

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 05-12

January 20, 2005

GREGORY THOMAS McNAMARA
FORMER REGISTERED REPRESENTATIVE

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Violated Exchange Rule 408(a) in that he exercised discretion in the accounts of three customers with oral but not written authorization; effected transactions in the account of a customer of his member firm employer that were not suitable – Consent to censure and two month bar.

Appearances:

For the Division of Enforcement
Julie Han Broderick, Esq.
Kimberly J. Rosner, Esq.

For the Respondent
Gregory Thomas McNamara
pro se

* * *

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 Gregory Thomas McNamara, a former registered representative with A.G. Edwards & Sons, Inc. (the "Firm"). Without admitting or denying guilt, Mr. McNamara consented to a finding by the Hearing Panel that he:

- I. Violated Exchange Rule 408(a) in that he exercised discretion in the accounts of three customers of his member firm employer with oral but not written authorization from the customers.
- II. Engaged in conduct inconsistent with just and equitable principles of trade in that he effected transactions in the account of a customer of his member firm employer that were not suitable in view of the customer's investment objectives, experience, and financial resources.

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

Background and Jurisdiction

1. Gregory Thomas McNamara ("McNamara") was born on February 13, 1966. He entered the securities industry in August 1988 when he commenced employment as a broker-trainee at Firm A. In September 1988, McNamara became registered with the Exchange as a registered representative with Firm A, where he remained until April 1989. In April 1989, McNamara joined Firm B as a registered representative and remained in that position until February 1997, when his employment was terminated.

2. In February 1997, McNamara became employed as a registered representative with the Firm and remained in that position until his employment was terminated in January 2003.
3. In February 2003, McNamara became employed as a registered representative with Firm C, a non-member organization, and remained in that position until his employment was terminated on November 5, 2004.
4. McNamara is not currently employed in the securities industry.
5. On or about February 13, 2003, the Firm filed a Uniform Notice of Termination (“Form U-5”) with the Exchange reporting the termination of McNamara’s employment following a Firm investigation that disclosed that McNamara used discretionary authority without prior written authorization in a customer’s account.
6. By letter dated March 14, 2003, which he received, Enforcement notified McNamara that it was investigating the matters reported by the Firm and requested a written explanation. Thereafter, McNamara responded by providing information and testimony.

Overview

7. At various times throughout 1998 to 2002, McNamara exercised discretion in three customer accounts with oral but not written authorization. During the period of July 1999 through January 2001, McNamara effected unsuitable transactions in one customer account.

Discretionary Trading Without Written Authorization and Unsuitable Trading

ABC Women Account

8. In or about March 1997, the ABC Women, a non-profit organization, opened an account at the Firm which was handled by McNamara (the “ABC Women’s Account”). The ABC Woman’s Account was opened at the Firm by transferring approximately \$544,000 in assets from an account held at Firm B, which had been handled by McNamara, and consisted of blue chip securities and mutual funds. The investment objectives for the account were listed as taxable income-conservative and growth-conservative on the new account form.
9. At the time the ABC Women’s Account was opened, PC, the treasurer of the ABC Women, and BF, president, were authorized to make investment decisions for the account. McNamara met with PC and BF to discuss the investment goals for the account. During that meeting, PC and BF gave McNamara oral authorization to use discretion in the account. No written trading authorization was requested and none was completed.
10. In or about October 1998, DJ assumed the title of treasurer of the ABC Women. At that time, DJ and BF gave McNamara oral authorization to trade the account. No written trading authorization was requested and none was completed.

11. During 1997 and 1998, the ABC Women's Account was invested in a mix of blue chip securities and conservative and fixed income mutual funds. During 1999, McNamara sold a majority of the blue chip holdings and mutual funds in the ABC Women's account and concentrated the account in several volatile technology stocks, most of which were low-rated (B- or lower) or unrated by Standard & Poor's, Inc. ("S&P").
12. In or about July 1999, following discussions with the ABC Women, McNamara updated the investment objectives on the new account form for the ABC Women's Account to growth-conservative and growth-aggressive. Thereafter, McNamara employed a short-term trading strategy in several speculative technology issues in the ABC Women's Account. On several occasions, McNamara bought and sold the same security multiple times over a short period of time. During 2000, McNamara continued to short-term trade other volatile technology stocks in the ABC Women's Account.
13. From November 1999 to April 2000, the account value in the ABC Women's Account had increased from its initial value of approximately \$544,000 to approximately \$1 million. From May 2000 to September 2000, the account value fluctuated between \$824,000 and \$917,000. During this time, the ABC Women did not complain about the account activity. By October 2000, the account value declined to approximately \$771,000.
14. In or about October 2000, DJ and BF met with McNamara and informed him that they were unhappy with the account's performance. After McNamara convinced them that their portfolio was well positioned for future profits, DJ and BF left the existing portfolio intact and experienced further losses throughout late 2000 and early 2001. By February 2001, the account value declined to approximately \$560,000.
15. McNamara acknowledged that he traded in the ABC Women's Account with oral but not written authorization and that the trading and concentration in technology stocks was unsuitable for the ABC Woman's Account.

The ABC Church Major Renovation Account

16. In or about December 1998, the ABC Church, a non-profit organization, opened an account with the Firm which was handled by McNamara (the "Church Major Renovation Account"). The account was opened at the Firm by transferring approximately \$208,000 in assets from an account held at another firm and consisted of blue chip securities, taxable bonds and mutual funds.
17. At the time the Church Major Renovation Account was opened, SP, RC and DD, the Church Major Renovation Account's president, secretary and treasurer respectively, had authority to make investment decisions in the account. McNamara met with SP, RC and DD and discussed the investment goals for the account. During that meeting, SP, RC and DD gave McNamara oral authorization to use discretion in the account. No written trading authorization was requested and none was completed.
18. McNamara acknowledged that he traded in the Church Major Renovation Account with oral but not written authorization.

19. Upon learning of McNamara's activities in the ABC Women's and Church Major Renovation Accounts, the Firm placed McNamara under special supervision beginning on or about April 17, 2001.

The Ps Accounts

20. In or about September 1998, R and MP (the "Ps"), McNamara's aunt and uncle, opened a joint account with the Firm which was handled by McNamara. In or about April 1999, the RP opened an IRA rollover with the Firm which was handled by McNamara.
21. On or about January 29, 2003, in connection with his daily review of correspondence, BOM, the branch office manager and McNamara's supervisor, reviewed a letter dated January 20, 2003, sent by RP to McNamara at the Firm. In the letter, RP stated that he noticed a trade in his accounts in a security called XYZ and that he hoped it "turns out good." Following his review, BOM telephoned RP to clarify statements that RP made in the letter. During the telephone call, RP confirmed to the BOM that he gave McNamara oral authority to use discretion in both P accounts at the time he opened the accounts with the Firm. No written trading authorization was requested and none was completed.
22. McNamara acknowledged that he traded in the P Accounts with oral but not written authorization.
23. Upon discovery that McNamara was trading with discretion in the P Accounts without written authorization, the BOM confronted McNamara and thereafter the Firm terminated McNamara's employment.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Mr. McNamara 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. McNamara of a censure and a bar for a period of two months 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
Panelists:
Kevin M. Fitzgerald
Jasmin M. Martinez