

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee
For District No. 7,

Complainant,

vs.

Hunter International Securities, Inc.
c/o Howard A. Tescher, Esq.
Ft. Lauderdale, Florida

and

Louis N. Nizza, Jr.
Dearfield Beach, Florida,

Respondents.

DECISION

Complaint No. C07960096

District No. 7 (ATL)

Dated: September 14, 1998

The November 25, 1997 decision of the District Business Conduct Committee for District No. 7 ("DBCC") regarding Hunter International Securities, Inc. ("Hunter International") and Louis N. Nizza, Jr. ("Nizza") was called for review pursuant to NASD Procedural Rule 9312.¹ After a review of the entire record in this matter, we affirm that findings of the DBCC that Hunter International failed to maintain its required net capital, failed to maintain accurate books and records, filed inaccurate FOCUS reports, and filed erroneous trade reports, in violation of Conduct Rules 2110

¹ The National Business Conduct Committee ("NBCC") of NASD Regulation, Inc. ("NASD Regulation") called this case for review to determine whether the sanctions imposed by the DBCC for District No. 7 ("DBCC") were appropriate in light of the findings of violations. This matter was decided by the National Adjudicatory Council ("NAC"), which, as approved by the Securities and Exchange Commission ("SEC"), became the successor to the NBCC on January 16, 1998.

and 3110 and Marketplace Rule 4642. We lessen the sanctions imposed on Hunter International by eliminating its expulsion as a member, but we maintain the imposition of a censure and impose a \$40,000 fine. We modify the sanctions imposed on Nizza by eliminating his bar in all capacities and we impose instead a bar from acting in the capacity of a financial and operations principal ("FINOP"), a suspension in all capacities for 60 days, and the requirement that he requalify by examination before again acting in a registered capacity. We affirm the censure of Nizza and the \$20,000 fine.

Background

Hunter International was a member of the NASD from August 1993 until December 1995, when it filed a Uniform Request for Broker-Dealer Withdrawal, a form BDW. Nizza first entered the securities industry in 1989. He has been registered with the Association as, among other things, a general securities representative and a FINOP. He was associated with Hunter International from October 1994 until June 1996. Nizza is currently associated with member firm Royal Hutton Securities Corp.

The DBCC issued the complaint on October 23, 1996. Nizza did not answer the complaint or attend the DBCC hearing in this matter. The DBCC based its findings against him on the evidence introduced at the hearing and on Procedural Rule 9216. Hunter International answered the complaint and denied that it committed the violations alleged. Hunter International did not, however, have any representative attend the hearing and did not submit any evidence. In response to the call for review in this case, neither Nizza nor Hunter International submitted a brief and neither attended the oral argument.

Facts

Net Capital, Recordkeeping and FOCUS Reports. NASD Regulation Field Supervisor Gloria Johnson conducted a routine examination of Hunter International in August 1995. During the course of her examination, she reviewed Hunter International's books and records and net capital calculations. At the times relevant to the complaint, Hunter International had a net capital requirement of \$100,000. As of June 30, 1995, Hunter International's own calculation showed that it maintained net capital of only \$59,025, creating a net capital deficiency of \$40,975. NASD Regulation District No. 7 staff ("District Staff"), however, calculated Hunter International's net capital on June 30 as only \$26,546.50, meaning the Firm had a deficiency of \$73,453.50.

On July 17, 1995, Hunter International submitted the required telegraphic notice of its June 30 net capital deficiency and represented that it had infused additional capital. According to the Firm, it had net capital of \$228,344 as of July 17, 1995.

Hunter International's calculation for July 31, 1995 showed net capital of \$131,757. District Staff performed preliminary calculations that indicated net capital of \$94,803.02, or a deficiency of \$5,196.98. District Staff did not, however, arrive at a final net capital figure for the Firm as of July 31, 1995.

Hunter International submitted to the NASD monthly FOCUS Part I reports showing its net capital position for June 30 and July 31, 1995, which contained the same calculations of its net capital as described above. Hunter International also filed a quarterly FOCUS Part IIA report for the quarter ended June 30, 1995. This report also contained the same calculations as the Firm used in calculating its June 30, 1995 net capital.

Nizza was Hunter International's Chief Financial Officer and FINOP during June and July 1995. According to the Firm's written supervisory procedures, he was responsible for the review of Hunter International's financial statements. In addition, he was responsible for the submission of the Firm's FOCUS reports Part I and Part IIA.

