and Consent with NASD pursuant to which he was barred from the securities industry for forging the power of attorney, converting $23,000 from FG and RG's Roan-Meyers account, and providing false testimony to NASD staff during an on-the-record interview. (Ex. CX–15.)

[34] *Id.* at 150.

[35] *Id.* at 142.

[36] *Id.* at 143.

[37] *Id.* at 143–44.

[38] Ex. CX–2.

[39] Tr. 104, 108–09.

[40] *Id.* at 109, 112.

267.47% to break even.[41] The end result of Brigandi's trading was a debit balance in the account of $42.09.[42]

Brigandi earned $42,454 on the account in commission and markdowns, which represented 48% of his total earnings during this period.[43]

III. CONCLUSIONS OF LAW

A. Unsuitable Recommendations—NASD Conduct Rule 2310

The first cause of the Complaint charges that Brigandi violated NASD Rules 2310 and 2110 by recommending and effecting unsuitable transactions in FG's account during the period January 2000 through August 2000. Rule 2310(a) requires that, in recommending the purchase or sale of a security, an associated person must have a reasonable basis for believing that the recommendation is suitable for the customer, based on the facts disclosed by the customer as to his other security holdings and his financial situation and needs.[44] Rule 2310(b) requires that an associated person "make reasonable efforts to obtain information concerning: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such … registered representative in making recommendations to the customer." These obligations equally apply to discretionary

[41] *Id.* at 110–11. The cost-to-equity ratio "is the percentage of return on the customer's average net equity needed to pay broker-dealer commissions and other expenses. In other words, the cost-to-equity ratio measures the amount an investment would have to appreciate to break even." *District Bus. Conduct Comm. v. Pinchas*, Exchange Act Release No. 41,816, 1999 SEC LEXIS 1754, at *18 (Sept. 1, 1999).

[42] *Id.* at 107. The losses in the account were exacerbated by Ali's conversion of $23,000.

[43] *Id.* at 105, 115.

[44] Although Rule 2310 refers to the member's obligations, Rule 0115 provides, "Persons associated with a member shall have the same duties and obligations as the member under these Rules."

transactions effected by members or associated persons.[45] Moreover, an associated person's recommendations must be consistent with his customer's best interests.[46] An associated person violates Conduct Rule 2310 if there is a showing that he lacked reasonable grounds for believing that his recommendation of a particular security was suitable for a customer or he failed to obtain information concerning the suitability of his recommendation before executing the transaction.[47]

Although suitability usually refers to the quality of the recommended security, "[r]ecommending excessive activity in a customer's account may also be unsuitable."[48] The first cause of the Complaint alleges that Brigandi recommended and executed an excessive number of trades in FG's account during the January 2000 through August 2000 period. The Complaint further alleges that Brigandi executed the trades without reasonable grounds for believing that the level of trading activity was suitable for FG based on his financial situation, investment objectives, and needs.

To establish excessive trading, the Department must prove two elements. First, the Department must show that Brigandi had control over trading in the account. Second, the

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[45] *See, e.g., Department of Enforcement v. Lu*, No. C9A020052, 2004 NASD Discip. LEXIS 8 (N.A.C. May 13, 2004), *appeal pending*, No. 3-11522 (SEC June 15, 2004) ("When a broker effects transactions in an account over which he has discretionary authority, the transactions are implicitly recommended.").

[46] *Wendell D. Belden*, Exchange Act Release No. 47,859, 2003 SEC LEXIS 1154, at *11 (May 14, 2003).

[47] *See District Bus. Conduct Comm. v. Moore*, No. C01970001, 1999 NASD Discip. LEXIS 27, at *12–13 (N.A.C. Aug. 9, 1999) (finding respondent liable for failing to consider customers' overall financial situation, level of investment experience, sophistication, or financial needs).

[48] *Jack H. Stein*, Exchange Act Release NO. 47,335, 2003 SEC LEXIS 338, at *7 (Feb. 10, 2003).

Department must show that the level of activity in the account was inconsistent with his customers' objectives and financial situation.[49]

1. Control

Control is established if the account is discretionary,[50] or if the broker exercises *de facto* control of the account. *De facto* control of an account may be shown when the client does not understand the trading activity in his account[51] or "habitually follows the advice of the broker."[52] Here, Brigandi admits that he recommended most of the transactions in the account, which were followed more than 80% of the time. Therefore, Brigandi controlled the account for purposes of an excessive trading analysis.

2. Excessive Trading

The second step after showing control of the account is to determine whether the trading activity was in fact excessive. There is no single test for making such a determination. However, there are a number of factors, such as the turnover ratio, the cost-to-equity ratio, the use of "in and out" trading,[53] and the number and frequency of trades in an account, that may provide a basis for a finding of excessive trading.[54] Generally, excessive trading is indicated by a turnover

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[49] *District Bus. Conduct Comm. v. Pinchas*, Exchange Act Release No. 41,816, 1999 SEC LEXIS 1754, at *11–12 (Sept. 1, 1999).

