

NEW YORK STOCK EXCHANGE, INC.

**EXCHANGE HEARING PANEL DECISION 04-138**

August 26, 2004

BRUCE D. REID

FORMER REGISTERED REPRESENTATIVE

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**Effected unsuitable transactions and unauthorized margin purchases in a customer account – Consent to censure and a six-month bar.**

**Appearances:**

For the Division of Enforcement  
Martin S. Mazur, Esq.  
Daniel S. Eisenberg, Esq.

For the Respondent  
Roger D. Mellem, 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 Bruce D. Reid, a former registered representative with Merrill Lynch, Pierce, Fenner & Smith, Inc. (the "Firm"). Without admitting or denying guilt, Mr. Reid consented to a finding by the Hearing Panel that he engaged in conduct inconsistent with just and equitable principles of trade in that he:

- I. Effected unsuitable transactions in the account of a customer of his member organization employer in view of the customer's investment objectives, investment experience, financial circumstances, and age.
- II. Effected purchases on margin in the account of a customer without authorization.

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

**Background and Jurisdiction**

1. Reid was born on May 19, 1942 and entered the securities industry with the Firm in March 1977 where he remained until his voluntary resignation on October 1, 2003. The Exchange approved Reid as a registered representative with the Firm on June 24, 1977. Reid is not currently employed in the securities industry.
2. On July 8, 2002, the Division of Enforcement ("Enforcement") of the Exchange received a Form RE-3 from the Firm reporting that customer BH had alleged unsuitable trading and the unauthorized use of margin in her account by Reid and claimed damages in the amount of \$196,316. The Firm settled BH's claim for \$124,000 to which Reid contributed \$3,500.

3. By letter dated February 4, 2003, that he received, Enforcement notified Reid that it was inquiring into the above matter.

### **Overview**

4. During 2001, Reid effected margin transactions in the account of a customer, then age 83, that were unsuitable in view of the customer's investment experience, investment objectives, financial resources, and age. He also recommended purchases that resulted in the over-concentration of one security in that customer's account ranging from 52% to 98% of the total value of the account. In addition, despite the fact that the customer had not authorized the use of margin, he effected four margin purchases in that account. The improper transactions effected by Reid, which took place during the general decline in the market, substantially contributed to a loss, including interest, for the period January 1, 2001 through February 28, 2002 of \$159,000 or 69% of the value of the account.

### **Unsuitability**

5. In or about January 1989, BH and her husband, GH, sold their business that was located in Alaska, retired and moved to Seattle, Washington. HA, the H's accountant, who was a customer of Reid, then introduced them to Reid and they opened a joint account with Reid and the Firm. The new account document reflected that the Hs were retired, had a net worth of \$600,000, had income of \$50,000 to \$60,000 per year and an investment objective of income and a "good quality" risk factor. The Hs deposited \$300,000 into the joint account. BH, who was then approximately 70 years old, had no prior investment experience. GH died in July 1991 and the assets in the joint account were then transferred to an individual account in BH's name (the "Account").
6. The Firm's computer records indicate that BH's original investment objective in her individual account was income with conservative risk.
7. On March 12, 1999, in response to a survey sent by the Firm, BH advised that she had household assets of approximately \$300,000 and that her liquid assets were 100% invested with the Firm.
8. During all relevant times, Reid recommended at least 90 percent of the purchases in the Account and, although BH approved all of the transactions in the Account, she did not understand them.
9. In February 2002, BH, who was then 84 years old, delivered a letter to the Firm complaining about the losses sustained by the Account since January 1, 1999. Among other things, BH claimed that she relied upon Reid for investment advice and that she had never authorized Reid to trade on margin.

10. As noted above, BH complained about the Account's performance for the period January 1, 1999 through February 2002. The losses for the period 2001-2002 were \$159,000.

### **Unsuitable Use of Margin**

11. Margin transactions were effected in the Account in 1998 and 1999. In early 2000, HA, at BH's direction, spoke with Reid and directed him to discontinue margin purchases. As a result of that instruction, margin was not utilized in 2000 or in January and February 2001.
12. However, margin activity resumed in March 2001. On February 28, 2001 there was a cash balance of \$49 in the Account. BH withdrew \$14,489 in March; resulting in an \$11,101 debit balance. From April 2001 through February 2002, Reid solicited margin purchases that exceeded sales by \$54,749, BH withdrew \$8,416, and margin interest totaled \$4,707. The last purchase was made in July 2001. At the end of that month the Account had a value of \$127,801 and a debit balance of \$75,796. At the end of February 2002 the Account had a value of \$48,156 and a debit balance of \$82,040.
13. The Firm did not send Reid hard copies of his customers' account statements for about a year and a quarter (The Firm believes that it stopped sending those hard copies sometime during the 2001 calendar year.), and he did not review those account statements despite the fact that they were available to him on his computer. When he wanted information about an account he accessed the holding section on the computer and did not access the account statement, profit and loss, or expense sections.
14. Reid never explained the risk of margin to MH and he never discussed with her the fact that her account was being depleted by the execution of margin transactions.

### **Over-concentration**

15. Commencing in November 1999 Reid recommended that BH purchase XYZ in the Account. Between that time and July 2001, Reid effected six purchases and four sales of XYZ which Standard & Poors rated B+ throughout that period. The final purchase of XYZ was made in the Account for settlement on July 17, 2001. At July 31, 2001, the shares of XYZ in the Account were worth \$106,400 and constituted approximately 52% of the market value of the portfolio. As at October 30, 2001, XYZ constituted 98% of the total equity of the Account, as at November 31, 2001, XYZ constituted 88% of that equity, and as at December 31, 2001, it constituted 93% of that equity.
16. In view of the customer's age, financial resources, investment objectives, and the fact that most of her liquid assets were invested in the Account, one security constituting in excess of 50 percent of the market value of the portfolio constitutes an over-concentration.

17. Reid effected transactions in the account of a customer of his member organization employer which, due to excessive use of margin and over-concentration, were unsuitable in view of the customer's investment experience, investment objectives and financial resources.

**The Unauthorized Use of Margin**

18. BH did not understand margin and never authorized Reid to use margin in her Account.
19. BH conferred with Reid when she wished to write checks against the Account or use her credit card which was linked to the Account and he would approve of her doing so. As noted in paragraph 12 above, these withdrawals increased the debit balance in the Account in 2001.
20. As noted in paragraph 11 above, HA upon BH's instructions, directed Reid to discontinue margin purchases.
21. Despite all of the above, Reid solicited four margin purchases during the period April through July 2001.
22. Reid effected purchases made on margin in the account of a customer of his member organization employer who had not authorized the use of margin.

**DECISION**

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. Reid 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. Reid of a censure and a six-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

Vincent F. Murphy  
Hearing Officer