

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 02-184**

September 24, 2002

MICHAEL ALLAN BRESSMAN

FORMER REGISTERED REPRESENTATIVE

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**Violated Exchange Rule 408(a) in that he exercised discretion without prior written authorization, violated Exchange Rule 408(b) in that he exercised discretion without notifying and obtaining the approval of another person – Consent to censure, two month bar and \$15,000 fine.**

**Appearances:**

For the Division of Enforcement  
Simon Swidler, Esq.  
Michael W. Bautz, Esq.

For the Respondent  
Kenneth A. Goldberg, Esq.

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An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and Michael Allan Bressman, a registered representative formerly with Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Firm"). Without admitting or denying guilt, Mr. Bressman consented to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 408(a) in that he exercised discretionary power in customers' accounts without first obtaining written authorization of the customer.
- II. Violated Exchange Rule 408(b) in that he exercised discretionary power in customers' accounts without first notifying and obtaining the approval of another person delegated under Exchange Rule 342(b)(1) with the authority to approve the handling of such accounts.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Mr. Bressman stipulate to certain facts, the substance of which follows:

**Background and Jurisdiction**

1. Bressman was born on July 6, 1957. Bressman entered the securities industry on or about November 23, 1979 working as a registered representative with the Firm. Bressman worked in the Firm's Short Hills, New Jersey office until his termination on January 4, 2000.

2. Bressman is currently employed in the securities industry with a non-member firm.
3. On or about January 28, 2000, Enforcement received from the Firm a Uniform Termination Notice for Securities Industry Registration ("Form U-5"). The Form U-5 reported, "Bressman was terminated on January 4, 2000, after the Firm determined that he had exercised discretion in clients' accounts."
4. By letter dated July 21, 2000, which Bressman received, the Exchange notified Bressman that it was investigating the matters reported in the Form U-5.

### **Overview**

5. As set forth below, in the period from approximately January 1990 to January 4, 2000, Bressman utilized discretionary authority to effect transactions in the accounts of twenty-eight of his clients. In each instance, the client granted Bressman verbal discretionary trading authority. However, the discretionary trading authority was not reduced to writing and Bressman did not inform the Firm of the arrangement.

### **Discretionary Trading in Customer Accounts**

#### **CM**

6. On or about January 14, 1985, CM opened an Individual Retirement Account with the Firm.
7. In 1992 CM's account was assigned to Bressman who serviced it until November 1999.
8. In approximately 1995, CM granted Bressman verbal discretionary trading authority. The discretionary trading authority was not reduced to writing and Bressman did not inform the Firm of the arrangement. Bressman utilized that discretion at various times thereafter.
9. In 1998 and 1999, Bressman utilized his discretionary trading authority to effect a total of approximately 118 transactions in CM's account.
10. In November 1999, CM complained to the Firm about the transactions in her account. The Firm settled with CM for \$25,000.00.

#### **R and MD (the "Ds")**

11. On or about November 28, 1990 the Ds opened a Cash Management Account with the Firm.
12. Bressman serviced the Ds' account until his termination on January 4, 2000.

13. Shortly after the account was opened, the Ds granted Bressman verbal discretionary trading authority. The discretionary trading authority was not reduced to writing and Bressman did not inform the Firm of the arrangement.
14. On more than one occasion from on or about November 28, 1990 to on or about January 4, 2000, Bressman utilized his discretionary authority to effect one or more transactions in the Ds' account.
15. On or about February 2000, the Ds complained to the Firm of the transactions in their account from 1997 to 2000. The Firm settled with the Ds for \$15,000.

### **26 Additional Customers**

16. At various times from approximately January 1990 until January 4, 2000, while employed at the Firm's Short Hills, New Jersey office, Bressman serviced the accounts of, among others, twenty-six (26) additional customers.
17. Bressman obtained verbal discretionary authority from each of the above-mentioned twenty-six customers. The discretionary authority was not reduced to writing and Bressman did not inform the Firm of the arrangements.
18. From on or about 1990 to his termination on January 4, 2000 Bressman, on more than one occasion, utilized his discretionary authority to effect one or more transactions in each of the twenty-six (26) additional customers.

### **DECISION**

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Bressman guilty as set forth above by unanimous vote.

### **PENALTY**

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Mr. Bressman of a censure, a two month bar from membership, allied membership, approved person status, and from employment or association in any capacity with any Exchange member or member organization and a \$15,000 fine.

For the Hearing Panel

Vincent F. Murphy  
Hearing Officer