[50] *Peter C. Bucchieri*, Exchange Act Release No. 37,218, 1996 SEC LEXIS 1331 (May 14, 1996).

[51] *Disrict. Bus. Conduct Comm. v. Gliksman*, No.C02960039, 1999 NASD Discip. LEXIS 12, at *24 (N.A.C. Mar. 31, 1999)

[52] *J. Stephen Stout*, Exchange Act Release No. 43,410, 2000 SEC LEXIS 2119, at *75 (Oct. 4, 2000).

[53] "The term 'in and out' trading denotes the sale of all or part of a customer's portfolio, with the money reinvested in other securities, followed by the sale of the newly acquired securities." *Costello v. Oppenheimer & C*o., Inc., 711 F.2d 1361, 1369 n.9 (7th Cir. 1983).

[54] *Gliksman*, 1999 NASD Discip. LEXIS 12, at *25.

rate in excess of six[55] or a cost-to-equity ratio in excess of 20%.[56] In addition, in and out trading by itself can provide a basis for finding excessive trading.[57]

Brigandi does not dispute the Department's analysis that shows for the relevant period a turnover rate of 96.81, a cost-to-equity ratio of 267.46%, and a commission-equity ratio of 252.58%.[58] These rates reflect excessive trading; they are unjustifiable. Moreover, the staff's analysis shows that Brigandi engaged in aggressive in and out trading.[59] In short, nothing in the record provides justification for Brigandi's aggressive trading. Even if the Hearing Panel were to accept Brigandi's argument that he relied on Ali's approval of the activity, it is well established that "a broker is under a duty to refrain from making recommendations that are incompatible with the customer's financial profile."[60]

Here, Brigandi made no effort to ascertain his customers' financial situation, needs, or investment experience. He essentially concluded that FG was a wealthy international businessman with considerable investment experience based on the information Ali supplied, although Ali told Brigandi that he was not sure that FG had accounts other than those at Royal

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[55] *David* Wong, Exchange Act Release No. 45,426, 2002 SEC LEXIS 339, at *14, n.18 (Feb. 8, 2002). Bucchieri, 1996 SEC LEXIS 1331, at *11, n.11, citing *Mihara v. Dean Witter & Co., Inc.*, 619 F.2d 814, 821 (9th Cir. 1980). The turnover rate is calculated using the "Looper Formula," named for *Looper & Co.*, 38 SEC 294 (1958), which divides the total cost of purchases made during a given period by the average monthly investment. In accounts that primarily hold securities rather than cash, a modified Looper formula is used, which divides the total cost of purchases by the average monthly equity. *See Department of Enforcement v. Stein*, No. C07000003, 2001 NASD Discip. LEXIS 38, at *16, n.15 (N.A.C. Dec. 3, 2001), citing *Allen George Dartt*, 48 SEC 693 (1987).

[56] *District Bus. Conduct Comm. v. Pinchas*, 1999 SEC LEXIS 1754, at *18.

[57] *Id.* at *15 (holding that in and out trading is a practice extremely difficult for a broker to justify).

[58] "Where a broker has de facto control of investment decisions in an account, as was the case here, excessive trading may be found based solely on the turnover rate in an account." *Id.* at *18, n.17, citing *David A. Gingras*, 50 S.E.C. 1286, 1289 (1992).

[59] *See* Ex. CX–2.

Hutton and A.G. Edwards.[61] Apart from the approximately $29,000 in FG's Royal Hutton account, Brigandi had no specific information about FG's financial status to support Ali's statement, and Brigndi's assumption, that FG was wealthy. Before commencing trading in FG's account, Brigandi did not determine the size of the A.G. Edwards account, which was the only other specific asset Brigandi knew existed. Moreover, once Brigandi received the net proceeds from the A.G. Edwards account in April 2000, which amounted to approximately $55,000, Brigandi knew that the total in FG's identified accounts was not more than $90,000. Nevertheless, Brigandi did not consider determining FG's financial situation to assure that his recommendations were suitable.

Brigandi particularly relied on FG's Royal Hutton account statement to support his assessment of FG's risk tolerance. Brigandi testified that the one statement he reviewed showed that the account included "penny stocks, health stocks, [and] non-reporting stocks."[62] Based on this information, Brigandi concluded that a suitable investment strategy was aggressive short-term momentum trading. "A customer's prior transactions, however, are not relevant in a suitability determination …."[63] In addition, the A.G. Edwards account indicates that FG invested primarily in bonds and mutual funds, which would not support Brigandi's assumptions. There is no evidence that FG had a history of active stock trading.

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[60] *Department of Enforcement v. Lu*, No. C9A020052, 2004 NASD Discip. LEXIS 8 (N.A.C. May 13, 2004).