Trade Reporting. The fourth cause alleged that Hunter International, acting through Edward C.W. Donner, III ("Donner"), filed erroneous trade reports on transactions in securities listed on The Nasdaq Stock Market. District Staff introduced a schedule that reflected 78 trades during the period August 14 through August 17, 1995. Of the 78 trades reviewed, seven were canceled. Of the remaining 71 trades, Hunter International committed one or more errors in reporting 42 trades. These errors included, among others, untimely reporting, improper bunching of trades, and listing an incorrect price. In all, 59 reporting errors were identified by District Staff.²

District Staff introduced another schedule that reflected Hunter International's compliance with the confirmation disclosure requirements of Rule 10b-10 of the Securities Exchange Act of 1934 ("Rule 10b-10"). Of the 69 trades that District Staff reviewed, 65 showed inaccurate disclosures of the mark-up or mark-down charged to the customer. Also, 10 of the confirmations failed to disclose that Hunter International was acting as a market maker.

Discussion

Net Capital, Books and Records and FOCUS Reports. The first cause of the complaint alleged that Hunter International conducted a securities business while it failed to maintain its required net capital. Exchange Act Rule 15c3-1(a)(2) required Hunter International to maintain minimum net capital of \$100,000 during June 1995.³

² Some of the 42 trades had multiple errors, resulting in the total number of errors exceeding the number of erroneously reported trades.

³ The record contained order tickets that showed that Hunter International

The Firm's own calculations for June 30 showed that it had net capital of only \$59,025. Pursuant to SEC requirements, Hunter International notified the NASD of its net capital deficiency. Nevertheless, the Firm violated the net capital rule. Moreover, District Staff's calculations showed that the Firm failed to book \$27,726.30 of liabilities from sales commissions. The Firm also failed to book \$5,301.21 of accounts payable. As a result of these errors, on June 30, Hunter International had net capital of \$26,546.50. We find, as did the DBCC, that Hunter International and Nizza violated Conduct Rule 2110 by conducting a securities business on June 30 while it maintained insufficient net capital.

Cause two alleged that Hunter International and Nizza failed to maintain accurate books and records in June and July 1995. The inaccuracies for June 30 are the same errors we have already discussed regarding the net capital violation. As for July 31, 1995, District Staff found that the Firm failed to accrue \$16,259.30 of liabilities and also that the Firm failed to account for numerous canceled purchase transactions by adding the stock back into inventory and applying the applicable haircut and undue concentration adjustments, which reduced the Firm's net capital by a total of \$22,600. Based on the evidence, we uphold the conclusion of the DBCC and find that Hunter International and Nizza violated Conduct Rules 2110 and 3110 by failing to maintain accurate books and records in June and July 1995.

Cause three of the complaint alleged that Hunter International and Nizza filed with NASD inaccurate FOCUS Reports Part I and Part IIA as of June 30, 1995 and FOCUS Report Part I as of July 31, 1995, in violation of Exchange Act Rule 17a-5. Based on the calculations presented by District Staff, we find that the FOCUS reports filed for Hunter International were materially inaccurate because, for June 1995, the FOCUS reports understated the Firm's liabilities by more than \$33,000. For July 1995, the FOCUS reports misstated the Firm's net capital by more than \$35,000. Therefore, we affirm the DBCC's conclusion and find that Hunter International and Nizza violated Conduct Rule 2110 by filing inaccurate FOCUS I and FOCUS IIA reports.

Trade Reporting Errors. Marketplace Rule 4642 ("Rule 4642") requires that a member firm that is registered as a Nasdaq market maker in a designated security ("Registered Reporting Market Maker") shall transmit through the Automated Confirmation Transaction ("ACT") service last sale reports for transactions in designated securities during normal market hours within 90 seconds after execution.

conducted principal transactions in equity securities on June 30, 1995, thereby evidencing that Hunter International was conducting a securities business on the same day that it had a net capital deficiency. The record does not, however, contain evidence that the Firm was conducting a securities business on July 31, 1995. We uphold the DBCC's dismissal of the allegation that Hunter International conducted a securities business and failed to maintain its required net capital on July 31, 1995.

See Rule 4642(a). Based on the requirements of the rule, last sale reports must include price and volume information for the transaction. Rule 4642(d). In addition, firms must report when they have aggregated or "bunched" transactions together pursuant to the provisions of subsection (f) of the rule. The provisions of the trade reporting rule do not allow firms to bunch transactions that include an individual order of 10,000 shares or more. See Marketplace Rule 4632(f).

The evidence presented at the DBCC hearing demonstrated that Hunter International committed several trade reporting errors. In reviewing four days of Hunter International's trading records, District Staff reviewed 71 trades and found that 42 trades were erroneously reported. The errors included 16 transactions that were not reported to ACT within 90 seconds, five transactions that were reported with an incorrect price, one transaction that was reported with an incorrect volume, 16 bunched transactions that should not have been bunched, and 21 bunched transactions that were not reported as such. Based on the evidence, we find that Hunter International violated Rule 4642 as alleged in the complaint.

