

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
NASD REGULATION, INC.

In the Matter of

Department of Enforcement,

Complainant,

vs.

John Lawson Greer, III
Knoxville, TN,

Respondent.

DECISION

Complaint No. C05990035

Dated: August 6, 2001

Registered representative falsified client agreement, new account approval form, and client option agreement and approval forms. Held, findings affirmed and sanctions modified.

We called this case for review pursuant to Procedural Rule 9312 to examine the Hearing Panel's findings and to examine whether the sanctions imposed by the Hearing Panel against John Lawson Greer, III ("Greer") are sufficiently remedial. After an independent review of the record, we find that Greer falsified a client agreement, new account approval form, and client option agreement and approval form in violation of Conduct Rule 2110. We affirm the Hearing Panel's imposition of a \$5,000 fine and the requirement that Greer complete the supervisory section of the Regulatory Element of the Continuing Education Program within 180 days of the date of the decision. We increase the two-week suspension in all capacities to a six-month suspension in all capacities, and we eliminate the requirement that Greer be required to be employed at a member firm that will agree to have all new account forms for Greer and his customers be reviewed by the firm's Compliance Department. We also affirm the Hearing Panel's imposition of costs in the amount of \$1,416.95.

Background

Greer entered the securities industry in 1978. He was registered as a general securities representative with Morgan Keegan & Company, Inc. ("Morgan Keegan" or the "Firm") from November 1996 until October 1998. Since October 1998, Greer has been associated with another firm as a general securities representative, a general securities principal, and an options principal.

Facts

The facts are generally undisputed.¹ On September 18, 1998, Greer completed and submitted to Morgan Keegan a Client Agreement on behalf of a fictitious customer named "J. Lawson Green" (hereinafter referred to as "Green"). On September 24, 1998, Greer completed and submitted to Morgan Keegan a New Account Approval Form ("Approval Form") on behalf of the fictitious Green. Greer described Green on the Approval Form as a self-employed real estate salesman residing on Erin Drive in Knoxville, Tennessee, and he noted Green's date of birth as November 10, 1957. The Approval Form indicated that Green's annual income was between \$50,000 and \$75,000 and that Green had an approximate net worth of between \$50,000 and \$100,000. Greer estimated Green's tax bracket to be in the 33rd percentile. Greer answered "No" on the Approval Form to the questions: "Does broker have a beneficial or personal interest in this account?" and "Is client or any member of the immediate family an employee of a financial institution or NASD member firm?"

On September 27, 1998, Greer completed and submitted to Morgan Keegan a Client Option Agreement and Approval Form ("Option Agreement") in Green's name. Greer signed all of these documents as Green. The Option Agreement approved Green for writing and buying moderate-risk stock options.

On October 8, 1998, Greer bought 30 Qlogic Corporation Oct '98 @ 55 call (uncovered opening option contract) in the Green account for a net amount of \$6,312.54, with a settlement date of October 9, 1998. On October 12, 1998, Greer sold 25 Qlogic for a net amount of \$18,176.20. Greer paid for his Qlogic purchase with a cashier's check to the Firm dated October 13, 1998, in the amount of \$6,312.54. On the line indicating "Purchaser," Greer changed the "r" in "John Greer" to "n," making the Purchaser "John Green." When Morgan Keegan discovered that the check had been altered, it conducted an inquiry, determined that the Green account was "not legitimate," and canceled Greer's Qlogic transactions. The Firm returned \$6,312.54 to Greer, and it terminated his employment. Morgan Keegan indicated on Greer's Uniform Termination Notice for Securities Industry Registration ("Form U-5") that he had been terminated for opening a fictitious account for personal use. Upon receipt of the Form U-5, NASD Regulation, Inc. ("NASD Regulation") opened an investigation into the matter.

Discussion

We affirm the Hearing Panel's findings that Greer violated Rule 2110 by submitting falsified documents to Morgan Keegan, as alleged in the complaint.² Greer admitted that he opened an account at Morgan Keegan under the fictitious name of "J. Lawson Green" and signed the new account

¹ As part of the proceedings below, Greer participated in a February 22, 2000 pre-hearing conference, in which he admitted that he committed the violations alleged in the complaint, and he asked for a hearing on the issue of sanctions.

² The Department of Enforcement filed the complaint in this matter on November 19, 1999.

documents in the name of the fictitious account holder. He further admitted that he placed a trade in the Green account using a cashier's check on which he changed the name of the purchaser from "John Greer" to "John Green." It is also undisputed that Greer misrepresented to NASD Regulation staff ("Staff") and the State of Tennessee that he had opened the account for his son.

