

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 03-30

March 6, 2003

GILBERT F. HARTMAN

FORMER REGISTERED REPRESENTATIVE

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Effected unsuitable, excessive and unauthorized customer trades; violated Exchange Rule 408(a) by exercising discretion without written customer authorization; violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by causing creation of inaccurate books and records – Consent to censure and eight month bar.

Appearances:

For the Division of Enforcement
Steven J. Brostoff, Esq.
Aida Vernon, Esq.

For the Respondent
Gilbert F. Hartman
pro se

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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 Gilbert F. Hartman, a former registered representative with Ferris, Baker Watts Inc. (the "Firm"). Without admitting or denying guilt, Mr. Hartman consents to findings by the Hearing Panel that he:

- I. Engaged in conduct inconsistent with just and equitable principles of trade in that he: effected unsuitable transactions, in view of the customer's investment experience, investment objectives, risk tolerance and financial circumstances, in three customer accounts of his member firm employer; engaged in excessive trading, in view of the customer's investment experience, investment objectives and financial circumstances, in two customer accounts of his member firm employer; and entered seven unauthorized trades in one customer account of his member firm employer.
- II. Violated Exchange Rule 408(a) by exercising discretionary authority in the account of a customer of his member firm employer without obtaining written authorization from the customer.
- III. Violated Exchange Rule 440 and SEC Rules 17a-3 and 17a-4 by causing the creation and maintenance of inaccurate books and records.

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

Background and Jurisdiction

1. Gilbert F. Hartman (“Hartman”) was born on December 15, 1947. He was employed in the securities industry from 1986 to 2000, at all times as a registered representative with Exchange member organizations. Hartman was employed by the Firm from October 1995 to March 2000.
2. Hartman worked as a registered representative at the Hunt Valley, Maryland branch office of the Firm from October 1995 to March 13, 2000, when his employment was terminated.
3. Hartman has not been employed in the securities industry since March 2000.
4. On or about April 6, 2000 Enforcement received a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) reporting that Hartman had been “permitted to resign” as a result of the Firm’s investigation of certain customer complaints.
5. By letter dated October 30, 2000, which Hartman received, Enforcement notified Hartman of its investigation.

Summary of Violative Conduct

6. During 1998 to 2000, Hartman engaged in unsuitable trading in the accounts of three customers, engaged in excessive trading in two of those accounts, and made seven unauthorized trades in one of those accounts. Hartman also exercised discretionary authority in one of those accounts without written authorization and caused inaccurate books and records to be created by failing to accurately reflect the investment objectives of two customers.

Unsuitable, Excessive and Unauthorized Trading in Customer Accounts

The W Account

7. Customer W opened an account with the Firm with a \$75,000 deposit in October 1997. At the time, Customer W was 49 years old, divorced and provided financial support to her two college-age children and her mother. Customer W was a self-employed antiques dealer with no prior investment experience. Her annual income in 1997 was listed on the new account form as \$25,000 to \$50,000 and her net worth was listed as over \$200,000.
8. Customer W informed Hartman that her investment objective was long-term growth and that she had a moderate risk tolerance. On Customer W’s new account form, Hartman failed to accurately state Customer W’s investment objectives, instead listing them as aggressive growth; speculation; and growth and income.

9. Between January and November 1998, Hartman made 11 purchases and sales of the warrants of an oil and gas company, at prices ranging from \$12.31 to \$53. The extreme price volatility history of these warrants made the continual buying and selling of these warrants an unsuitable investment for Customer W and was inconsistent with her objectives and risk tolerance.
10. On March 16, 1999, Hartman sold short 2,200 of these warrants in Customer W's account. At the time, the account held a long position of 2,200 warrants. On March 23, 1999, Hartman liquidated Customer W's long position in these warrants. Hartman did not cover the short position until May 4, 1999, by which time the price of the warrants more than doubled. Customer W lost over \$38,000 on the short sale.
11. Hartman did not explain to Customer W that short selling was done on margin or inform Customer W that keeping an uncovered short position open placed her at risk of potentially unlimited losses if the warrants increased in price rather than decreased. Hartman's use of an uncovered short position in the warrants was inconsistent with her objectives and risk tolerance and, therefore, unsuitable.
12. In September 1999, Hartman liquidated all of Customer W's blue chip positions without her authorization. Subsequently, Hartman concentrated the W account in non-investment grade stocks and often held positions for only a few days before selling them.
13. In February and March 2000, the last two months he handled the W account, Hartman made a total of 35 trades and generated over \$9,000 in gross commissions. Between July 1999 and March 2000, Hartman generated more than \$19,000 in commissions. During this nine-month period, the annualized turnover rate for the account was 13.57. In the 30 months the W account was open, Hartman generated a total of \$30,000 in commissions. The cost/equity ratio during the life of the account was 24%. (The annualized cost/equity ratio represents the rate of return an account would need to earn in a year in order to break even. The cost/equity ratio is determined by adding the margin interest, commissions, and fees in an account, and then dividing that total by the average monthly equity. To annualize a cost/equity ratio, the number 12 (months) is divided by the number of months in the relevant time period, and the resulting number is then multiplied by the actual cost/equity ratio.)
14. Hartman's trading of the W account from July 1999 to March 2000 was unsuitable and excessive.
15. On March 8, 2000, without Customer W's authorization, Hartman purchased 2,000 shares of a security for a total of \$30,000. On March 7 and March 9, 2000, without Customer W's authorization, Hartman purchased a total of 1,500 shares of another security for \$13,000.

