

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL F. SIEGEL
(CRD No. 1001893),

Respondent.

Disciplinary Proceeding
No. C05020055

Hearing Officer – SNB

March 16, 2006

THE HEARING PANEL'S SUPPLEMENTAL FINDINGS OF FACT PURSUANT TO REMAND FROM THE NATIONAL ADJUDICATORY COUNCIL

I. Procedural Background

On November 26, 2002, Enforcement filed a Complaint alleging that Michael F. Siegel ("Respondent") made unsuitable recommendations to two couples (HD and LD, and DL and BL) in violation of Rules 2110 and 2310. The Complaint also alleged that Respondent engaged in private securities transactions without prior notice to and approval from his firm, in violation of Rules 2110 and 3040.

A hearing was held in New Orleans, Louisiana, on October 8-10, 2003, before a Hearing Panel. The Panel heard testimony from, among others, Respondent and the four customers to whom Respondent allegedly recommended unsuitable transactions.

Following the hearing, the Panel deliberated and found that Respondent sold securities outside his firm without giving the required prior notice, and he made unsuitable recommendations to four customers, as alleged in the Complaint. For the selling away violations, the Panel suspended Respondent for six months and fined him \$10,000. For making unsuitable recommendations, the Panel suspended Respondent for six months and

fined him \$10,000. The Panel ordered the suspensions to be served concurrently and assessed costs of \$6,607.15.

Respondent appealed the decision to the National Adjudicatory Council (“NAC”), and the Department of Enforcement (“Enforcement”) cross-appealed. After a review of the record, the NAC remanded this matter to the Panel to make certain credibility determinations and factual findings on a narrow set of issues with respect to Respondent and two of the customers, DL and BL.

In that regard, the NAC noted that Respondent’s testimony conflicted with the testimony of customers DL and BL with respect to conversations, occurring in 1997 and 1998, concerning World ET and a World ET/World Amtech \$100,000 debenture purchased by DL and BL in February 1998. However, the Panel did not indicate whose testimony it found to be credible. Rather, it found liability based upon Respondent’s testimony and undisputed facts. The NAC indicated that these discussions would be relevant to its resolution of allegations that Respondent made unsuitable recommendations to DL and BL, and therefore, the NAC directed the Panel to make credibility findings as to these interactions.

The Hearing Officer who sat on the Panel at the hearing and drafted the April 19, 2004, Panel decision retired from the Office of Hearing Officers prior to the NAC’s remand in the case. Accordingly, a replacement Hearing Officer was appointed, pursuant to Rule 9231(e).¹ The replacement Hearing Officer did not participate in the resolution of the credibility issues raised by the NAC’s remand order, but provided legal advice to the

¹ Rule 9231(e) provides that when a replacement Hearing Officer is appointed after a hearing has commenced, the replacement Hearing Officer has discretion either (1) to allow the Hearing Panelists to resolve the issues in the proceeding without the replacement Hearing Officer’s participation, in which case the replacement Hearing Officer may advise the Panelists on legal issues and should prepare and sign the decision on behalf of the Panel, or (2) to certify his or her familiarity with the record and participate in the decision, in which case the replacement Hearing Officer may recall any witness before the full Hearing Panel.

Panelists and prepared this decision on behalf of the Panel. Accordingly, the determinations set forth below are those of the two remaining Panelists who participated in the hearing in this matter.

As noted above, the NAC has issued a remand with respect to further factual findings on a narrow set of issues. The NAC directed the Hearing Panel to make credibility determinations concerning: “(1) the discussions and interactions between and among [Respondent], DL, and BL from October 1997 to February 1998; and (2) other facts and circumstances concerning DL’s and BL’s consideration of, and \$100,000 investment in, the World ET/World Amtech debenture.”

The NAC also instructed the Hearing Panel to “address disputes concerning and make findings addressing: (1) the timing, content, context, and manner of the conversations and interactions between and among Respondent, DL, and BL; and (2) the basis(es) of DL’s and BL’s decision to invest in the World ET/World Amtech debenture.”

II. Findings of Fact

In many respects, the testimony of the witnesses is consistent. However, as indicated below, in those situations where the testimony differs, the Panel found the testimony of DL and BL to be more credible than the testimony of Respondent.