Sanctions

The remaining issue before us is whether the sanctions imposed by the Hearing Panel are appropriately remedial. We find that they are not. After considering all of the facts in this matter, we impose the following sanctions: We affirm the \$5,000 fine, the requirement that Greer complete the supervisory section of the Regulatory Element of the Continuing Education Program within 180 days of the date that this decision becomes final, and the Hearing Panel's assessment of \$1,416.95 in costs. We increase the two-week suspension in all capacities to a six-month suspension in all capacities, and we eliminate the Hearing Panel's requirement that the Compliance Department of any broker-dealer that employs Greer be required to review Greer's and his customers' new account forms.

At the outset, we note that the Hearing Panel stated that there were two possible NASD Sanction Guidelines ("Guidelines") that could apply to Greer's misconduct, the Guideline for Recordkeeping Violations and the Guideline for Forgery and/or Falsification of Records. We have determined that the Guideline for Forgery and/or Falsification of Records is the appropriate guideline to apply in this case on the basis that Greer's conduct was intentional and deceptive, and we have considered the Principal Considerations in Determining Sanctions applicable to that Guideline: the nature of the document(s) forged or falsified and whether the respondent had a good-faith, but mistaken belief of express or implied authority.³ We find that Greer did not have a good-faith, but mistaken, belief of express or implied authority. We find that Greer purposely falsified four documents, the Client Agreement, the Approval Form, the Option Agreement, and the cashier's check, in order to open, and trade in, a fictitious account. In his January 19, 1999 letter to Staff and in testimony before the Hearing Panel, Greer stated that just prior to his opening the Green account, he had a problem with his personal account at Morgan Keegan and the Firm had placed a 90-day cash restriction on the account. We find that Greer falsified documents and opened a fictitious account in order to be able to trade without being monitored by Morgan Keegan. This conduct served intentionally to deprive the Firm of the ability to monitor Greer's trading during the time his own account was restricted.

We find it an aggravating factor that Greer made misrepresentations to Staff and the State of Tennessee in his initial responses to questions about the incident. Greer never denied completing the new account forms, but he initially contended both to Staff and the State of Tennessee that he had opened the account for his son.

In a letter to Staff dated November 19, 1998, Greer stated that he had opened the Green account on behalf of his son, but that he had "neglected to code the account as a custodial account or as employee related." Greer wrote:

³ See NASD Sanction Guideline (1998 ed.) at 35 (Forgery and/or Falsification of Records).

The name should have been Greer, but it came out as Green. We use the name J Lawson to distinguish between the various Johns in my family. The address on the document was my [Post Office Box], P.O. Box 111, 5201 Kingston Pike, Knoxville, TN 37919.

Funds were deposited to the account in the form of a cashier's check. The check was made out to Morgan Keegan with myself as the remitter.

There was only one trade, which was the purchase of 30 Q Logic options. The trade was paid for and the result was a profit of approximately \$20,000, which Morgan Keegan kept.

In a follow-up letter to Staff dated January 10, 1999, Greer again contended that the Green account was his son's, and he stated that he was at a loss to explain the November 10, 1957 birth date on the Approval Form, since his son was born on November 10, 1982. Contrary to the information on the Approval Form, Greer stated that his son was not self-employed as a salesman, that he earned less than \$75,000, and that he had a net worth of less than \$100,000. Greer stated that the investment experience that he had attributed to Green was reflective of his own experience. Greer stated that he had initially put his brother-in-law's address on the account, but that upon reflection, he changed it to his own post office box address. He stated that he had invested his own funds in the Green account, and he admitted that he had changed his name to "John Green" on the cashier's check.

The Consent Order entered into by Greer on March 4, 1999 with the Commissioner of Commerce and Insurance of the State of Tennessee at Nashville, specifically states that Greer failed to report on his November 4, 1998 Uniform Application for Securities Industry Registration or Transfer ("Form U-4") that Morgan Keegan had terminated him for cause. The Consent Order further states that on December 21, 1998, Greer informed the State of Tennessee that he had opened the account for his son, John Lawson Greer, but that he had inadvertently opened the account in the name of J. Lawson Green.⁴

Although Greer did not specifically assert that there was a direct correlation between the Green account matter and his work situation at Morgan Keegan, he clearly wanted NASD Regulation to understand that his misconduct occurred in what he saw as very emotionally trying circumstances. In correspondence to Staff and in testimony before the Hearing Panel, Greer described certain problems at Morgan Keegan, including what he believed to be an unjustified 90-day restriction on his account.

⁴ The State of Tennessee ordered Greer to retake and pass the Series 7 and 63 examinations within 90 days; required Greer's firm to report any customer complaints for two years; and ordered him to pay a civil penalty of \$10,000.