Rule 10b-10 requires market makers to disclose their market maker status on confirmations and also to disclose the difference between a price being paid by a customer and the price reported to Nasdaq. District Staff reviewed 69 confirmation statements and found that the Firm failed to disclose that it was a market maker on 10 confirmations. The Firm also failed accurately to disclose the mark-up or mark-down it charged on 65 confirmations. Based on the evidence, we find that Hunter International violated Rule 10b-10 as alleged in the complaint. Therefore, we affirm the DBCC's finding that Hunter International violated Conduct Rule 2110 and Rule 4642.

Sanctions

In imposing sanctions on Hunter International, we have considered the factors enumerated in the NASD Sanction Guidelines ("Guidelines") for net capital violations, inaccurate FOCUS reports, recordkeeping violations, and trade reporting violations.⁴ Initially, we note that during the short time that it was registered as a broker/dealer, Hunter International had no disciplinary history.

Because the June net capital violation is also the source of the inaccurate June FOCUS reports and the inaccurate books and records for June, we have not duplicated our sanctions for these three violations. Our findings are that Hunter International committed a single violation of the net capital rule and committed the related recordkeeping and FOCUS report violations. Although the amount of the Firm's net

⁴ See Guidelines (1996 ed.) at 23, 35, 40, and 55 (False or Inaccurate Reports (FOCUS or other), Net Capital Violations, Recordkeeping Violations, and Trade-Reporting Violations),

capital deficiency was substantial, the violation occurred on a single occasion. Hunter International also committed a second recordkeeping and FOCUS report violation in July.

Under the circumstances, we impose monetary sanctions on the Firm of \$40,000. The Guideline for a net capital violation suggests that a fine should be imposed in the range of \$1,000 to \$20,000. Of the \$40,000 fine we impose on the Firm, we allocate \$15,000 to the net capital violation and the related recordkeeping and FOCUS report violations.

As for the trade reporting violation, we allocate \$25,000 of the fine to this violation. The evidence showed that Hunter International had an abysmal accuracy rate for its trade reporting and Rule 10b-10 disclosure requirements. The SEC recently reaffirmed the importance of Rule 10b-10 disclosures, stating that "Rule 10b-10 works to protect investors and combat broker-dealer fraud by ensuring full and fair disclosure to investors of the substance of the transactions effected by their brokers." In re Hattier, Sanford and Reynoir, Exchange Act Rel. No. 39543, p. 8 n.16 (Jan. 13, 1998). Therefore, we impose a sanction that reflects the serious trade reporting errors and incorrect and missing confirmation disclosures.

For Nizza, we consider the net capital and connected violations, but not the trade reporting violation. Nizza has prior NASD disciplinary history that we find is an aggravating circumstance. In March 1991, Nizza settled with the NASD over allegations that he failed to maintain accurate net capital computations for three months in 1990. He accepted a censure and a \$1,000 fine. Given the repeat nature of Nizza's violation of the net capital rule, we conclude that he should no longer function in the capacity of a FINOP for another broker/dealer. Accordingly, we bar him from again serving as a FINOP. We also suspend him in all capacities for 60 days and require that he requalify prior to serving again in any capacity. We impose a fine of \$20,000 on Nizza, which is within the range recommended by the Guidelines.

Accordingly, we order that Hunter International be censured, fined \$40,000, and assessed \$498.40 in DBCC costs (joint and several). Nizza is censured, barred from acting in the capacity of a FINOP, suspended in all capacities for 60 days, ordered to requalify by examination before acting in any capacity requiring registration, fined \$20,000, and assessed DBCC costs of \$498.40 (joint and several).⁵ The bar of Nizza in the capacity of a FINOP is effective immediately upon service of this decision. Pursuant to Procedural Rule 9360, the Chief Hearing Officer shall set the date on which Nizza's suspension shall begin.

On Behalf of the National Adjudicatory Council,

Joan C. Conley, 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 Procedural 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 sanction, after seven days' notice in writing, will summarily be revoked for non-payment.

Joan C. Conley
Corporate Secretary

September 14, 1998

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Hunter International Securities, Inc.
c/o Howard A. Tescher, Esq.
Ft. Lauderdale, Florida

Louis N. Nizza, Jr.
Deerfield Beach, Florida

Re: Complaint No. C07960096 : Hunter International Securities, Inc., and
Louis N. Nizza, Jr.

Dear Respondents:

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 ("SEC"). To do so, you must file an application with the Commission within thirty days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. ("NASD Regulation") 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 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, NW, Stop 6-9
Washington, DC 20549

The address of NASD Regulation is:
Office of General Counsel
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 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: W. Brice La Hue, Esq.