A. Respondent’s Relationship with World ET

As an initial matter, the Panel found that Respondent’s relationship with World ET was significant in evaluating the credibility of his testimony. Beginning in early 1997, well before his initial contact with DL and BL, Respondent had significant contact with the management of World ET. Among other things, World ET management requested, and Respondent offered, to assist in fund raising for World ET.² Tr. 624-632. On November 24,

² The transcript of the hearing is cited as “Tr.”; Complainant’s exhibits are cited as “CX”; and Respondent’s exhibits are cited as “RX.”

1997, Respondent sought and received permission from his firm to become a director of World ET. Tr. 632-635; CX-1, CX-2. In seeking his firm's permission, Respondent represented that he was not presently recommending World ET securities to his customers. CX-1; Tr. 638. The firm approved his request, stating, among other things, that he was not permitted to effect transactions in World ET securities. CX-2; Tr. 637. Following the firm's approval, on or before December 1, 1997, Respondent became a member of World ET's board of directors.³ CX-3, CX-5; Tr. 639-41.

Respondent's ties to World ET increased over time. On January 14, 1998, Respondent loaned \$22,000 to World ET, which was to be repaid from the first funds Respondent raised for World ET.⁴ Stipulation 15; CX-16. Moreover, on January 27, 1998, just before DL and BL invested in World ET, Respondent signed a contract with World ET in which he agreed to locate investors in exchange for compensation.⁵ Tr. 688-691; CX-5, CX-16. Respondent did not provide a copy of this agreement to his firm, and he arranged for World ET to send all materials to his home address. Tr. 691-92, 735-36.

Based upon these ties and incentives, as well as Respondent's demeanor at the hearing, the Panel did not find credible Respondent's testimony that he only mentioned World ET in passing, and did not recommend it. Nor did the Panel credit Respondent's assertion that he did not review World ET materials that he provided to Respondents. Instead, and as reflected below, where there were differences, the Panel found the testimony of DL and BL to be the more credible account.

³ On December 1, 1997, in his capacity as a board member, Respondent signed his consent to a resolution of the board to acquire the formula for Nok-Out. Tr. 639-640, 739; CX-3.

⁴ In March of 1998, Siegel made an additional loan to World ET in the amount of \$20,166.01. Stipulation 16.

⁵ Respondent claims that he signed this agreement because he believed World ET was within days of getting regulatory approval, and because regulatory approval was never received, he did not solicit investors. Tr. 690-695. The Panel, however, did not find Respondent's claim to be credible, as there would have been no reason for Respondent to sign the agreement if there were unstated contingencies to its performance.

B. Respondent's First Meeting with Customers DL and BL

Customers BL and DL, husband and wife, first met Respondent in October or November 1997. Tr. 360, 478. They requested a meeting with Respondent based upon the recommendation of their friend, HD (another investor witness in this matter), who had an account with Respondent. DL, a nurse, and her husband, BL, a Louisiana State Trooper, were close to retiring at the time of the meeting, which took place at the couple's home in Houma, Louisiana. Tr. 360-361, 364, 466-467. Their savings consisted of \$1 million, and they were looking for an investment that would yield more than the savings account and CDs at the local bank, where the funds were then held. Tr. 360-362. They had no prior securities investment experience, and Respondent was their first broker. Id. DL told Respondent that they were not willing to take big risks, but they were willing to invest some of their money in stocks that Respondent recommended. Tr. 363-364. Respondent explained his "chicken stock" strategy -- designed for people who were "chicken" about the market-- to invest in stable, established companies. Tr. 481-482, 493, 514. He also told them that from time to time, he might introduce them to start up or technology companies with greater risk, but he would discuss those investments with them first. Tr. 430-431. Based on this meeting, DL and BL decided to open a discretionary account with Respondent as their investment advisor. Tr. 362.

C. Respondent's Subsequent Meetings with DL and BL Regarding World ET

In November or December 1997, Respondent had several additional meetings with DL and BL. At the first of these meetings, the couple completed their paperwork with Respondent's firm, Dain Rauscher, Inc. ("Dain Rauscher")⁶, in order to open their account. Tr. 364. It was at this meeting that Respondent first mentioned World ET to the couple. Id.

⁶ When Respondents opened their account, the firm was named Rauscher, Pierce and Refsnes, Inc. The name of the firm later changed to Dain Rauscher, Inc.