Greer stated in the January 1999 letter to Staff that he had never had a problem before in the industry. He said:

I hated being at Morgan Keegan and probably subconsciously was looking to get out. . . I want to reinforce that I harmed neither Morgan Keegan or (sic) clients. The only person I harmed was myself. I have clients who depend on me and I would like to continue in the business.

Greer stated that he had created and used the fictitious account to avoid what he perceived as harassment from Morgan Keegan management. Greer also introduced testimony before the Hearing Panel from DLW, a registered nurse who had been treating him for depression since approximately September 1999. DLW testified that Greer engaged in the alleged fraudulent conduct after having suffered a series of losses and a betrayal by his business partner. She testified that Greer was making significant progress in dealing with his depression.

It is nonetheless clear to us that Greer knew then, as he knows now, that he deliberately engaged in wrongful conduct. Neither Greer's problems at the Firm nor his mental state in any way justify or mitigate his opening and subsequently trading in a fictitious account. Nonetheless, we, like the Hearing Panel, have given weight to the fact that Greer appears to be quite remorseful. He understands that his actions have caused him and his family considerable harm. We also have considered the positive steps Greer has taken to address his depression.

We also have considered the effects of Greer's misconduct. While it is true that that no customer was harmed, trading in the Green account enabled Greer to avoid Firm restrictions and supervision. The Hearing Panel found, and we agree, that Greer established the account as a means to trade securities in an account other than the account that Morgan Keegan had restricted. Under the terms of the restriction, Greer would have had to pay for his October 8, 1998 Qlogic purchase on that date or, in the alternative, have sufficient funds in his account to pay for the trade. The record shows, however, that Greer did not pay for his October 8 trade until October 13.

We disagree with the Hearing Panel's decision to give Greer credit for the time he was out of the industry following the Consent Order. In determining to impose a two-week suspension, the Hearing Panel specifically noted that as a consequence of the Consent Order, Greer was out of work for six months until he re-registered in the State of Tennessee, a license that he apparently needed because he resided in Tennessee. One of the factors listed in the Sanction Guidelines to be considered in conjunction with the imposition of sanctions is "[w]hether the member firm with which the respondent

is/was associated disciplined respondent for the misconduct at issue prior to regulatory detection.⁵ We find that Greer should not be given credit under this provision.

Greer became employed by another broker-dealer in October 1998, the same month in which he was terminated by Morgan Keegan, and he applied for his Tennessee license on November 4, 1998. Greer did not report on his November 4, 1998 Form U-4 that Morgan Keegan had terminated him for cause. Morgan Keegan did, however, report the opening of the fictitious account as the cause for Greer's termination on Greer's November 5, 1998 Form U-5.

When the State of Tennessee learned that Morgan Keegan had terminated Green for opening a fictitious account, it opened an investigation of the matter. The Consent Order notes that in response to a December 21, 1998 inquiry, Greer represented that he had opened the account for his son, John Lawson Greer, and that he had inadvertently opened the account under the name of J. Lawson Green. The State ultimately concluded that Greer's statement was not true, but it did not complete its investigation and issue its Consent Order until March 4, 1999. This investigation caused the delay in Greer's receiving his Tennessee license.

We conclude that it is neither appropriate nor consistent with the Sanction Guidelines to give Greer "credit" for the time it took for the State of Tennessee to conclude its investigation and issue him a license.⁶ Greer's time out of the industry was not caused by any disciplinary action taken by Morgan Keegan, the State of Tennessee, or NASD Regulation. Instead, the delay was caused by Greer's failure to disclose.

We also have decided to eliminate the requirement that the Compliance Department of any member firm that employs Greer review all of Greer's and his customers' new account forms. We believe that Greer's future employers, who will be on notice of Greer's conduct and this decision, should determine the appropriate manner and level of supervision to accord Greer.

Accordingly, having considered the above factors, we affirm the \$5,000 fine, the requirement that Greer complete the supervisory section of the Regulatory Element of the Continuing Education Program within 180 days of the date that this decision becomes final, and the assessment of \$1,416.95 in costs. We increase the two-week suspension in all capacities to a six-month suspension in all capacities, but we eliminate the requirement that the Compliance Department of any member firm that

⁵ See Principal Considerations in Determining Sanctions (No. 14) at 9.

⁶ We have, however, considered the \$10,000 fine imposed by the State of Tennessee in determining to impose only a \$5,000 fine in this matter.

employs Greer review all of Greer's and his customers' new account forms.⁷ Greer's suspension shall start on the date indicated in the cover letter to this decision.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

⁷ 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. The sanctions that we have imposed are consistent with the NASD Sanction Guideline (1998 ed.) at 35 (Forgery and/or Falsification of Records).

Pursuant to NASD Procedural Rule 8320, any member that 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.