The K Account

16. The Ks opened a joint account with the Firm in October 1996. They had no prior investment experience. Ms. K was 44 years old and collected Social Security disability benefits due to injuries she sustained in a car accident. She funded the account with \$26,000 from her accident settlement. The Ks had two young children. The Ks' combined annual income was \$50,000 to \$75,000 and net worth was \$100,000-\$200,000.
17. Ms. K informed Hartman that she had a low risk tolerance and could not afford to lose money. On the Ks' new account form, Hartman failed to accurately state the Ks' investment objectives, instead listing them as aggressive growth; speculation; and growth and income.
18. After the account had been open approximately one year, Ms. K orally gave Hartman discretion to trade the account. Hartman did not obtain written authorization to exercise discretion in the K account.
19. Instead of buying and holding high-quality securities consistent with the Ks' investor profile, Hartman engaged in aggressive trading of the oil and gas company warrants and made other inappropriately risky investments. For example, between December 1997 and March 1999, Hartman bought and sold these warrants 14 times for this account, at prices ranging from \$8 to \$53.
20. On April 1, 1999, Hartman made a margin purchase of 4,000 shares (for \$24,000, almost the total value of the K account at the time) of a little-known technology company that traded over the counter. This security was a speculative investment. The Ks lost their entire investment in this security.
21. After the above investment, Hartman continued to make margin purchases of low quality stocks. By December 1999, after numerous margin calls, the K account had negative equity of \$3,000. Between October 1996 and November 1999, the annualized cost/equity rate was 26%.
22. Hartman's trading in the K account was unsuitable given the Ks' investment experience, investment objectives, risk tolerance and financial resources.

The T Account

23. In the fall of 1995, Customer T and her husband transferred several accounts to the Firm, including Ms. T's IRA. Both the Ts were in their 70's at the time. Mr. T, who died in March 1996, was the primary decision maker and contact for the accounts. Ms. T, who died in August 2000, was a homemaker with a high school education and no independent investment experience.

24. After her husband's death, Ms. T's annual income was \$50,000-\$75,000 and her net worth was approximately \$600,000. The new account form for Ms. T's IRA stated that the investment objectives were growth and income; aggressive growth; and conservative growth.
25. After Mr. T's death, Ms. T's family members advised Hartman that he should manage her securities accounts more conservatively than he had when Mr. T was alive and that he should make safety of the principal the top priority.
26. In October 1996, Hartman sold off most of the existing stock positions in the account. From then on, Hartman heavily traded the account, buying and selling a mix of blue chips and more risky securities, including the oil and gas company warrants. Between January 1998 and March 1999, Hartman bought and sold these warrants 22 times in Ms. T's IRA, at prices ranging from \$8.50 to \$53. At one point, these warrants constituted over 50% of the account value of \$159,000. In September 1998, Hartman's liquidation of a position in the warrants generated a \$62,000 loss in the account.
27. From November 1996 to November 1999, Hartman made an average of five trades per month in Ms. T's IRA and as many as 10-15 trades per month on numerous occasions. Hartman generated approximately \$75,000 in gross commissions during this period, resulting in a cost/equity rate of 26%. In the 10 months encompassing March to December 1998, the annualized turnover rate was 11.97.
28. Hartman's trading in Ms. T's IRA was unsuitable and excessive, given Ms. T's age, investment objectives, investment experience and financial resources.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Hartman 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. Hartman of a censure and an eight month bar from membership, allied membership, approved person status and from employment or association in any capacity with any member or member organization.

For the Hearing Panel

Milton M. Stein
Hearing Officer