Respondent claimed World ET was only mentioned in passing and he did not recommend it. However, based upon the fact that Respondent had significant contact with World ET Management beginning in early 1997 and was actively discussing the promotion of World ET with its senior management at the time, as well as Respondent's demeanor during testimony as compared with the demeanor of DL and BL, the Panel did not find Respondent's account credible.

Therefore, based upon the credible testimony of DL and BL, the Panel found that Respondent told the couple that World ET was a new company with a product called Nok-Out, an odor and bacteria eradicating product that the company hoped to market to the poultry and swine industries. Tr. 364-365, 624-25. Respondent told the couple that once World ET received the necessary permits, the product would be sold coast-to-coast almost immediately. Tr. 450-451. Respondent did not anticipate any obstacles in obtaining the necessary permits. Id. Respondent told DL and BL that World ET was "a great investment opportunity" and that they had a chance to get in on the "ground floor." Tr. 364, 448-450, 479.

It is undisputed that during a meeting in early December 1997, Respondent gave DL and BL a "Siegel Group" folder containing several World ET documents, including a business plan with a pro forma, a document purportedly describing the benefits of the technology, and a blank subscription agreement. Stipulations 8; CX-12, CX-13; Tr. 370-371, 434. Respondent attached two business cards with his name to the folder: one card referencing the Siegel Group, and the other referencing Dain Rauscher. Tr. 445-446.

While Respondent acknowledged that he gave DL and BL the World ET materials, including the subscription agreement, he claimed that he never looked at the materials he gave them. Tr. 676, 677. He asserted that he handed the folder to DL and BL, suggesting they call World ET if they had any questions. Id. He also claimed that he assumed that the

materials included a private placement memorandum with the requisite disclosures. Tr. 812-813. The Panel did not find Respondent's account credible, particularly given that he was a director of World ET at the time, he was being compensated for identifying investors, and he attached his card to the folder containing the materials.

Moreover, Respondent testified that he told DL and BL only that he was investing in World ET, but did not mention the amount of his investment. Tr. 669-670. On the other hand, DL recalled that Respondent said that he was investing much more than the \$100,000 minimum, and that Respondent also said that their friend, HD was investing. Tr. 462-463. DL's husband, BL, recalls that Respondent said that HD was investing three times the minimum, and Respondent was investing the same as HD. Tr. 510. The Panel finds BL's testimony credible, because it was consistent with, but more specific than, DL's testimony, and moreover, HD in fact invested three times the \$100,000 minimum. CX-7, CX-8.

DL and BL took comfort in Respondent's representation. They thought that if Respondent was investing in World ET, they should "consider it solid." Tr. 443. Respondent told the customers that they could get their money back in as little as 90 days or perhaps a year. Tr. 451-452. Although the subscription agreement referenced a debenture, DL and BL did not know what a debenture was, and Respondent did not explain it to them. The couple thought that they would be shareholders in World ET. Tr. 436-438. Respondent told DL and BL that the World ET transaction would not show up on the Dain Rauscher statement because it was a new company. Tr. 443.

D. DL and BL Invest in World ET

Based upon Respondent's recommendation, DL and BL decided to invest in World ET. Tr. 365. On February 5, 1998, DL faxed Respondent an authorization to withdraw \$100,000 from the couple's Dain Rauscher account and wire the funds to their joint bank account, whereupon she drew a check in the amount of \$100,000 payable to World ET.

Stipulations 9 and 10. DL delivered the check, along with the signed subscription agreement, to Respondent.⁷ Stipulation 12. Respondent then forwarded documents to World ET and the check was deposited in World ET's account. Stipulation 13.

E. Discussions Subsequent to the Investment

During the course of the following months, when DL asked about World ET, Respondent said that the investment was still promising. Tr. 384. However, DL and BL never received any documentation or reports from World ET. Tr. 385. Ultimately, DL and BL lost their entire investment. Id.

III. Conclusion

Pursuant to the NAC's remand, the Panel has made the foregoing supplemental findings of fact with respect to the credibility of the testimony of Respondent, DL and BL concerning the couple's investment in World ET. As reflected herein, the Panel has resolved these credibility determinations in favor of the testimony of DL and BL.

HEARING PANEL

by: _____
Sara Nelson Bloom
Hearing Officer, on behalf of the Panel

Copies to: Michael F. Siegel (*via overnight and first class mail*)
George C. Freeman, III, Esq. (*via facsimile and first class mail*)
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⁷ The subscription agreement stated no interest rate or maturity date for the debenture. CX-11.