[61] Tr. 136.

[62] Tr. 135.

[63] *District Bus. Conduct Comm. v. Vaughan*, No. C07960105, 1998 NASD Discip. LEXIS 47 (N.A.C. Oct. 22, 1998) (citations omitted).

Brigandi also attempted to justify his recommendations by showing that it was possible to make money using his strategy despite the extraordinarily high cost-to-equity ratio. Brigandi offered expert testimony that 14 of 20 trades through March 2000 were profitable.[64] But the profitability of the trades in question is irrelevant. It is equally improper to engage in unsuitable excessive trading that results in profits as it is to engage in the same activity that results in losses.[65]

The Hearing Panel finds that the level of trading activity in this account was excessive and at odds with the customers' financial situation, needs, and objectives. The high turnover rate, the commission-equity and cost-to-equity ratios, and the aggressive pattern of in and out trading support this conclusion. Accordingly, the Hearing Panel finds that Brigandi's recommendations and trading activity were unsuitable and that Brigandi therefore violated NASD Conduct Rules 2310 and 2110. The Hearing Panel further concludes that Brigandi's conduct was egregious.

IV. SANCTIONS

The NASD Sanction Guidelines ("Guidelines") for egregious violations of NASD's suitability rule suggest a fine of $2,500 to $75,000 and a suspension or bar.[66] The Guidelines also recommend in appropriate circumstances that the fine be increased by the amount of the

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[64] Tr. 185.

[65] *Cf. Michael T. Studer*, Exchange Act Release No. 50,543, 2004 SEC LEXIS 2347 at *19 (Oct. 14, 2004) ("An account may be churned even if the customer shows a profit on the excessive trading. To maintain otherwise would mean that 'securities brokers would be free to churn their customers' accounts with impunity so long as the net value of the account did not fall below the amount originally invested.'") citing *Davis v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 906 F.2d 1206, 1218 (8th Cir. 1990). *See also* IM-2310-2(a)(2) ("sales efforts must be judged on the basis of whether they can be reasonably said to represent fair treatment for the persons to whom the sales efforts are directed, rather than on the argument that they result in profits to customers").

[66] NASD SANCTION GUIDELINES 97 (2004 ed.).

respondent's financial benefit or that the respondent be ordered to offer rescission to the injured customers.[67]

The Department requested a $20,000 fine and a four-month suspension. The Hearing Panel finds the Department's requested sanctions inadequate. Brigandi acted recklessly, without any regard for his customers' best interests. Accordingly, the Hearing Panel concludes that nothing short of a bar would sufficiently protect the investing public.

In reaching this determination, the Hearing Panel particularly focused on Brigandi's refusal to accept responsibility for his conduct. He viewed himself as much a victim of Ali's fraud as FG and RG. In effect, Brigandi's position is that he had the right to rely on Ali's representations about FG's financial situation and needs because Ali claimed to have their power of attorney. Without hesitation or the slightest effort to verify any of the scant information Ali supplied, immediately after he received the account, Brigandi blindly initiated aggressive trading at a level that may not be justifiable for any client. Indeed, the Hearing Panel cannot envision a situation where a broker could justify a cost-to-equity ratio of 267.46%.

In conclusion, Brigandi's "flagrant disregard for the rules of the securities industry and his continuous attempts to avoid taking responsibility for his actions demonstrate the threat that his continued employment in the industry holds."[68] Accordingly, to protect the investing public and prevent

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[67] *Id.* at 97, n.2.

[68] *See Department of Enforcement v. Dane S. Faber*, No. CAF010009, 2003 NASD Discip. LEXIS 3, at *40 (N.A.C. May 7, 2003), *aff'd, Dane S. Faber*, Exchange Act Release No. 49,216, 2004 SEC LEXIS 277 (Feb. 10, 2004).

his further disregard of the standards that govern the securities industry, the Hearing Panel will bar Brigandi from associating with any member firm in any capacity. In light of the bar, the Hearing Panel will not impose a fine.[69]

V. ORDER

John Brigandi is barred permanently from associating with any member firm in any capacity for recommending unsuitable trading in FG's account, in violation of NASD Conduct Rules 2310 and 2110. In addition, Brigandi is ordered to pay costs in the amount of $2,403.94, including an administrative fee of $750 and hearing transcript costs of $1,653.94.

These sanctions shall become effective on a date set by the NASD, but not earlier than 30 days after this Decision becomes the final disciplinary action of the NASD, except that the bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.[70]

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Andrew H. Perkins
Hearing Officer
For the Hearing Panel

[69] The Hearing Panel will not order restitution because the Department had not requested that it be ordered and there was insufficient evidence from which the Hearing Panel could determine the extent of the customers' losses, if any. In this regard, the Hearing Panel notes that FG and RG filed an arbitration claim to recover their losses, but the result of the arbitration is not reflected in the record.

[70] 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.

Copies to:

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